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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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PAMELA WOODCOX, EUGENE
WOODCOX, MICHELLE CONTRERAS,
and LOUIS CONTRERAS,

Plaintiffs,

v.

VOLKSWAGEN GROUP OF AMERICA,
INC., D/B/A VOLKSWAGEN OF
AMERICA, INC.; VOLKSWAGEN AG;
ROSEVILLE VOLKSWAGEN, LLC;
THE NIELLO COMPANY; and DOES
1 through 50, inclusive,

Defendants.

CIV. NO. 2:17-215 WBS DB

MEMORANDUM AND ORDER RE: MOTION
TO REMAND AND MOTION TO STAY

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Plaintiffs Pamela Woodcox, Eugene Woodcox, Michelle
Contreras, and Louis Contreras brought this action in the
Sacramento County Superior Court against defendants Volkswagen
Group of America, Inc.; Volkswagen AG; Roseville Volkswagen, LLC;
and the Niello Company for damages arising out of defendants'
alleged installation of illegal "defeat devices" in certain

1 automobiles to avoid detection and enforcement of Environmental
2 Protection Agency ("EPA") and state vehicle emissions
3 regulations. Defendants removed the action to this court on
4 January 31, 2017. Presently before the court are plaintiffs'
5 Motion to Remand and defendants' Motion to Stay this case pending
6 transfer to the Northern District of California pursuant to 28
7 U.S.C. § 1407.

8 I. Factual and Procedural History

9 In 2015, the EPA and the California Air Resource Board
10 ("CARB") issued Notices of Violation to Volkswagen Group of
11 America for alleged violations of the federal Clean Air Act
12 ("CAA"). (Compl. ¶¶ 73-74 (Docket No. 1-2).) Volkswagen
13 allegedly installed illegal software-based "defeat devices" in
14 certain diesel vehicles, which "reduce[] the effectiveness of the
15 emission control systems" and produce "compliant emission
16 results" only "when the vehicle was being tested for compliance
17 with EPA emissions standards." (Id. ¶¶ 31, 68-69, 72-73.) As a
18 result, Volkswagen's vehicles allegedly emitted levels of
19 pollutants up to forty times above EPA- and CARB-compliant levels
20 during normal operation. (Id. ¶ 69.)

21 Volkswagen's actions resulted in well over 1,000
22 actions across the United States for their sale of purportedly
23 "clean diesel" vehicles containing these defeat devices. The
24 Judicial Panel on Multidistrict Litigation ("JPML") has
25 consolidated over 1,200 cases of these cases into a federal
26 multidistrict litigation in the United States District Court for
27 the Northern District of California ("MDL court"). In re:
28 Volkswagen Clean Diesel Mktg., Sales Practices, and Prod. Liab.

1 Litig., MDL No. 2672, Conditional Transfer Order 85 (J.P.M.L.
2 Feb. 21, 2017).

3 Plaintiffs filed the instant action in state court,
4 incorporating part of the consolidated consumer class action
5 complaint in the MDL court and bringing separate California state
6 law claims. Plaintiffs allege the following causes of action:
7 (1) violation of California Unfair Competition Law ("UCL"); (2)
8 violation of California False Advertising Law; (3) breach of
9 express warranty under the Song-Beverly Consumer Warranty Act;
10 (4) violation of the California Consumer Legal Remedies Act; (5)
11 fraud by concealment; and (6) negligent misrepresentation.

12 (Compl.) Defendants subsequently removed the case to federal
13 court on the basis of federal question jurisdiction. (Docket No.
14 1.)

15 On February 6, 2017, plaintiffs filed a motion to
16 remand the case to state court for lack of subject matter
17 jurisdiction, arguing that the case implicates only California
18 law. (Mot. to Remand (Docket No. 5-2).) Defendants,
19 anticipating transfer of this case to the MDL court, then moved
20 to stay this action. (Mot. to Stay (Docket No. 6-1).) On
21 February 10, 2017, the JPML issued a Conditional Transfer Order
22 ("CTO") indicating its decision that this case should be
23 transferred to the MDL court. (Oswell Decl., Ex. B at 2 (Docket
24 No. 12-3).) Plaintiffs filed a notice of opposition to the CTO
25 and then moved to vacate the CTO pursuant to J.P.M.L. Rule 7.1.

