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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NADINE CAMARA, an individual, CHRISTINE  
DAVIS, an individual, STEPHANIE DOBBS, an  
individual, MICHELLE COTTRILL, an individual,  
and JENNIFER WILKENS, an individual,

No. C 09-06084 WHA

Plaintiffs,

v.

BAYER CORPORATION, an Indiana corporation,  
BAYER HEALTHCARE PHARMACEUTICALS  
INC., a Delaware corporation, BAYER  
HEALTHCARE LLC, a Delaware limited liability  
company, BERLEX LABORATORIES  
INTERNATIONAL, INC., a Delaware corporation,  
BAYER SCHERING PHARMA AG, a German  
Corporation, BAYER AG, a German corporation,  
SCHERING AG, a German corporation,  
MCKESSON CORPORATION, a Delaware  
corporation, and DOES 1-50,

**ORDER GRANTING  
DEFENDANTS' MOTION  
TO STAY PROCEEDINGS  
PENDING TRANSFER BY  
THE JUDICIAL PANEL  
ON MULTIDISTRICT  
LITIGATION TO MDL 2100**

Defendants.

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**INTRODUCTION**

In this pharmaceutical products-liability case, defendants Bayer Corporation, Bayer  
Healthcare LLC, and Bayer Healthcare Pharmaceuticals, Inc. ("Bayer defendants"), move to stay  
this action pending a potential transfer to a multidistrict litigation proceeding. Plaintiffs Nadine  
Camara, Christine Davis, Stephanie Dobbs, Michelle Cottrill, and Jennifer Wilkens move to  
remand this action to state court for lack of subject-matter jurisdiction due to the absence of

1 complete diversity. Defendants' motion to stay pending transfer to MDL is **GRANTED**.

2 This order defers ruling on plaintiffs' motion to remand.

3 **STATEMENT**

4 Bayer defendants are pharmaceutical companies that manufactured the prescription oral  
5 contraceptives commonly known as Yasmin<sup>®</sup> and YAZ<sup>®</sup>. This products-liability case is one of a  
6 large number of actions filed against defendants for the alleged personal injury caused by  
7 Yasmin<sup>®</sup> and YAZ<sup>®</sup>. On October 1, 2009, an MDL panel transferred 32 actions pending at the  
8 time to MDL No. 2100 in United States District Court for the Southern District of Illinois for  
9 coordinated or consolidated pretrial proceedings before the Honorable David R. Herndon.

10 *In re: Yasmin, Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation.*  
11 655 F. Supp. 2d 1343 (J.P.M.L. 2009). As of January 15, 2010, 180 additional actions have been  
12 transferred to MDL No. 2100 (Schwartz Decl. Exh. C at 1). Additionally, in the opposition to  
13 stay and motion for remand, plaintiffs briefly mention California's Petition for Coordination  
14 filed with the Judicial Council of California on September 29, 2009. On January 11, 2010, the  
15 Honorable Judge Lichtman granted the Petition for Coordination in the JCCP (Br. 4).

16 Plaintiffs filed a state court action for personal injury allegedly caused by Yasmin<sup>®</sup> and  
17 YAZ<sup>®</sup> on November 30, 2009, in the Superior Court of California for the County of Los Angeles.  
18 In the complaint, plaintiffs allege claims of: (1) strict liability for failure to warn; (2) strict  
19 liability for design defect; (3) negligence; (4) breach of implied warranty; (5) breach of express  
20 warranty; (6) violation of California Civil Code Sections 1709 and 1710; (7) negligent  
21 misrepresentation; (8) violation of California Business and Professions Code Section 17200;  
22 (9) violation of California Business and Professions Code Section 17500; and (10) violation of  
23 California Civil Code 1750.

24 On December 30, defendants removed this action to federal court, alleging that defendant  
25 McKesson, a citizen of California, was fraudulently joined in an effort to avoid federal  
26 jurisdiction. On January 5, 2010, Bayer defendants filed a letter with the JPML identifying this  
27 case as a tag-along action to MDL No. 2100 (Schwartz Decl. ¶ 3). On January 15, a conditional  
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1 transfer order issued for the instant action (Schwartz Decl. ¶ 4). Defendants now move for a stay  
2 of this action, pending a transfer to MDL No. 2100.

