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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAVID STARK; BILLY SMALL, JR.;  
LINDA WHITE, individually and as  
successor-in-interest of the ESTATE  
OF CHARLES WHITE; GAYLON  
MURRY; RUTH KENNON, individually  
and as successor-in-interest of the  
ESTATE OF JAMES KENNON; and  
NANCY HOOSER,

Plaintiffs,

v.

McKESSON CORPORATION;  
BRISTOL-MYERS SQUIBB  
COMPANY; PFIZER, INC.; and Does  
1–100, inclusive,

Defendants.

No. 2:17-cv-00095-MCE-CKD

**MEMORANDUM AND ORDER**

This suit arises out of alleged defects in the pharmaceutical product Eliquis. Plaintiffs are four individuals who used Eliquis and two successors-in-interest of individuals who allegedly died as a result of their Eliquis usage. Defendants are two pharmaceutical manufacturers—Bristol-Myers Squibb Co. (“BMS”) and Pfizer, Inc.—and one pharmaceutical distributor—McKesson Corp. The suit was originally filed in the San Joaquin County Superior Court, but was removed to this Court by Defendants BMS and Pfizer on January 17, 2017. ECF No. 1. In removing the suit, BMS and Pfizer claim

1 that McKesson (a California citizen for diversity purposes) was fraudulently joined in  
2 order to destroy diversity.

3 This suit is one of a number of Eliquis cases currently pending in both California  
4 and federal courts. On February 7, 2017, the U.S. Judicial Panel on Multidistrict  
5 Litigation (“MDL Panel”) ordered that 34 Eliquis federal cases be transferred to the  
6 Southern District of New York “for coordinated or consolidated pretrial proceedings.”  
7 Transfer Order, ECF No. 19-15, at 4. The same day, the Panel issued a conditional  
8 transfer order for 16 other Eliquis cases, including this one. Conditional Transfer Order,  
9 ECF No. 19-16, at 2–3. Plaintiffs have stated their intent to oppose that transfer. Pls.’  
10 Opp’n to Mot. to Stay, ECF No. 20, at 3. Furthermore, Plaintiffs have petitioned the  
11 Chair of the Judicial Council of California for coordination of the pending California  
12 Eliquis Cases. *Id.* at 2. That petition was set for hearing on March 8, 2017. *Id.*

13 Pending before the Court now are Defendants’ Motions to Dismiss for Lack of  
14 Jurisdiction, to Stay, and to Drop Parties for Improper Joinder, as well as Plaintiffs’  
15 Motion to Remand. ECF Nos. 5, 7, 15–16. For the reasons provided below,  
16 Defendants’ Motion to Stay is GRANTED. Accordingly, the Court does not address the  
17 three other pending motions, which are stricken without prejudice to refile, if  
18 appropriate, when the stay is lifted.<sup>1</sup>

## 20 DISCUSSION

21  
22 A “trial court may, with propriety, find it is efficient for its own docket and the  
23 fairest course for the parties to enter a stay of an action before it, pending resolution of  
24 independent proceedings which bear upon the case.” Mediterranean Enters., Inc. v.  
25 Ssangyong Corp., 708 F.2d 1458, 1465 (9th Cir. 1983) (quoting Leyva v. Certified  
26 Grocers of Cal., Ltd., 593 F.2d 857 863–64 (9th Cir. 1979). The power to issue a stay

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27 <sup>1</sup> Because oral argument would not be of material assistance, the Court ordered this matter  
28 submitted on the briefs. E.D. Cal. Local R. 230(g).

1 derives from a federal district court's power to control its docket and ensure that cases  
2 before it are justly determined. Leyva, 593 F.2d at 864. When considering a motion to  
3 stay, the court weighs a series of competing interests:

4 the possible damage which may result from the granting of a  
5 stay, the hardship or inequity which a party may suffer in  
6 being required to go forward, and the orderly course of justice  
7 measured in terms of the simplifying or complicating of  
8 issues, proof, and questions of law which could be expected  
9 to result from a stay.

10 CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962) (citing Landis v. N. Am. Co.,  
11 299 U.S. 248, 254–55 (1936)).

12 In the context of staying proceedings pending a motion before an MDL Panel,  
13 these factors are better framed as follows: “(1) conserving judicial resources and  
14 avoiding duplicative litigation; (2) hardship and inequity to the moving party if the action  
15 is not stayed; and (3) potential prejudice to the non-moving party.” Lingle v. DePuy  
16 Orthopaedics, Inc., No. 11cv1486 L(MDD), 2011 WL 5600539, at \*1 (S.D. Cal. Nov. 17,  
17 2011). Application of these factors to the instant case weighs in favor of implementing a  
18 stay and declining to address the three other motions pending before the Court.

19 First, there is no indication that a short stay pending resolution of the conditional  
20 transfer of this case to the JPML would prejudice Plaintiffs. They claim that should a  
21 stay issue, they would “be forced to file and argue motion to remand in two different  
22 courts.” Pls.’ Opp’n to Mot. to Stay, at 6. It is unclear, however, why such a result would  
23 cause prejudice. Either the case will be transferred to the pending MDL court  
24 proceeding or it will remain before this Court. In either case, only one court will hear and  
25 rule on the pending motion to remand. Second, there is the potential for inequity if the  
26 action is not stayed. Identical jurisdictional issues raised here are raised in the various  
27 Eliquis cases now pending in the MDL proceeding. Decl. of Brooke Kim, ECF No. 7-1,  
28 ¶¶ 9–11. Without a stay, Defendants would have to argue almost identical motions  
before different courts, potentially creating conflicting results. Finally, judicial economy  
warrants a stay. If the case is transferred to the MDL proceeding, one court will be in the

1 position to decide the identical jurisdictional issues presented by each case.  
2 Accordingly, the Court finds that a stay of the proceedings is appropriate in this case.<sup>2</sup>

3  
4 **CONCLUSION**

5  
6 For the reasons provided above, Defendants' Motion to Stay, ECF No. 7, is  
7 GRANTED. All proceedings in this case are hereby stayed pending a final ruling by the  
8 MDL Panel on In re: Eliquis (Apixaban) Products Liability Litigation, MDL No. 2754. The  
9 parties are directed to file a Joint Status Report advising the Court of the status of the  
10 motion pending before the MDL Panel every forty-five (45) days; the first such report  
11 must be filed not later than forty-five (45) days after this Order is electronically filed.  
12 Failure to do so may result in monetary sanctions and/or dismissal of this action for  
13 noncompliance with the Court's Order and/or the failure to prosecute. The remaining  
14 pending Motions, ECF Nos. 5, 15–16, are stricken without prejudice to refile, if  
15 appropriate, when the stay is lifted.

16 IT IS SO ORDERED.

17 Dated: March 27, 2017

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19 MORRISON C. ENGLAND, JR.  
20 UNITED STATES DISTRICT JUDGE

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25 <sup>2</sup> Though the Court does not address the merits of Plaintiffs' Motion to Remand, it is appropriate to  
26 briefly address the motion here. When there are competing motions to stay and remand, some courts  
27 apply a three-step test to determine whether to address the motion to remand, which first requires a  
28 "preliminary assessment" of the motion to remand. Conroy v. Fresh Del Monte Produce, Inc.,  
325 F. Supp. 2d 1049, 1053 (N.D. Cal. 2004). However, "[t]he Ninth Circuit has not expressly adopted this  
approach." Id. Plaintiffs urge this Court to apply this three-step test. See Pls.' Opp'n to Mot. to Stay, ECF  
No. 20, at 5–6. The Court here declines to do so, given the factors addressed above that counsel issuing  
a stay.