

1
2
3
4
5
6
7
8

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 SYLVIA J. SUMMA, et al., No. C 13-03097 JSW
10 Plaintiffs,
11 v.
12 MCKESSON CORPORATION, et al.,
13 Defendants.
14 /
15

**ORDER GRANTING MOTION TO
STAY AND VACATING
HEARING ON MOTION TO
REMAND PENDING RULING
FROM MDL****(Docket Nos. 9, 10)****INTRODUCTION**

16 This matter comes before the Court upon consideration of the Motion to Stay All
17 Proceedings Pending Transfer by the Judicial Panel on Multidistrict Litigation to MDL 1871
18 (E.D. Pa.), filed by Defendant Glaxosmithkline LLC (“GSK”) (Docket No. 10), which was
19 originally noticed for a hearing before Magistrate Judge Spero. The matter has been re-
20 assigned to the undersigned. GSK has not yet re-noticed the motion to stay for a hearing on this
21 Court’s calendar. However, the motion is ripe for resolution.

22 The Court has considered the parties’ papers, relevant legal authority, and the record in
23 this case, and it finds the motion suitable for disposition without oral argument. *See* N.D. Civ.
24 L.R. 7-1(b). The Court GRANTS GSK’s motion to stay. In light of this ruling, the Court
25 VACATES the hearing scheduled for November 8, 2013, on Plaintiffs’ motion to remand
26 (Docket No. 9), which the Court shall reschedule, if necessary.

27 //
28 //

BACKGROUND

2 On or about October 16, 2007, the Judicial Panel on Multidistrict Litigation (“JPML”)
3 established a multidistrict litigation regarding product liability cases involving the drug
4 Avandia®, *In re Avandia Marketing, Sales Practices, and Products Liability Litigation*, MDL-
5 1871 (“*In re Avandia*”). (Docket No. 10-2, Declaration of Steven J. Boranian (“Boranian
6 Decl.”), ¶¶ 2-3, Ex. A.)

7 On June 26, 2013, the Plaintiffs filed their Complaint against GSK and McKesson
8 Corporation in the Superior Court of the State of California for the County of San Francisco
9 (“San Francisco Superior Court”), and asserted a number of state law claims based on injuries
10 they allegedly suffered as a result of using Avandia®. (See generally Notice of Removal, Ex. A
11 (Complaint).) This case is one of many cases filed in San Francisco Superior Court by
12 Plaintiffs’ counsel. (*Id.*, Ex. D.)¹

13 On July 3, 2013, GSK removed this action - and many, if not all, of the thirty-seven
14 other cases filed by Plaintiffs' counsel - to this Court. GSK asserts that, because McKesson has
15 been fraudulently joined, the Court has diversity jurisdiction. (Notice of Removal ¶ 17.) GSK
16 also contends that this case qualifies as a "mass action" under the Class Action Fairness Act
17 ("CAFA"), pursuant to 28 U.S.C. Section 1332(d)(11). (*Id.* ¶ 5.) At the time of removal, GSK
18 had not been served with the Complaint. (*Id.* ¶ 6.)

19 On July 6, 2013, GSK notified the JPML that this action was pending, and it seeks to
20 stay this case pending transfer to *In re Avandia*. (Boranian Decl., ¶ 5.) Plaintiffs have opposed
21 GSK’s transfer motion before the JPML, oppose a stay in this case, and have filed a separate
22 motion to remand this case to San Francisco Superior Court.

ANALYSIS

24 “[T]he power to stay proceedings is incidental to the power inherent in every court to
25 control disposition of the cases on its docket with economy of time and effort for itself, for
26 counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “The exertion of

The undersigned has at least seven of these cases pending on its docket.

1 this power calls for the exercise of sound discretion.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268
2 (9th Cir. 1962). Accordingly, it is within this Court’s discretion to determine whether a stay is
3 warranted. The competing interests that a district court must weigh in deciding whether to grant
4 a stay include: (1) “possible damage which may result from granting a stay, (2) the hardship or
5 inequity which a party may suffer in being required to go forward, and (3) the orderly course of
6 justice measured in terms of the simplifying or complicating of issues, proof, and questions of
7 law which could be expected to result from a stay.” *Id.* (citing *Landis*, 299 U.S. at 254-55).

8 In the context of a motion to stay pending a motion to consolidate cases before the
9 JPML, district courts should consider the following factors: (1) potential prejudice to the non-
10 moving party; (2) hardship and inequity to the moving party if the action is not stayed; and (3)
11 the judicial resources that would be saved by avoiding duplicative litigation if the cases are in
12 fact consolidated. *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997).

13 “Generally, jurisdiction is a preliminary matter that should be resolved before all
14 others.” *Leeson v. Merck & Co., Inc.*, 2006 WL 3230047, *2 (E.D. Cal. Jan. 27, 2006); *see also*
15 *Villarreal v. Chrysler Corp.*, 1996 WL 116832, at *1 (N.D. Cal. Mar. 12, 1996) (“Judicial
16 economy will best be served by addressing the remand issue [before a party’s motion to stay]
17 because a determination on this issue will facilitate litigation in the appropriate forum.”). Some
18 courts, however, have held that “the calculus changes somewhat when deference to a MDL
19 court will further ‘the uniformity, consistency, and predictability in litigation that underlies the
20 MDL system.’” *Leeson*, 2006 WL 3230047, *2 (quoting *Conroy v. Fresh Del Monte Produce*
21 *Inc.*, 325 F. Supp. 2d 1049, 1053 (N.D. Cal. 2004)).

22 Plaintiffs’ motion to remand raises issues that are similar to issues raised in motions to
23 remand in the cases that are assigned to the undersigned Judge as well the cases assigned to
24 other judges in this District. Further, the presiding judge in *In re Avandia* has addressed many
25 of these same issues, including fraudulent joinder, fraudulent misjoinder of plaintiffs, the forum
26 defendant rule, and questions relating to removal by defendants who have not yet been served.
27 *See, e.g., In re Avandia*, 624 F. Supp. 2d 396, 418-20 (E.D. Pa. 2009). Therefore, a stay will
28 promote judicial economy, uniformity and consistency in decision making. Further a short stay

1 will not prejudice Plaintiffs, because they can renew their motion to remand in MDL 1871. If
2 the case is not transferred, this Court will resolve the motion to remand expeditiously. Finally,
3 a brief stay will avoid duplicative litigation. Indeed, several other judges within this District
4 have granted motions to stay in *Avandia* cases filed by Plaintiffs' counsel, and in at least one of
5 those cases, the plaintiffs had filed a motion to remand. (See Boranian Decl., Ex. C; Docket No.
6 18-1, Declaration of Steven J. Boranian in Support of GSK Reply, Ex. A.)

7 Accordingly, the Court GRANTS the motion to stay pending a ruling by JPML on
8 whether this case will be transferred to *In re Avandia*, MDL 1871. The parties shall file a joint
9 notice with the Court within seven (7) days of any such ruling.

10 **IT IS SO ORDERED.**

11 Dated: July 30, 2013

12 
13 JEFFREY S. WHITE
14 UNITED STATES DISTRICT JUDGE

15
16
17
18
19
20
21
22
23
24
25
26
27
28