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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

HAGOP BAZRGANIAN, on behalf of all  
plaintiffs,

Plaintiff,

v.

MERCEDES-BENZ USA, LLC, a  
Delaware Limited Liability Company;  
DAIMLER AG, a German Multinational  
Automotive Corporation; DAIMLER  
TRUCKS NORTH AMERICA LLC, an  
Oregon Limited Liability Company;  
DETROIT DIESEL CORPORATION, a  
Michigan Corporation; DAIMLER VANS  
USA, LLC, a South Carolina Limited  
Liability Company, DAIMLER VEHICLE  
INNOVATIONS, LLC, a New Jersey  
Limited Liability Company; DAIMLER  
NORTH AMERICA CORPORATION, a  
New Jersey Corporation; CALSTAR  
MOTORS, a Mercedes-Benz Dealer;  
CARRIE KINNEY, an individual; and  
DOES 1 through 100, inclusive,

Defendants.

Case No. 2:17-cv-06521-ODW(JPR)

**ORDER GRANTING MOTION TO  
TRANSFER VENUE [16]**

**I. INTRODUCTION**

Plaintiff Hagop Bazrganian (“Plaintiff”), on behalf of himself and others  
similarly situated, filed this class action against Defendants Mercedes-Benz USA,  
LLC (“MBUSA”), Daimler Trucks North America LLC, Detroit Diesel Corporation,

1 Daimler Vans USA, LLC, Daimler North America Corporation, and CalStar Motors’  
2 (collectively, “Defendants”) in Los Angeles Superior Court on July 14, 2017.  
3 (Compl., ECF No. 1-1.) This case was removed to the United States District Court for  
4 the Central District of California on September 5, 2017. (ECF No. 1.) Before the  
5 Court is Defendants’ unopposed Motion to Transfer Venue. (ECF No. 16.) For the  
6 reasons discussed below, the Court **GRANTS** Defendants’ Motion.<sup>1</sup>

## 7 **II. PROCEDURAL AND FACTUAL BACKGROUND**

8 On February 18, 2016, a consumer class-action lawsuit was filed against  
9 MBUSA in the United States District Court for the District of New Jersey, alleging  
10 that Mercedes-Benz diesel vehicles are falsely advertised as “clean” or  
11 environmentally friendly (“First-Filed Action”). Complaint, *Ulyana Lynevych, et. al.*  
12 *v. Mercedes-Benz USA, LLC, et. al.*, No. 2:16-cv-00881-JLL-JAD (case filed Feb. 18,  
13 2016).<sup>2</sup> Subsequent to the filing of the First-Filed Action, five other putative class  
14 actions that presented substantially similar false advertising claims against MBUSA  
15 were filed in various district courts. (Mot. 2–3.) In May 2016, these cases were either  
16 dismissed or consolidated with the First-Filed Action. (Mot. 3.); *see* Order, *In re*  
17 *Mercedes-Benz Emissions Litigation*, No. 2:16-cv-00881-JLL-JAD. On September  
18 25, 2017, the plaintiffs in the First-Filed Action filed a fourth amended complaint.  
19 Fourth Consolidated and Am. Class Action Compl. and Demand for Jury Trial, *In re*  
20 *Mercedes-Benz Emissions Litigation*, No. 2:16-cv-00881-JLL-JAD (filed Sept. 25,  
21 2017). In the First-Filed Action, those plaintiffs defined their putative class as:

22 All persons or entities in the United States who owned and  
23 or leased an [sic] “Polluting Vehicle” as of February 18,  
24 2016. Polluting Vehicles include, without limitation, the  
25 diesel-powered: ML 320, ML 350, GL 320, E320, S350,

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26 <sup>1</sup> After carefully considering the papers filed with the instant Motion, the Court deemed the  
27 matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.

28 <sup>2</sup> This Court takes judicial notice, *sua sponte*, of the First-Filed Action, the filing of the original  
complaint in the First-Filed Action, and the Fourth Amended Complaint in the First-Filed Action  
pursuant to Federal Rule of Evidence 201(c)(1).

