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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 SIMPSON PERFORMANCE  
12 PRODUCTS, INC.,

Plaintiff,

13 v.  
14

15 NECKSGEN INC.,

Defendant.  
16

Case No.: 3:17-cv-01704-BEN-MDD

**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS WITHOUT  
PREJUDICE**

17 On August 24, 2016, Plaintiff Simpson Performance Products, Inc. ("Simpson")  
18 filed its initial Complaint in the Western District of North Carolina. (Docket No. 1.) In  
19 response, Defendant NecksGen, Inc. ("NecksGen") filed a motion to dismiss. Within 21  
20 days of the filing of Defendant's motion to dismiss, Simpson filed an Amended  
21 Complaint ("AC"). (Docket No. 12.) Thereafter, NecksGen sought leave to file a motion  
22 to dismiss Plaintiff's AC, which was granted by Magistrate Judge David Keesler.  
23 (Docket Nos. 14-15.) Magistrate Judge Keesler also recommended that Judge Richard  
24 Voorhees deny Defendant's motion to dismiss the initial complaint as moot. (Docket No.  
25 15.) On January 25, 2017, NecksGen filed its second motion to dismiss the AC, to which  
26 Plaintiff filed its opposition, and NecksGen filed a reply. (Docket Nos. 16-18.)

27 On June 6, 2017, while both motions to dismiss were pending, NecksGen filed a  
28 third motion to dismiss for improper venue in light of the May 22, 2017 Supreme Court

1 opinion in *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514 (2017).  
2 On August 23, 2017, Judge Voorhees denied NecksGen's first motion to dismiss as moot,  
3 granted NecksGen's third motion to dismiss for improper venue, and transferred the  
4 action to this District. (Docket Nos. 25-6.)

5 The case was initially assigned to Judge William Q. Hayes. (Docket Nos. 27.) On  
6 August 29, 2017, Judge Hayes declined assignment pursuant to General Order 598, and  
7 the case was reassigned to this Court. (Docket No. 28.) Now pending before this Court  
8 is NecksGen's second motion to dismiss the AC. (Docket No. 16.) A review of the  
9 parties' briefings indicates the interests of justice and judicial economy would benefit  
10 from a re-briefing of the issues according to the appropriate authorities in light of the  
11 transfer of this case between districts.

12 Therefore, NecksGen's motion to dismiss the AC is **DENIED without prejudice**.  
13 NecksGen shall file its answer or otherwise respond to Plaintiff's AC **on or before**  
14 **September 22, 2017**. If NecksGen elects to file a motion to dismiss, Simpson shall file  
15 its opposition **on or before October 6, 2017**, NecksGen's reply shall be due **on or**  
16 **before October 13, 2017**, and the Clerk of the Court shall schedule a hearing on this  
17 motion for **October 23, 2017 at 10:30 a.m.** The parties are further ordered to comply  
18 with the Civil Local Rules for the Southern District of California.

19 **IT IS SO ORDERED.**

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21 Dated: September 7, 2017

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23 Hon. Roger T. Benitez  
24 United States District Judge  
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