

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

3
4 ANN ASCHE, et al.,

No. C 13-4986 CW

5 Plaintiffs,

ORDER GRANTING
MOTION TO STAY;
DENYING MOTION TO
REMAND WITHOUT
PREJUDICE (Docket
Nos. 18, 19)

6 v.

7 ORGANON USA INC., ORGANON
8 PHARMACEUTICALS USA INC.,
9 ORGANON INTERNATIONAL INC.,
10 ORGANON BIOSCIENCES NV, AKZO
11 NOBEL NV, SCHERING PLOUGH
12 CORPORATION, MERCK & COMPANY,
13 INC., MCKESSON CORPORATION,

14 Defendants.
15 _____/

16 On November 5, 2013, Defendants Organon USA Inc., Organon
17 Pharmaceuticals USA Inc. LLC, Organon International Inc., and
18 Merck & Co., Inc. moved to stay this action pending a decision by
19 the Judicial Panel on Multidistrict Litigation (JPML) to transfer
20 this case. Plaintiffs oppose the stay, arguing that the stay
21 would delay the Court's ruling on their motion to remand. Because
22 this case will likely be transferred to the Eastern District of
23 Missouri, where multidistrict litigation (MDL) involving
24 Defendants is currently pending, the Court grants the motion to
25 stay.

26 DISCUSSION

27 "When evaluating a motion to stay proceedings pending a
28 transfer to a MDL court, a primary factor to consider is the
preservation of judicial resources. Staying an action pending
transfer can help prevent duplicative litigation and inconsistent
rulings." Couture v. Hoffman-La Roche, Inc., 2012 WL 3042994, at

1 *2 (N.D. Cal.) (citing Rivers v. Walt Disney Co., 980 F. Supp.
2 1358, 1360-61 (C.D. Cal. 1997)).

3 Here, judicial economy favors a stay. Several cases have
4 been filed in this district raising the same jurisdictional and
5 factual issues as the present action. Many of these cases were
6 transferred to the MDL court. A stay will therefore avoid
7 duplicative litigation and prevent inconsistent rulings on common
8 questions that the MDL court is likely to address.

9 Plaintiffs argue that the Court must decide their motion to
10 remand before considering Defendants' motion to stay. However,
11 the "Ninth Circuit has not expressly adopted this approach" and
12 courts in this district often take a different course. Conroy v.
13 Fresh Del Monte Produce, Inc., 325 F. Supp. 2d 1049, 1053 (N.D.
14 Cal. 2004); see also Freitas v. McKesson Corp., 2012 WL 161211
15 (N.D. Cal.) ("[O]ther courts in the Northern District, including
16 this one, have made clear that courts are not bound to
17 preliminarily consider the merits of a remand motion before
18 considering a motion to stay."). Indeed, this Court has granted
19 motions to stay in other cases involving the same claims and
20 Defendants as the present case, despite the fact that the
21 plaintiffs in those cases had filed motions to remand. Clarke v.
22 Organon USA Inc., 2013 WL 3475948, at *2 (N.D. Cal.); Wilson, et
23 al. v. Organon USA, Inc., et al., Case No. 13-0705, Docket No. 16.
24 Other courts in this district have taken the same approach in
25 nearly identical cases. See, e.g., Burton v. Organon USA Inc.,
26 2013 WL 1963954 (N.D. Cal.) ("Since the question whether McKesson
27 is a proper defendant in the NuvaRing® cases is now before the
28 MDL, the court finds that judicial economy would be better served

1 by staying this case pending the transfer, rather than by
2 considering the motion to remand."); Tucker v. Organon USA, Inc.,
3 2013 WL 2255884 (N.D. Cal.) ("Permitting [the MDL court] to
4 resolve the issue of fraudulent joinder globally, as opposed to
5 adjudicating the issue prior to transfer, promotes judicial
6 consistency and avoids conflicting judgments.").¹ Accordingly,
7 Plaintiffs' pending motion to remand does not preclude the Court
8 from granting a stay.

9 CONCLUSION

10 For the reasons set forth above, Defendants' motion to stay
11 (Docket No. 18) is GRANTED. Plaintiffs' motion to remand (Docket
12 No. 19) is DENIED without prejudice.

13 IT IS SO ORDERED.

14
15 Dated: 12/3/2013

16 
17 CLAUDIA WILKEN
18 United States District Judge

19
20
21
22
23 _____
24 ¹ Plaintiffs cite only one case from this district in which a court
25 reached a different conclusion when "presented with this identical
26 issue." Docket No. 27, Opp. Stay, at 2 n.2 (citing Marble v. Organon
27 USA, Inc., 2012 WL 2237271 (N.D. Cal.) (Alsup, J.) (denying motion to
28 stay and granting remand)). Plaintiffs fail to note, however, that the
judge who decided that case subsequently reversed his position in
another case after recognizing that several actions involving the same
claims and defendants had been transferred to the MDL court. See Buyak
v. Organon USA Inc., Case No. 13-3128-WHA, Docket No. 22, Order Granting
Mot. Stay, at 2 ("Circumstances have since changed.").