1 R320, E Class, GL Class, ML Class, R Class, S Class, GLK  
2 Class, GLE Class, and Sprinter.

3 *Id.* at 191. Further, the plaintiffs in the First-Filed Action defined their California  
4 Subclass as: “All persons or entities in the state of California who owned and/or  
5 leased an [sic] Polluting Vehicle as of February 18, 2016.” *Id.* The First-Filed  
6 Action’s Fourth Amended Complaint alleges, among other things, violations of  
7 various state and federal consumer protection acts, violations of various business laws,  
8 and fraudulent concealment. *Id.* at v–x.

9 On July 14, 2017, Plaintiff Hagop Bazrganian filed the instant action against  
10 MBUSA and other defendants alleging: (1) breach of contract, (2) violations of the  
11 Song-Beverly Consumer Warranty Act, (3) breach of implied warranty of  
12 merchantability, (4) violations of the California Unfair Competition Law, (5)  
13 violations of the California Consumers Legal Remedies Act, and (6) violations of the  
14 California False Advertising Law. (Compl.) Bazrganian defines his class as “[a]ll  
15 persons, including individual, non-corporate entities, or corporations, wherever  
16 organized or existing in the United States who are former or current owners of an  
17 Affected Vehicle.” (Compl. 9.) Bazrganian defines “Affected Vehicles” as including,  
18 without limitation:

- 19 • Dodge/Freightliner Trucks/Mercedes-Benz Sprinter Van (2006–Present);
- 20 • Mercedes-Benz C320 CDI (2005–Present);
- 21 • Mercedes-Benz E280 & E320 CDI/BlueTEC (2007–2009) Models  
22 211.02 & 022;
- 23 • Mercedes-Benz 350 CDI (2009–2009);
- 24 • Mercedes-Benz E350 CDI/BlueTEC (2010–Present) Models 212.024;
- 25 • Mercedes-Benz G350 CDI/BlueTEC (2010–Present);
- 26 • Mercedes-Benz R320/350 CDI/BlueTEC (2007–Present) Models  
27 251.122 & 125;
- 28 • Mercedes-Benz ML320/350 CDI/BlueTEC (2007–Present) Models  
164.122, 125 & 024;

- 1 • Mercedes-Benz GL320/350 CDI/BlueTEC (2007–Present) Models  
2 164.822, 825, & 824;
- 3 • Mercedes-Benz S320/350 CDI/BlueTEC (2005–Present) Models  
4 221.183;
- 5 • Mercedes-Benz CLS320/350 CDI/BlueTEC (2005–Present) Models  
6 219.322; 218.326, 926, 394, 994, 323, 923, 923, 393, 993;
- 7 • Mercedes-Benz GLK class;
- 8 • Mercedes-Benz GLE class; and
- 9 • Mercedes-Benz Sprinter Van.

10 (*Id.* 9–10.) On September 27, 2017, Defendants moved to transfer this action to the  
11 District of New Jersey under the first-to-file rule, or under 1404(a), in the alternative.<sup>3</sup>  
12 (Mot.) Bazrganian failed to oppose the Motion.<sup>4</sup> That Motion is now before the  
13 Court for decision.

### 14 III. LEGAL STANDARD

15 Under the first-to-file rule, or comity doctrine, a district court may decline to  
16 exercise jurisdiction over an action when a complaint involving the same parties and  
17 issues has been filed in another district. *Pacesetter Sys., Inc. v. Medtronic Inc.*, 678  
18 F.2d 93, 94–95 (9th Cir. 1982). This doctrine seeks to conserve limited judicial  
19 resources and avoid duplicate or inconsistent judgments on similar issues. *Id.* at 95.  
20 When considering whether to apply this doctrine, a court must consider: (1) the  
21 similarity of the parties; (2) the chronology of the two actions; and (3) the similarity of  
22 the issues. *See Kohn Law Grp., Inc. v. Auto Parts Mfg. Miss., Inc.*, 787 F.3d 1237,  
23 1240 (9th Cir. 2015).

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26 <sup>3</sup> Because the Court is granting Defendants’ Motion under the first-to-file, the Court declines to  
27 address the merits of Defendants’ 1404(a) argument at this time.

28 <sup>4</sup> Under Local Rule 7-12, the Court may deem failure to file a timely opposition as consent to the  
Court granting the Motion. C.D. Cal. Local Rule 7-12. While Bazrganian failed to oppose the  
Motion, the Court nonetheless proceeds to address the merits of the Motion.



1 determine the second action is duplicative” (internal quotations omitted)). Although  
2 some defendants listed in the instant action are not named defendants in the First-Filed  
3 Action, their interests in defending this action can be inferred as the same because  
4 they are subsidiaries and/or affiliates of the primary defendants of the First-Filed  
5 Action, MBUSA and Daimler AG. *See generally Metlife*, No. C 06-0444, 2006 WL  
6 3201045, at \*4 (finding that corporate subsidiaries have the same general interest in  
7 defending a similar action that includes their parent companies); *see also Barapind v.*  
8 *Reno*, 72 F. Supp. 2d 1132 (E.D. Cal. 1999) (observing that a subsequent suit may be  
9 found duplicative where the plaintiff simply added an additional defendant who  
10 represents the same interests in a complaint already filed in another federal district  
11 court).

#### 12 **B. Chronology and Similarity of Issues**

13 The remaining two factors in determining whether to apply the first to file rule  
14 are the chronology of the two actions and the similarity of the issues. Here, it is  
15 undisputed that the First-Filed Action was filed well before this action. The First-  
16 Filed Action was originally filed on February 18, 2016—more than one year prior to  
17 the filing of this action. *Compare* (Compl.) *and* Complaint, *Ulyana Lynevyeh, et. al.*  
18 *v. Mercedes-Benz USA, LLC, et. al.*, No. 2:16-cv-00881-JLL-JAD (case filed Feb. 18,  
19 2016).

20 Furthermore, the First-Filed action and this action have substantial overlap in  
21 the claims asserted. Both cases allege fraudulent concealment, violations of the  
22 California Unfair Competition Law, violations of the California Consumer Legal  
23 Remedies Act, and violations of the California False Advertising Law. (Compl.);  
24 Fourth Consolidated and Am. Class Action Compl. and Demand for Jury Trial, *In re*  
25 *Mercedes-Benz Emissions Litigation*, No. 2:16-cv-00881-JLL-JAD (filed Sept. 25,  
26 2017). While Bazrganian has asserted some claims that are not alleged in the First-  
27 Filed Action, the existence of these claims does not preclude transfer. *See Shwartz v.*  
28 *Frito-Lay N. Am.*, No. C-12-02740(EDL), 2012 WL 8147135, at \*3 (N.D. Cal. Sept.

1 12, 2012) (finding that “[t]he issues need not be precisely identical for the first-to-file  
2 rule to apply . . .[,] the rule can apply even if the later action brings additional  
3 claims”).

4 Because all three factors have been satisfied, the Court finds it appropriate to  
5 apply the first-to-file rule to this action. “Efficiency is lost, and judicial resources are  
6 wasted” where multiple actions, comprised of substantially similar claims and parties,  
7 continue simultaneously. *See Treasure Garden, Inc. v. Red Star Traders, LLC*, No.  
8 CV 12-0857, 2013 WL 12121989, at \*5 (C.D. Cal. Apr. 1, 2013).

9 **V. CONCLUSION**

10 For the reasons discussed above, the Court **GRANTS** Defendants’ Motion to  
11 Transfer to United States District Court for the District of New Jersey. (ECF No. 16.)  
12 The Clerk of the Court shall transfer and close the case.

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14 **IT IS SO ORDERED.**

15  
16 October 31, 2017



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18 **OTIS D. WRIGHT, II**  
19 **UNITED STATES DISTRICT JUDGE**