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

JANICE AUD, et al.,

No. C 13-03111 JSW

Plaintiffs,

**ORDER GRANTING MOTION TO
STAY AND VACATING
HEARING ON MOTION TO
REMAND PENDING RULING
FROM MDL**

v.

MCKESSON CORPORATION, et al.,

Defendants.

(Docket Nos. 12, 13)

INTRODUCTION

This matter comes before the Court upon consideration of the Motion to Stay All Proceedings Pending Transfer by the Judicial Panel on Multidistrict Litigation to MDL 1871 (E.D. Pa.), filed by Defendant Glaxosmithkline LLC (“GSK”) (Docket No. 12). The Court has considered the parties’ papers, relevant legal authority, and the record in this case, and it finds the motion suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). The Court VACATES the hearing scheduled for August 23, 2013, and it GRANTS GSK’s motion to stay. In light of this ruling, the Court VACATES the hearing scheduled for October 11, 2013, on Plaintiffs’ motion to remand, which shall be rescheduled, if necessary.

BACKGROUND

On or about October 16, 2007, the Judicial Panel on Multidistrict Litigation (“JPML”) established a multidistrict litigation regarding product liability cases involving the drug Avandia®, *In re Avandia Marketing, Sales Practices, and Products Liability Litigation*, MDL-

1 1871 (“*In re Avandia*”). (Docket No. 12-2, Declaration of Steven J. Boranian (“Boranian
2 Decl.”), ¶¶ 2-3, Ex. A.)

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

9 On July 3, 2013, GSK removed this action - and many, if not all, of the thirty-seven
10 other cases filed by Plaintiffs’ counsel - to this Court. GSK asserts that, because McKesson has
11 been fraudulently joined, the Court has diversity jurisdiction. (Notice of Removal ¶ 17.) GSK
12 also contends that this case qualifies as a “mass action” under the Class Action Fairness Act
13 (“CAFA”), pursuant to 28 U.S.C. Section 1332(d)(11). (*Id.* ¶ 5.) Neither GSK nor McKesson
14 have been served with the Complaint. (*Id.* ¶ 6.)

15 On July 9, 2013, GSK notified the JPML that this action was pending, and it seeks to
16 stay this case pending transfer to *In re Avandia*. (Boranian Decl., ¶ 5.) Plaintiffs have opposed
17 GSK’s transfer motion before the JPML, oppose a stay in this case, and have filed a separate
18 motion to remand this case to San Francisco Superior Court.

19 ANALYSIS

20 “[T]he power to stay proceedings is incidental to the power inherent in every court to
21 control disposition of the cases on its docket with economy of time and effort for itself, for
22 counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). “The exertion of
23 this power calls for the exercise of sound discretion.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268
24 (9th Cir. 1962). Accordingly, it is within this Court’s discretion to determine whether a stay is
25 warranted. The competing interests that a district court must weigh in deciding whether to grant
26 a stay include: (1) “possible damage which may result from granting a stay, (2) the hardship or
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28 The undersigned has at least at least seven of these cases pending on its docket.

1 inequity which a party may suffer in being required to go forward, and (3) the orderly course of
2 justice measured in terms of the simplifying or complicating of issues, proof, and questions of
3 law which could be expected to result from a stay.” *Id.* (citing *Landis*, 299 U.S. at 254-55).

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

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

18 Plaintiffs’ motion to remand raises issues that are similar to issues raised in motions to
19 remand in the cases that are assigned to the undersigned Judge as well the cases assigned to
20 other judges in this District. Further, the presiding judge in *In re Avandia* has addressed many
21 of these same issues, including fraudulent joinder, fraudulent misjoinder of plaintiffs, the forum
22 defendant rule, and questions relating to removal by defendants who have not yet been served.
23 *See, e.g., In re Avandia*, 624 F. Supp. 2d 396, 418-20 (E.D. Pa. 2009). Therefore, a stay will
24 promote judicial economy, uniformity and consistency in decision making. Further a short stay
25 will not prejudice Plaintiffs, because they can renew their motion to remand in MDL 1871. If
26 the case is not transferred, this Court will resolve the motion to remand expeditiously. Finally,
27 a brief stay will avoid duplicative litigation. Indeed, at least one other court within this District
28 has granted a motion stay an *Avandia* case filed by Plaintiffs’ counsel, even though the

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plaintiffs in that case had filed a motion to remand. (*See* Docket No. 17-1, Declaration of Steven J. Boranian in Support of GSK Reply, Ex. A.)

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

IT IS SO ORDERED.

Dated: July 29, 2013



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE