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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HOWARD JONES, et al.,

Plaintiffs,

v.

BRISTOL-MYERS SQUIBB CO., et al.,

Defendants.

No. C 13-2415 PJH

**ORDER GRANTING DEFENDANT'S
MOTION TO STAY PROCEEDINGS
PENDING TRANSFER**

Before the court is the motion of defendant Bristol-Myers Squibb Company ("BMS") to stay proceedings pending a transfer by the Judicial Panel on Multidistrict Litigation ("JPML") to MDL 2418 in the District of New Jersey ("the Plavix® MDL" or "the MDL"). Having reviewed the parties' papers and carefully considered their arguments and the relevant legal authority, the court hereby GRANTS the motion.

BACKGROUND

On April 29, 2013, plaintiff Howard Jones, along with fifty-five others ("plaintiffs") filed this action in the Superior Court of California, County of San Francisco, against BMS, McKesson Corporation ("McKesson") and Doe defendants 1 through 100. Plaintiffs' claims arose from injuries sustained from their use of Plavix®, an FDA-approved prescription drug used to prevent heart attacks and strokes by inhibiting blood clotting.

Plaintiffs assert thirteen causes of action against BMS, the New York based manufacturer, and McKesson, a California distributor of the drug. These claims are based on strict products liability, negligence, breaches of express and implied warranty, negligent

1 misrepresentation, fraud by concealment, loss of consortium, wrongful death, and several
2 California statutory violations.¹

3 On May 29, 2013, BMS removed the action to this court on the basis of diversity
4 jurisdiction, alleging that McKesson (a citizen of California) was fraudulently joined and that
5 two New York plaintiffs were fraudulently misjoined in order to destroy complete diversity.

6 On February 12, 2013, the JPML established a multidistrict Plavix® litigation in the
7 District of New Jersey, assigned to the Hon. Freda Wolfson. See In re Plavix Mktg., Sales
8 Practices & Prods. Liab. Litig. (No. II), MDL No. 2418, 2013 WL 565971 (J.P.M.L. 2013).
9 Since then, the JPML has conditionally transferred twenty-six actions in this district to the
10 Plavix® MDL, including the instant one. See Conditional Transfer Order No. 8, In re Plavix
11 (No. II), MDL No. 2418 (J.P.M.L. 2013). Twenty-four² of those cases have been stayed
12 and one is pending before the Hon. Sandra Brown Armstrong. See Douglas et al. v.
13 Bristol-Myers Squibb Co., No. 13-2331 (N.D. Cal. 2013).

14 On June 5, 2013, plaintiffs filed a motion to remand the case to state court and BMS
15 filed the present motion to stay.

16 DISCUSSION

17 A. Legal Standard

18 Under 28 U.S.C. § 1407, the JPML has the authority to transfer “civil actions
19 involving one or more common questions of fact [which] are pending in different districts
20 . . . to any district for coordinated or consolidated pretrial proceedings.” 28 U.S.C.
21 § 1407(a). In relation, a conditional transfer order “does not affect or suspend orders and
22 pretrial proceedings in any pending federal district court action and does not limit the
23 pretrial jurisdiction of that court.” J.P.M.L.R. 2.1(d). As such, a district court still has the
24

25 ¹ Specifically, plaintiffs allege violation of the following California statutes: Cal. Civ. Code
26 §§ 1709, 1710 (deceit and concealment); Cal. Bus. & Prof. Code §§ 17200 (unfair
27 competition), 17500 (untrue or misleading advertising), and the Consumer Legal Remedies
Act, Cal. Civ. Code §§ 1750 et. seq.

28 ² One of these actions was stayed by agreement of the parties. See Norrise v. Kaiser
Found. Hosps. & Health Plan, Inc. et al., No. 12-6456 (N.D. Cal. Feb. 15, 2013).

1 discretion to control its docket and stay proceedings. See Landis v. North Am. Co., 299
2 U.S. 248, 254-55 (1936). When a stay is requested because of pending proceedings that
3 bear on the case, the court may grant a stay in a variety of circumstances in the interests of
4 the efficiency of its own docket and fairness to the parties. Leyva v. Certified Grocers of
5 Cal. Ltd., 593 F.2d 857, 863 (9th Cir.1979).

6 When considering a motion to stay pending a JPML transfer, courts evaluate factors
7 such as: “(1) potential prejudice to the non-moving party; (2) hardship and inequity to the
8 moving party if the action is not stayed; and (3) the judicial resources that would be saved
9 by avoiding duplicative litigation if the cases are in fact consolidated.” Rivers v. Walt
10 Disney Co., 980 F.Supp. 1358, 1360 (C.D. Cal. 1997) (citation omitted).

11 In addition, deference to the MDL court for resolution of a motion to remand often
12 provides “the opportunity for uniformity, consistency, and predictability that underlies the
13 MDL system.” Nielsen v. Merck & Co., 2007 WL 806510 at *1 (N.D. Cal. Mar. 15, 2007)
14 (citing Conroy v. Fresh Del Monte Produce, Inc., 325 F.Supp.2d 1049, 1053 (N.D. Cal.
15 2004)).

16 B. Defendant's Motion

17 1. Conserving Judicial Resources and Avoiding Duplicative Litigation

18 BMS contends that staying the proceedings will save judicial resources and promote
19 judicial efficiency and uniformity. Plaintiffs oppose BMS’s motion on two main grounds.
20 First, they argue that the court should consider the merits of plaintiffs’ motion to remand
21 before entertaining a stay of the proceedings. Second, plaintiffs accuse BMS of being
22 disingenuous in its appeal to judicial efficiency, alleging that BMS is the one who has
23 burdened this court by improperly removing the action from state court, and that BMS’s
24 “procedural tactics” have already caused them prejudice and undue delay.

25 Preservation of judicial resources is a primary factor to consider in evaluating a
26 motion to stay proceedings pending a transfer to an MDL court. See Rivers, 980 F.Supp.
27 at 1360-61. A stay is appropriate when it would avoid the needless duplication of work and
28 the possibility of inconsistent rulings. Freitas v. McKesson Corp., 2012 WL 161211 at *2

1 (N.D. Cal., Jan. 10, 2012) (citing Rivers, 980 F.Supp. at 1360–61). In Rivers, the court
2 explained that judicial efficiency can be served by granting a motion to stay where the court
3 would otherwise have to engage in the “intricacies” of a case, which ultimately an MDL
4 judge may have to duplicate. 980 F.Supp. at 1360-61. Courts in this district, including this
5 court, have granted motions to stay in order to preserve judicial resources, even where
6 jurisdictional questions and motions to remand are at issue. See Freitas, 2012 WL
7 161211; see also Couture v. Hoffman-La Roche, Inc., 2012 WL 3042994 (N.D. Cal., July
8 25, 2012).

9 Here, the court finds that staying the proceedings pending transfer to the Plavix®
10 MDL would foster judicial economy. The JPML has already conditionally transferred
11 twenty-six of this district’s Plavix® actions to the MDL, concluding that “[c]entralization will
12 eliminate duplicative discovery, prevent inconsistent pretrial rulings, . . . and conserve the
13 resources of the parties, their counsel, and the judiciary.” In re Plavix (No. II), MDL No.
14 2418 at *3. Likewise here, a stay would prevent duplicative pretrial practice in the likely
15 event that the case is definitively transferred to the Plavix® MDL.

16 More importantly, other courts in this district have found that the same fraudulent
17 joinder issue BMS raises here, “will likely be raised in every other action involving
18 McKesson,” and should be decided by the MDL. Addison v. Bristol-Myers Squibb Co.,
19 2013 WL 3187859 at *1 (N.D. Cal., June 21, 2013); see also Kinney v. Bristol-Meyers
20 Squibb Co., No. 12-4477 at 2 (N.D. Cal. Apr. 12, 2013). Thus, the court finds that granting
21 BMS’s motion to stay the proceedings would promote judicial economy and uniformity by
22 avoiding the possibility of inconsistent rulings within the Northern District, conserving
23 judicial resources and allowing the MDL to consistently address the issues before it.

24 Furthermore, plaintiffs have failed to argue that a stay of proceedings in this case
25 would not conserve judicial resources. Instead, they focus on BMS’s alleged bad faith in
26 removing the action from state court, causing the unnecessary expenditure of this court’s
27 resources. Plaintiffs maintain that the motion to stay is no more than a distraction from
28 what they claim is the primary issue at hand – improper removal.

1 However, the court finds these arguments unpersuasive. Merely presenting
2 conclusory allegations about BMS’s reasons for removing the case is not a persuasive
3 argument for purposes of the instant motion. See Rivers, 980 F.Supp. at 1361. Moreover,
4 what the court considers in its evaluation of this factor is how a case should proceed going
5 forward, and not how the case was brought before the court. As such, plaintiffs fail to
6 present any compelling reasons for the court to treat the instant case differently from the
7 twenty-three similarly situated Plavix® cases already stayed by eleven judges in this
8 district.

9 2. Potential Hardship to BMS

10 Another factor to consider when evaluating a motion to stay is the potential “hardship
11 and inequity to the moving party if the action is not stayed.” Rivers, 980 F.Supp. at 1360.
12 Courts within the Northern District have recognized that “the potential burden of engaging
13 in duplicative litigation weighs heavily in favor of staying . . . proceedings pending MDL
14 transfer.” Blalock v. DePuy Orthopaedics, Inc., 2011 WL 6217540 at *2 (N.D. Cal., Dec.
15 14, 2011); see also Nielsen, 2007 WL 806510 at *2 (“absent a stay, [defendant] would
16 suffer prejudice from being forced to litigate the same jurisdictional issues in multiple
17 forums”). This risk of hardship has been specifically recognized in this district’s Plavix®
18 actions. See Arnold v. Bristol-Meyers Squibb Co., No. 12-6426 at *2 (N.D. Cal. Apr. 3,
19 2013); Arenberg v. Bristol-Meyers Co., No 12-6207 at *2-3 (N.D. Cal. Apr. 22, 2013).

20 Here, similarly to Arnold, Arenberg, and Blalock, the court finds that BMS will face
21 significant hardship if its motion to stay the proceedings is not granted. If this court denies
22 plaintiffs’ motion, and the case is later transferred, the MDL court could revisit the issue,
23 thus forcing BMS to relitigate it. Arnold, No. 12-6426 at *2. If, on the other hand, this court
24 grants the remand motion and the MDL later decides that removal in similar cases was
25 proper, BMS would be prejudiced by having to litigate the case in state court instead of
26 before the MDL. Id. Should this court deny the motion to stay, BMS would be left with two
27 unfavorable alternatives that expose it to a significant risk of duplicative litigation and
28 prejudice.

1 3. Potential Prejudice to Plaintiffs

2 Plaintiffs claim that they will be prejudiced if this case is stayed pending transfer to
3 the MDL. Alleging that BMS improperly removed the matter, plaintiffs further assert that
4 the instant motion is part of BMS's "procedural tactics" to prolong the proceedings and
5 prevent the court from considering their remand motion. Pls.' Opp'n at 5. Plaintiffs contend
6 that staying the matter would be "egregious" because BMS has already caused a delay by
7 filing an "entirely unfounded notice of removal" and an "equally meritless motion for a stay
8 of the proceedings." Id.

9 The third factor to consider when evaluating a motion to stay pending a transfer to
10 an MDL court is "potential prejudice to the non-moving party." Rivers, 980 F.Supp. at 1360.
11 In other Plavix® cases raising fraudulent joinder issues, courts in this district have
12 reasoned that a stay will not prejudice plaintiffs, as a remand motion can just as easily be
13 presented to and decided by the transferee judge, especially when it turns on a question of
14 federal law. See Kinney, No 12-4477 at *2; see also Arnold, No.12-6426 at *2.

15 Here, the court finds that plaintiffs will not suffer prejudice because, as in Kinney, the
16 issues of fraudulent joinder and misjoinder implicate federal law, and can be easily and
17 adequately addressed by the MDL court. Additionally, staying the case would not result in
18 undue delay of the proceedings. The JPML has already conditionally transferred this
19 matter to the Plavix® MDL and a stay is not likely to be long in duration.

20 Furthermore, plaintiffs fail to demonstrate to the court how a stay of the proceedings
21 would prejudice them. Instead, they focus on the propriety of BMS's removal of the matter,
22 and ask the court to "discipline" BMS by denying its allegedly ill-advised motion to stay. As
23 a result, plaintiffs neglect to identify the potential prejudice they would suffer if BMS's
24 motion is granted. Because the MDL court can adequately address plaintiffs' motion to
25 remand, and because plaintiffs have failed to identify potential prejudice from a stay, the
26 court finds that plaintiffs will not suffer prejudice if the motion to stay is granted.

27 4. Motion to Stay Versus Motion to Remand

28 Plaintiffs' main argument in opposition to BMS's motion to stay is that the court

1 must first preliminarily consider the merits of the remand motion before entertaining a stay
2 of the proceedings. See Meyers v. Bayer A.G., 143 F.Supp.2d 1044 (E.D. Wis. 2001). In
3 relation, plaintiffs argue that the Hon. Edward Chen's decision to remand a similar Plavix®
4 case, see Caouette v. Bristol-Meyers Squibb Co., 2012 WL 3283858 (N.D. Cal. 2012),
5 makes clear that the instant action was improperly removed, and therefore staying the
6 proceedings would be an inappropriate exercise of jurisdiction.

7 When confronted with a motion to stay proceedings pending transfer to an MDL
8 court, as well as a motion to remand, courts *may* engage in a three-step inquiry. See
9 Conroy, 325 F.Supp.2d at 1053 (N.D. Cal. 2004) (citing Meyers, 143 F.Supp.2d at 1048-
10 49). Courts first give "preliminary scrutiny to the merits of the motion to remand" and then
11 proceed to evaluate jurisdictional issues. Id. If this evaluation suggests that "the
12 jurisdictional issue is both difficult and similar or identical to those in cases transferred or
13 likely to be transferred, the court should stay the action." Id. Importantly however, the
14 Ninth Circuit Court of Appeals "has not yet addressed whether courts must first decide the
15 merits of a motion to remand before determining whether to stay the proceedings."
16 Addison v. Bristol-Meyers Squibb Co., 2013 WL 3187859 at *2 (N.D. Cal. June 21, 2013);
17 see also Nielsen, 2007 WL 806510 at *2 ("this Court has previously observed that the
18 Meyers approach has not been explicitly adopted by the Ninth Circuit"). As such, judges in
19 the Northern District "have made clear that courts are *not* bound to preliminarily consider
20 the merits of a remand motion before considering a motion to stay." Freitas, 2012 WL
21 161211 at *2 (emphasis in original); see also Nielsen, 2007 WL 806510 at *2.

22 As mentioned above, this court is not bound to follow the Meyers approach
23 because the Ninth Circuit has not expressly adopted it. Additionally, the cases cited by
24 plaintiffs are not binding on this court. Most importantly, judges have stayed other Plavix®
25 cases in this district, rejecting the same arguments plaintiffs present here. See Addison,
26 2013 WL 3187859; see also Guinn v. Bristol-Meyers Squibb Co., 2013 WL 1964937 at *1
27 (N.D. Cal. May 10, 2013) (finding Conroy to be inapposite and that "the weight of authority
28 in [the Northern] district favors a stay"). Thus, granting BMS's motion to stay is not only

1 within the discretion of this court, but it would also reduce the risk of inconsistent rulings
2 within the Northern District.

3 Moreover, even if the court were to apply the Meyers approach here, a stay is still
4 warranted. The court finds that the issues in this case are similar to other Plavix® actions
5 in this district currently awaiting transfer to the MDL. Kinney, Addison, and Guinn all
6 present similar jurisdictional issues as the one raised in this matter, namely the fraudulent
7 joinder of McKesson. Additionally, Judge Chen acknowledged that the fraudulent joinder
8 issue is “not a simple question.” Kinney, Apr. 11, 2013, Tr. at 4:11. Moreover, plaintiffs
9 exaggerate the significance of Judge Chen’s decision to remand Caouette. As the Hon.
10 William Alsup explained, there was no competing motion to stay in Caouette, and even
11 more importantly, Judge Chen has “since ordered a stay of proceedings in identical cases.”
12 Addison, 2013 WL 3187859 at *1. Because the court finds that the instant case raises
13 jurisdictional issues that are both complex and similar to those in other MDL-bound cases,
14 application of the Meyers approach also favors a stay.

15 **CONCLUSION**

16 Based on the applicable legal standards, as well as the Northern District’s strong
17 preference for staying similar cases, the court hereby GRANTS defendant BMS’s motion to
18 stay the proceedings pending transfer to the Plavix® MDL.

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20 **IT IS SO ORDERED.**

21 Dated: July 8, 2013



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23 PHYLLIS J. HAMILTON
24 United States District Judge
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