26 II. Discussion

27 A. Order of Pending Motions

28 As an initial matter, the court must determine which

1 motion--plaintiffs' motion to remand or defendants' motion to
2 stay--to entertain first. Generally, jurisdiction is a
3 preliminary matter that should be resolved before all others.
4 Smith v. Mail Boxes, Etc., 191 F. Supp. 2d 1155, 1157 (E.D. Cal.
5 2002) ("[J]urisdictional issues should be resolved before the
6 court determines if a stay is appropriate."). However, the
7 approach changes when deference to an MDL court will further "the
8 uniformity, consistency, and predictability in litigation that
9 underlies the MDL system." Conroy v. Fresh Del Monte Produce
10 Inc., 325 F. Supp. 2d 1049, 1053 (N.D. Cal. 2004). The MDL court
11 can resolve a motion to remand when "the motion raises issues
12 likely to arise in other actions pending in [the consolidated
13 action]." Id.; see also In re Vioxx Prods. Liab. Litig., 360 F.
14 Supp. 2d 1352, 1354 (J.P.M.L. 2005) ("[M]otions to remand . . .
15 can be presented to and decided by the transferee judge.").

16 Several courts, including this one, have applied the
17 Conroy methodology when considering simultaneous motions to
18 remand and stay in the MDL context. See, e.g., Beshear v.
19 Volkswagen Grp. of Am., Inc., Civ. No. 16-cv-27-GFVT, 2016 WL
20 3040492, at *2-6 (E.D. Ky. May 25, 2016); Leeson v. Merck & Co.,
21 Inc., Civ. No. 2:05-2240 WBS PAN, 2006 WL 3230047, at *2-4 (E.D.
22 Cal. Jan. 27, 2006). "First, the court should [scrutinize] the
23 merits of the motion to remand" and consider it in full if "this
24 preliminary assessment suggests that removal was improper."
25 Conroy, 325 F. Supp. 2d at 1053. Second, "if the jurisdictional
26 issue appears factually or legally difficult, the court should
27 determine whether identical or similar jurisdictional issues have
28 been raised in other cases that have been or may be transferred

1 to the MDL proceeding.” Id. “[I]f the jurisdictional issue is
2 both difficult and similar or identical to those in cases
3 transferred or likely to be transferred, the court should stay
4 the action.” Id.; see also Meyers v. Bayer AG, 143 F. Supp. 2d
5 1044, 1048-49 (E.D. Wis. 2001).

6 Applying this methodology, the court finds that a stay
7 is proper. First, in light of the defendants’ subject matter
8 jurisdiction arguments, “removal was not plainly improper.” See
9 Leeson, 2006 WL 3230047, at *3. Defendants removed this case to
10 federal court, arguing plaintiffs’ state law claims necessarily
11 require the resolution of substantial federal law issues.
12 Federal question jurisdiction exists over state law claims “if a
13 federal issue is: (1) necessarily raised, (2) actually disputed,
14 (3) substantial, and (4) capable of resolution in federal court
15 without disrupting the federal-state balance approved by
16 Congress.” Gunn v. Minton, 133 S. Ct. 1059, 1065 (2013) (citing
17 Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg., 545 U.S.
18 308, 314 (2008)).

19 “When a claim can be supported by alternative and
20 independent theories--one of which is a state law theory and one
21 of which is a federal law theory--federal question jurisdiction
22 does not attach because federal law is not a necessary element of
23 the claim.” Rains v. Criterion Sys., Inc., 80 F.3d 339, 346 (9th
24 Cir. 1996). Some of plaintiffs’ claims do not necessarily raise
25 federal law questions. Plaintiffs allege, for example, that
26 defendants violated the UCL by violating federal and state
27 emissions laws. (Compl. ¶ 90.) Thus, the UCL claim may, but
28 does not necessarily, turn on federal law issues. However, it is

1 not plainly clear from the Complaint that there are theories for
2 each claim that do not necessarily require resolution of a
3 federal law issue.

4 Additionally, the entire action arose out of the EPA's
5 notice of violation by defendants for their use of "defeat
6 devices." (Id. ¶¶ 1-2.) The Complaint repeatedly alleges that
7 defendants sold vehicles exceeding emissions standards using
8 "defeat devices"--a term defined by federal law--which is a
9 substantial issue in this litigation. See 40 C.F.R. §
10 1045.115(g) ("A defeat device is an auxiliary emission control
11 device that reduces the effectiveness of emission controls under
12 conditions that the engine may reasonably be expected to
13 encounter during normal operation and use."). The Complaint also
14 specifically incorporates many portions of the amended
15 consolidated consumer class action complaint in the MDL court,
16 further complicating this jurisdictional issue. (See Compl. ¶
17 1.) Lastly, defendants argue that allowing the court to hear
18 this issue would not disrupt the federal-state balance approved
19 by Congress because Congress desires uniform application of
20 environmental regulations and the CAA. See Beshear, 2016 WL
21 3040492, at *5.

22 Plaintiffs argue that no federal issue is "actually
23 disputed" because Volkswagen's CEO admitted to the use of
24 software that defeats emissions tests while testifying before
25 Congress. This argument is weakened by the fact that the same
26 alleged factual scenario has led to litigation across the
27 country. Many courts across the country have evaluated this
28 issue, with outcomes on both sides. Compare id. at *4 (finding

1 there may be disputed federal issues and thus a stay is proper
2 under Conroy), with Springsted v. Valenti Motors, Inc., 2016 WL
3 2977235, at *3 (D. Conn. May 20, 2016) (finding it is unclear
4 whether there is an actual dispute and thus remand is proper).

5 It is unclear at this juncture to what extent
6 plaintiffs' claims depend on allegations of fraud and
7 misrepresentations rather than a disputed issue of federal law.
8 See Beshear, 2016 WL 3040492, at *4. Since this preliminary
9 assessment is only a limited inquiry, defendants' federal
10 question jurisdiction arguments are not clearly baseless. See
11 Leeson, 2006 WL 3230047, at *3.

12 Second, the jurisdictional issue here is similar to
13 jurisdictional issues in cases already transferred to the MDL
14 court. Several cases already transferred to the MDL court
15 contain the precise jurisdictional question at issue here--
16 whether plaintiffs' state law claims for relief are based upon a
17 disputed issue of federal law. See, e.g., Hess v. Volkswagen
18 Grp. of Am., Inc., Civ. No. 2:16-cv-668-KOB, 2016 WL 3483166
19 (N.D. Ala. June 27, 2016). For example, the JPML, in its final
20 transfer order for 41 actions, noted that 40 cases had pending
21 motions for remand. (Hogberg Decl., Ex. M (Docket No. 6-15).)
22 Furthermore, several related cases in California district courts
23 have been stayed and subsequently transferred while motions for
24 remand were pending on the same issue of federal question
25 jurisdiction. See, e.g., Ackers v. Volkswagen Grp. of Am., Inc.,
26 Civ. No. 2:16-1942 JAM CKD (E.D. Cal. Aug. 26, 2016), ECF No. 5;
27 Alvarado v. Lasher Auto Grp., Civ. No. 2:16-979 (June 14, 2016),
28 ECF No. 12; Wilke v. Volkswagen of Downtown L.A., Civ. No. 2:16-

1 3087 DOC SP (C.D. Cal. June 6, 2016), ECF No. 18.

2 Further, this case shares "common question[s] of fact"
3 with other cases already transferred to the MDL court. 28 U.S.C.
4 § 1407(a). Plaintiffs here, like plaintiffs in the MDL action,
5 are private consumers. The cases all involve the key question
6 related to the defendants' alleged use of "defeat devices."
7 Finally, there are many cases brought by California consumers
8 under California state law. See, e.g., Alvarado, Civ. No. 2:16-
9 979, ECF No. 12. Consequently, "identical or similar
10 jurisdictional issues have been raised in other cases that have
11 been or may be transferred to the MDL proceeding." Conroy, 325
12 F. Supp. 2d at 1053.

13 Because jurisdiction is a threshold issue and the MDL
14 court has many consumer actions bringing state law claims with
15 pending motions to remand, the MDL court will necessarily need to
16 rule on the motions to remand. The Conroy methodology suggests
17 that the court should rule upon defendants' motion to stay.

18 B. Motion to Stay

19 The power to stay proceedings "is incidental to the
20 power inherent in every court to control the disposition of the
21 causes on its docket with economy of time and effort for itself,
22 for counsel, and for litigants." Landis v. N. Am. Co., 299 U.S.
23 248, 254 (1936). Moreover, a stay and deference to the MDL court
24 are particularly appropriate when the parties contest issues that
25 are "likely to arise in other actions pending" in the
26 consolidated proceedings. Conroy, 325 F. Supp. 2d at 1053. In
27 evaluating whether to stay proceedings, the court is concerned
28 with balancing competing interests and should consider: "(1)

1 potential prejudice to the non-moving party; (2) hardship and
2 inequity to the moving party if the action is not stayed; and (3)
3 the judicial resources that would be saved by avoiding
4 duplicative litigation if the cases are in fact consolidated.”
5 Rivers v. Walt Disney Co., 980 F. Supp. 1358, 1360 (C.D. Cal.
6 1997); see also Landis, 299 U.S. at 254-55; CMAX, Inc. v. Hall,
7 300 F.2d 265, 268 (9th Cir. 1962).

8 First, as to prejudice to plaintiffs, plaintiffs argue
9 that a stay will place their case in a “procedural limbo” in the
10 MDL court with hundreds of other cases where they will be
11 unfairly prejudiced by a delay in proceedings. (Pls.’ Opp’n
12 8:11-18 (Docket No. 14).) This argument is weakened by the fact
13 that there are several other cases consolidated in the MDL court
14 from other federal California district courts that have pending
15 motions to remand on the exact same issue. Plaintiffs would
16 likely be able to have their motion to remand heard at the same
17 time as the other California plaintiffs’ motions.

18 The court is mindful that there may be some delay or
19 inconvenience to plaintiffs if a stay is granted. “But if this
20 case is transferred to the MDL, the efficiencies gained through
21 the MDL will benefit all parties.” Lessard v. Volkswagen Grp. of
22 Am., Inc., Case No. 16-cv-0754 (WMW/TNL), 2016 WL 3004631, at *2
23 (D. Minn. May 24, 2016). Granting a stay will not preclude
24 plaintiffs from seeking remand in the MDL court, and plaintiffs
25 may very well benefit from the perspectives of plaintiffs’
26 counsel in other cases with pending motions to remand. The stay
27 may also be brief if the JPML grants plaintiffs’ motion to vacate
28 the conditional transfer of this case to the MDL court. Further,

1 other courts have stayed cases pending transfer to an MDL court
2 when "plaintiffs have not demonstrated any prejudice in the event
3 of a stay except the slight delay in deciding the remand motion."
4 See, e.g., Med. Soc'y of N.Y. v. Conn. Gen. Corp., 187 F. Supp.
5 2d 89, 92 (S.D.N.Y. 2001).

6 Second, the potential hardship and inequity to
7 defendants weighs heavily in favor of a stay. If this court
8 considers and denies plaintiffs' motion to remand, plaintiffs may
9 have a second chance before the MDL court if the case is
10 subsequently transferred because the MDL court will necessarily
11 need to address motions to remand in the several cases already
12 transferred. "[Defendants] should not have to defend against the
13 same motion repeatedly brought by the same plaintiff[s]." See
14 Leeson, 2006 WL 3230047, at *4. Conversely, if this court
15 determines that defendants improperly removed this case but the
16 MDL court holds removal was proper in the other California cases,
17 defendants will be stuck with a decision in this case that is
18 inconsistent with the majority of other similar cases involving
19 purely California state law claims. See A.D. v. Pfizer, Inc.,
20 Case No. 13-cv-2466-JST, 2013 WL 3889159, at *2 (N.D. Cal. July
21 26, 2013) ("On the other hand, Defendants would face the risk of
22 unnecessary proceedings and inconsistent rulings on recurring
23 questions of law and fact if the case is not stayed."). Yet
24 defendants would not be able to appeal an order granting remand.
25 Kunzi v. Pan Am. World Airways, Inc., 833 F.2d 1291, 1293 (9th
26 Cir. 1987) ("Remand orders . . . are immune from appellate review
27 . . . even if the district court's jurisdictional decision was
28 erroneous.").

1 Denying a stay will also require defendants to
2 potentially respond to any other pretrial matters raised by
3 plaintiffs that the MDL court could decide. Each pretrial matter
4 adjudicated by this court increases the risk of inconsistent
5 rulings and prejudices defendants' ability to defend themselves
6 in the actions with similar allegations and issues. See Pfizer,
7 2013 WL 3889159, at *2.

8 Third, judicial economy weighs in favor of a stay. The
9 goal of the MDL court is to coordinate pretrial management of
10 actions with common facts. 28 U.S.C. § 1407. A stay pending the
11 JPML's decision to consolidate this action in the MDL court
12 increases efficiency and consistency, especially "when the
13 pending motions raise issues likely to be raised in other cases."
14 Manual for Complex Litigation (Fourth) § 22.35; see Meyers, 143
15 F. Supp. 2d at 1053 ("[J]udicial economy clearly favors a stay"
16 when the "other cases present the same or a similar issue.").

17 There are a vast number of cases already consolidated
18 in the MDL court, including cases with pending motions to remand
19 based on lack of federal question jurisdiction. While the MDL
20 court has cases from many different states, which implicates
21 different state laws, there are several cases before the MDL
22 court that concern the precise issue here--whether California
23 state law claims against defendants necessarily require the
24 resolution of a federal law issue. Granting a stay pending
25 resolution by the MDL court prevents repetitive decisions and the
26 use of excessive and unnecessary judicial resources. See Rivers,
27 980 F. Supp. at 1360-61. Finally, the MDL court has presided
28 over the multidistrict litigation for well over a year and

1 already established a procedure for many aspects of the MDL,
2 including the filing and briefing of motions for remand. (See
3 Hogberg Decl., Ex. C (Docket No. 14-4).) The already-set
4 procedures and the MDL court's extensive knowledge of the
5 underlying facts favor granting a stay.

6 If this case is transferred to the MDL court, the MDL
7 court will potentially be in a better position to address
8 plaintiffs' motion to remand and any other pretrial matters.
9 "Given the fact that hundreds of similar cases have been
10 transferred already, and the likelihood of many more cases being
11 in a similar procedural posture, the interests of judicial
12 economy and the threat of inconsistent rulings outweighs any
13 potential prejudice to the [plaintiffs]." Beshear, 2016 WL
14 3040492, at *8. Accordingly, the court will grant defendants'
15 motion to stay the proceedings pending transfer of this action to
16 the MDL court.

17 IT IS THEREFORE ORDERED that defendants' Motion to stay
18 be, and the same hereby is, GRANTED.

19 IT IS FURTHER ORDERED that plaintiffs' Motion to remand
20 be, and the same hereby is, DENIED WITHOUT PREJUDICE.

21 Dated: March 7, 2017



22 **WILLIAM B. SHUBB**
23 **UNITED STATES DISTRICT JUDGE**

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