3 On January 27, plaintiffs filed a motion to remand the action, claiming lack of complete  
4 diversity. Plaintiff’s contend that under 28 U.S.C. 1441(b), this Court lacks subject-matter  
5 jurisdiction because both defendant McKesson and plaintiffs Camara and Wilkins are citizens of  
6 California. Defendants argue that McKesson was fraudulently joined and should be ignored for  
7 purposes of determining diversity jurisdiction.

8 **ANALYSIS**

9 The power to grant a temporary stay “is incidental to the power inherent in every court to  
10 control the disposition of the causes on its docket with economy of time and effort for itself, for  
11 counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Plaintiffs argue that  
12 the Court should rule on the motion to remand before deciding to stay this action despite its being  
13 filed later. Whether a motion to remand or a motion to stay should be decided first, however, is  
14 “extremely sensitive to the facts of the case.” *Burse v. Purdue Pharma Co.*, 2004 WL 1125055  
15 at \*1 (N.D. Cal. 2004). In another MDL No. 2100 transfer order, the JPML responded to a  
16 motion to vacate a conditional transfer order due to a pending motion to remand. The order  
17 denied the motion, stating that “Plaintiff in the action before the Panel can present the motion for  
18 remand to state court to the transferee court” (Gabianelli Decl. Exh. D at 1)(citations omitted).  
19 As of February 18, thirteen motions to stay pending transfer to MDL have been granted in the  
20 Northern and Central Districts of California (Gabianelli Decl. ¶ 2). Of these thirteen, eight  
21 actions have pending motions to remand (*ibid.*). Plaintiffs argue that “a determination of  
22 Plaintiff’s remand motions will be made and it is imperative that these decisions are made in  
23 California . . .” (Opp. 5). In light of the eight pending motions for remand in California courts,  
24 it is clear that the transferee court will be well-equipped to make an informed and uniform  
25 decision on all of these motions to remand to California state court.

26 Plaintiffs argue that the motion to remand should be addressed before a motion to stay is  
27 granted. In view of the MDL, however, doing so would unnecessarily duplicate work and could  
28 lead to inconsistent results. In the motion to remand, plaintiffs argue that defendants cannot show

1 fraudulent joinder. In doing so, plaintiffs mistakenly cite to “this Court” as deciding a similar  
2 issue in favor of their fraudulent joinder argument. The language from plaintiffs’ memorandum  
3 is as follows: “this Court itself has previously addressed this issue” (Br. 11). In support of this  
4 assertion, plaintiffs cite to a 2005 decision in the Central District of California to say that “this  
5 Court, however, states that Merck does not, and cannot cite any California cases holding that a  
6 distributor cannot be liable for failure to warn . . .” (*ibid.*). Although the *Central District* may  
7 have come to the above conclusion, plaintiffs fail to cite a decision where “this Court” actually  
8 addressed the same issue. The reference to “this Court” in the memorandum is incorrect and  
9 misleading.

10 Plaintiffs also cite to many additional decisions in support of the position that fraudulent  
11 joinder is not present in the instant case. These results will likely be taken into consideration in  
12 deciding similar motions to remand. In order to prevent inconsistent results, however, this should  
13 be done by the MDL panel.


14 If the remand motion appeared to be more one-sided in favor of plaintiffs, the undersigned  
15 would be inclined to decide the motion now, as Judge David Carter did in *Hoiland v. Bayer*  
16 *Corporation et al.*, Case Number 8:09-cv-01350-DOC-RNB. The complaint, however, fails to  
17 clearly explain the role of McKesson in the injury of these specific plaintiffs and leaves a  
18 suspicion that McKesson could have been added to defeat diversity removal.

19 **CONCLUSION**

20 For all the above-stated reasons, defendants’ motion to stay pending the potential transfer  
21 of this action is **GRANTED**. In the interim, this order declines to rule on plaintiffs’ motion to  
22 remand.

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24 **IT IS SO ORDERED.**

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26 Dated: March 9, 2010.

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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE