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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIACATHERINE PAPASAN, et al.,
Plaintiffs,
v.
DOMETIC CORPORATION,
Defendant.Case No. 16-cv-02117-HSG**ORDER GRANTING DEFENDANT'S
MOTION TO TRANSFER VENUE**

Re: Dkt. No. 83

Currently pending before the Court is Defendant Dometic Corporation's motion to transfer venue to the Southern District of Florida. Dkt. No. 83 ("Mot."). Defendant filed the motion on October 20, 2017. Id. On November 3, 2017, Plaintiffs Catherine Papasan, Nelson Goehle, Andrew Young, Christopher Johnston, Jimmy Byers, and Richard and Leah Vollberg (collectively, "Plaintiffs") filed a response. Dkt. No. 86 ("Opp.").¹ Defendant replied on November 13, 2017. Dkt. No. 91 ("Reply").

On January 4, 2018, the parties argued the motion. Dkt. No. 106. At oral argument, the parties addressed whether Defendant's transfer motion could be mooted by Plaintiffs' then-pending request for centralization and transfer under 28 U.S.C. § 1407. See Dkt. No. 107 ("Hr'g Transcript") at 4:8-7:8. Plaintiffs brought that motion on October 30, 2017 before the United States Judicial Panel on Multidistrict Litigation (the "MDL Panel"). See Dkt. No. 1 (the "MDL Brief"), IN RE: Dometic Gas Absorption Refrigerator Prod. Liab. Litig., MDL No. 2811 (J.P.M.L. Oct. 13, 2017) (the "MDL Action"). The question before the MDL Panel was whether this action should be consolidated with two cases residing in the Southern District of Florida and one action

¹ After Plaintiffs filed their opposition, Plaintiffs submitted a second amended complaint that added named parties and allegations. See Dkt. No. 93 ("SAC").

1 ongoing in the Central District of California. See Dkt. No. 109, Schedule A (listing the litigation
2 as consisting of Varner, et al. v. Dometic Corporation, C.A. No. 1:16-22482, Zucconi, et al. v.
3 Dometic Corporation, C.A. No. 1:17-23197, and Zimmer, et al. v. Dometic Corporation, C.A. No.
4 2:17-06913).²

5 On January 30, 2018, the MDL Panel issued an order denying Plaintiffs’ motion. Dkt. No.
6 109. Following the MDL Panel’s decision, the Court again heard argument on Defendant’s
7 motion. After carefully considering the parties’ arguments, the Court **GRANTS** Defendant’s
8 motion.

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10 **I. LEGAL STANDARD**

11 “For the convenience of the parties and witnesses, in the interest of justice, a district court
12 may transfer any civil action to any other district or division where it might have been brought . . .
13 .” 28 U.S.C. § 1404(a). The purpose of this statute is “to prevent the waste of time, energy and
14 money and to protect litigants, witnesses and the public against unnecessary inconvenience and
15 expense.” *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (internal quotation marks omitted).
16 The moving party bears the burden of showing that the transferee district is a “more appropriate
17 forum.” See *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 499 (9th Cir. 2000). The district
18 court has broad discretion in deciding whether or not to transfer. See *Ventress v. Japan Airlines*,
19 486 F.3d 1111, 1118 (9th Cir. 2007).

20 The Court’s transfer inquiry proceeds in two steps. First, the Court determines “whether
21 the transferee district was one in which the action might have been brought by the plaintiff.”
22 *Hoffman v. Blaski*, 363 U.S. 335, 343–44 (1960) (internal quotation marks omitted). If so, the
23 Court conducts “an individualized” case-specific analysis of convenience and fairness. *Stewart*
24 *Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29, (1988) (internal quotation marks omitted). In this
25 district, courts typically consider the following factors: (1) plaintiffs’ choice of forum, (2)

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27 ² As the MDL Panel noted, Varner and Zucconi were consolidated under Fed. R. Civ. P. 42 in
28 September 2017. See Dkt. No. 109 at 1 n.1. Varner was dismissed on July 27, 2017, and thus
only Zucconi remains pending on the consolidated docket. *Id.*

1 convenience of the parties, (3) convenience of the witnesses, (4) ease of access to the evidence, (5)
2 familiarity of each forum with the applicable law, (6) feasibility of consolidation with other
3 claims, (7) any local interest in the controversy, and (8) the relative court congestion and time to
4 trial in each forum. See, e.g., *Ironworks Patents LLC v. Samsung Elecs. Co.*, No. 17-cv-01958-
5 HSG, 2017 WL 3007066, at *2 (N.D. Cal. July 14, 2017); *Perez v. Performance Food Grp., Inc.*,
6 No. 15-cv-02390-HSG, 2017 WL 66874, at *2 (N.D. Cal. Jan. 6, 2017); *Brown v. Abercrombie &*
7 *Fitch Co.*, No. 4:13-cv-05205 YGR, 2014 WL 715082, at *2 (N.D. Cal. Feb. 14, 2014).³ “This list
8 is non-exclusive, and courts may consider other factors, or only those factors which are pertinent
9 to the case at hand.” *Martin v. Glob. Tel*Link Corp.*, No. 15-cv-00449-YGR, 2015 WL 2124379,
10 at *2 (N.D. Cal. May 6, 2015).

11 12 **II. DISCUSSION**

13 Plaintiffs do not dispute that this action could have brought in the Southern District of
14 Florida. See Mot. at 15–17; Reply at 15 n.10. The Court therefore turns directly to the second
15 step of its transfer analysis. Plaintiffs assert that the majority of the factors above disfavor
16 transfer. Plaintiffs, for instance, argue that transfer is inconvenient because key witnesses and
17 counsel for the parties are not based in Florida. See Opp. at 12–14. In addition, Plaintiffs contend
18 that there is little benefit to litigating this action alongside Varner/Zuconni because those cases
19 involve different facts and evidence. See Opp. at 15. According to Plaintiffs, transfer would also
20 be prejudicial due to the relatively advanced state of this litigation.

21 The Court disagrees. To begin, Plaintiffs made numerous representations in their MDL
22 Brief that contradict these claims. Broadly, Plaintiffs asserted that: (1) the cases before the MDL
23 Panel (i.e., Varner/Zuconni, Zimmer, and this litigation) share a “common core of operative factual
24 allegations” that “predominate over individual questions of fact” specific to any one action; (2)
25 there were “efficiencies to be gained through coordinated discovery and motion practice” that
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27 ³ These factors are also “[c]onsistent” with Ninth Circuit precedent. See *Wilson v. Walgreen Co.*,
28 No. C-11-2930 EMC, 2011 WL 4345079, at *2 (N.D. Cal. Sept. 14, 2011); see also Jones, 211
F.3d at 498–99 (listing examples of factors that courts may consider).

1 would “minimize duplication of effort and burden on all parties”; and (3) centralization would
2 “minimize the risk of inconsistent rulings,” and accordingly, a propensity for “forum and judge
3 shopping.” MDL Brief at 2, 6–8, 11. Plaintiffs stated that, “[a]bsent transfer, the federal court
4 system will be forced to administer—and Defendant will be compelled to defend—these related
5 actions across multiple venues, all proceeding on potentially different pretrial schedules and
6 subject to different judicial decision-making and local procedural requirements.” *Id.* at 8–9.
7 Though Plaintiffs argued that there would be advantages to transferring the consolidated litigation
8 to this Court, Plaintiffs did so independently of setting forth centralization’s broad benefits. See
9 *id.* at 12–15.

10 In light of Plaintiffs’ statements, the balance of the transfer factors tips in Defendant’s
11 favor. With respect to Plaintiffs’ choice of forum, that selection is given less weight where, as
12 here, Plaintiffs seek to represent a class. *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987)
13 (“[W]hen an individual brings a derivative suit or represents a class, the named plaintiff’s choice
14 of forum is given less weight.”). In addition, “where the plaintiff resides outside of the chosen
15 forum, his choice of forum is entitled to less weight.” *Ambriz v. Matheson Tri-Gas*, No. C 14-
16 1041 CW, 2014 WL 2753886, at *2 (N.D. Cal. June 9, 2014). At the time that Defendant filed its
17 motion, six of the seven named Plaintiffs lived outside of California, and two named Plaintiffs
18 lived in Florida. See *Mot.* at 9. Of the sixteen Plaintiffs named in the second amended complaint,
19 thirteen reside outside of California. See SAC ¶¶ 17, 26, 37, 49, 56, 65, 76, 88, 99, 110, 121, 132.
20 Four of the named Plaintiffs now reside in Florida. See *id.* The substantial number of non-
21 resident named Plaintiffs cuts against Plaintiffs’ claim that it is more convenient for the parties to
22 litigate here.

23 With respect to expediency, Plaintiffs’ MDL Brief detailed the ways that centralization in
24 one district, with coordinated discovery, would “minimize duplication of effort and burden on all
25 parties.” MDL Brief at 8. At this stage, any inconvenience associated with Florida travel is
26 outweighed by transfer’s efficiency gains. Not only has Varner/Zucconi long-resided in the
27 Southern District of Florida, but now Zimmer will be litigated there as well. See *Dkt. No. 121, Ex.*
28

1 A.⁴ Considering that Defendant is named in all three cases, and that those cases share a common
2 factual core, there will almost certainly be overlapping witnesses. See MDL Brief at 7–8
3 (describing the shared factual inquiry as “whether Defendant designed, manufactured, marketed
4 and sold defective gas absorption refrigerators”); Mot. at 13. And even if one action presents
5 unique facts, Plaintiffs acknowledge that the cases’ commonalities predominate over their
6 differences. See MDL Brief at 2, 6–7. Given this overlap, it is feasible that this case will be
7 consolidated with Varner/Zucconi and Zimmer upon transfer. See Mot. at 11–12. Thus, this factor
8 too weighs in favor of transfer.

9 The Court cannot say based on the litigation’s stage that it has greater knowledge, as
10 compared to the Southern District of Florida, of the legal issues underlying these actions. This
11 case remains at the pleading stage, and the Court has ruled on one of two motions to dismiss. See
12 Mot. at 11. Plaintiffs do not dispute that Judge Scola in the Southern District of Florida has
13 rendered three substantive decisions in Varner/Zucconi—one on a motion to dismiss, another on a
14 motion for summary judgment, and the third on a motion for reconsideration. See *id.*; Opp. at 14–
15 16. As a result, both courts have become familiar with the disparate state doctrines governing
16 Plaintiffs’ claims. And again, Plaintiffs acknowledge that this action shares a common factual
17 core with Varner/Zucconi and Zimmer. In considering the relative degree of judicial congestion,
18 Plaintiffs admit that this district’s median time for civil cases is greater than that of the Southern
19 District of Florida. See Opp. at 16. Plaintiffs fail to cite any authority for their proposition that, in
20 evaluating this factor, the Court should assess the length of time that this particular case has been
21 pending.

22 As to the interests of justice, Plaintiffs argue that transfer to the Southern District of
23 Florida would create unfairness, disruption, and delay. See Opp. at 17–18. But Plaintiffs in their
24 MDL Brief acknowledge that “transfer to a single district court is appropriate for the just and
25 efficient resolution of these cases.” MDL Brief at 12. Defendant subsequently agreed. Mot. at

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27 ⁴ As in this case, Defendant brought a motion to transfer the Zimmer action from the Central
28 District of California to the Southern District of Florida. See Dkt. No. 121, Ex. A. The Court in
Zimmer granted that motion on February 22, 2018, approximately one month after the MDL
Panel’s decision denying section 1407 centralization. *Id.*

1 14. Even aside from expediency, Plaintiffs admit that transfer will reduce the risk of inconsistent
2 rulings. MDL Brief at 11. Judicial inconsistency, in turn, “encourages forum and judge shopping
3 (including, for example, manipulation of non-congruent discovery limits, approaches to
4 electronically stored information, and protective order issues.)”⁵ Id. The prospect of such
5 unfairness supports transferring this action to the Southern District of Florida. See, e.g., Jolly v.
6 Purdue Pharma L.P., No. 05-CV-1452H, 2005 WL 2439197, at *2 (S.D. Cal. Sept. 28, 2005)
7 (“Litigation of related claims in the same tribunal is strongly favored because it facilitates
8 efficient, economical and expeditious pre-trial proceedings and discovery and avoid duplicitous
9 litigation and inconsistent results.”) (internal quotations and alteration omitted). In view of the
10 overall fairness, convenience, and efficiency gains, the Court concludes that the benefits of
11 transfer outweigh the disadvantages, and that the Southern District of Florida is a more appropriate
12 forum for this case.

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14 **III. CONCLUSION**

15 For the foregoing reasons, the Court **GRANTS** Defendant’s motion to transfer venue. The
16 Clerk is **DIRECTED** to transfer the case to the Southern District of Florida, and to close the file.

17 **IT IS SO ORDERED.**

18 Dated: 3/16/18

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20 HAYWOOD S. GILLIAM, JR.
21 United States District Judge

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26 _____
27 ⁵ Plaintiffs argue that transfer is inappropriate under the “first to file” rule, which is designed to
28 prevent forum shopping. See Opp. at 7–10. But the first to file rule “is not a rigid or inflexible
rule to be mechanically applied, but rather is to be applied with a view to the dictates of sound
judicial administration.” Pacesetter Sys., Inc. v. Medtronic, Inc., 678 F.2d 93, 95 (9th Cir. 1982).
Given the substantial advantages to transfer, including a reduced risk of forum shopping, the Court
finds that the rule does not preclude transfer here.