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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**

5 **MOTIV POWER SYSTEMS, INC.,**

6 **Plaintiff,**

7 **v.**

8 **LIVERNOIS VEHICLE DEVELOPMENT, LLC,**
9 **COMERICA BANK,**

10 **Defendants.**

Case No.: 13-CV-4811 YGR

**ORDER GRANTING MOTION OF DEFENDANT
COMERICA BANK TO TRANSFER CASE
PURSUANT TO 28 U.S.C. § 1404(A)**

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12 Defendant Comerica Bank (“Comerica”) has filed its Motion to Transfer Case to the United
13 States District Court for the Eastern District of Michigan Pursuant to 28 U.S.C. § 1404(a). (Dkt.
14 No. 12.) Comerica seeks a transfer pursuant to the first-to-file rule or, in the alternative, on
15 convenience grounds under section 1404(a).

16 Plaintiff Motiv Power Systems, Inc. (“Motiv”) filed no response to the motion and
17 Comerica filed its Notice of Non-Opposition on December 27, 2013. (Dkt. No. 16.)

18 Having carefully considered the papers submitted and the pleadings in this action, and the
19 lack of opposition to the motion by Plaintiff, and for the reasons set forth below, the Court hereby
20 **GRANTS** the Motion to Transfer based on the first-to-file rule.¹

21 **I. BACKGROUND**

22 **A. The Parties and Dispute**

23 Comerica is a lender to defendant Livernois and its affiliates (“Borrowers”).² Livernois is
24 an automotive engineering services provider and manufacturer with its principal place of business

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26 ¹ Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court
27 finds this motion appropriate for decision without oral argument. Accordingly, the Court **VACATES**
the hearing set for **January 14, 2014**.

28 ² Livernois affiliates include Notada, LLC, and NTD Investments, LLC, neither of which is
a party to this or the other pending litigation.

1 in Michigan. The Borrowers are in default of their obligations to Comerica under the Notes and the
2 total unpaid principal and interest due to Comerica currently exceeds \$4.1 million.

3 Motiv, a California corporation, and Livernois are parties to a November 30, 2012,
4 Consulting Services Agreement (the “CSA”) pursuant to which Livernois agreed to “provide
5 [Motiv] with professional, technical engineering, design, fabrication and assembly services” in
6 connection with certain electric vehicle components. Pursuant to that CSA, Motiv delivered to
7 Livernois, in Michigan, certain automotive parts and equipment (“the Goods”). Comerica is not a
8 party to the CSA.

9 The heart of the dispute between Motiv and Comerica is whether Comerica’s asserted lien
10 on the Goods is senior to the Motiv’s lien and interests in that same property. Comerica asserts that
11 it is entitled to possess and liquidate any assets of Livernois in order to satisfy Livernois’
12 outstanding debt to Comerica. Comerica further contends that the Goods are the inventory of
13 Livernois and part of its assets.

14 Comerica alleges that, on September 23, 2013, Motiv forcibly took a portion of the Goods
15 into its possession. The remaining Goods are still in the possession of Livernois in Michigan.

16 **B. Chronology of the Litigation**

17 On October 3, 2013, Comerica filed a Michigan state court action against Motiv in the
18 Wayne County Circuit Court entitled *Comerica Bank v. Motiv Power Systems, Inc.* (Case No. 13-
19 012930- PD) (“the Michigan Complaint”). In its complaint, Comerica contends that it has a prior
20 perfected lien on the Goods, which lien is senior to any interest Motiv claims to have therein.
21 Comerica’s complaint states claims for declaratory relief, conversion, and claim and delivery.

22 On October 4, 2013, Motiv filed the instant action against Livernois in the Superior Court
23 of California, County of San Francisco (“the California Complaint”) captioned as *Motiv Power*
24 *Systems, Inc. v. Livernois Vehicle Development, LLC, et al.* (Case No. CGC-13-534698). On October
25 15, 2013, Motiv filed an amended complaint in the Motiv State Action for the purpose of adding
26 Comerica as a defendant.

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1 On October 17, 2013, Comerica removed the California Complaint to this Court. On
2 November 4, 2013, Motiv removed the Michigan Complaint to the U.S. District Court for the
3 Eastern District of Michigan.

4 **II. DISCUSSION**

5 A federal district court has discretion to dismiss, stay, or transfer a case to another district
6 court under the first-to-file rule. *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94–95 (9th
7 Cir. 1982); *Alltrade, Inc. v. Uniweld Prods. Inc.*, 946 F.2d 622, 628 (9th Cir. 1991) (“The most
8 basic aspect of the first-to-file rule is that it is discretionary.”). The first-to-file rule is “a generally
9 recognized doctrine of federal comity” permitting a district court to decline jurisdiction over an
10 action. *Inherent.com v. Martindale–Hubbell*, 420 F. Supp. 2d 1093, 1097 (N.D. Cal. 2006) (citing
11 *Pacesetter*, 678 F.2d at 94–95). The rule is primarily meant to alleviate the burden placed on the
12 federal judiciary by duplicative litigation and to prevent the possibility of conflicting judgments.
13 *Church of Scientology of Cal. v. U.S. Dep’t of Army*, 611 F.2d 738, 750 (9th Cir. 1979) (citations
14 omitted). As such, the rule should not be disregarded lightly. See *Microchip Tech., Inc. v. United*
15 *Module Corp.*, No. CV-10-04241-LHK, 2011 WL 2669627, at *3 (N.D. Cal. July 7, 2011). Courts
16 analyze three factors in determining whether to apply the first-to-file rule: (1) chronology of the
17 actions; (2) similarity of the parties; and (3) similarity of the issues. *Schwartz v. Frito-Lay N. Am.*,
18 No. C-12-02740 EDL, 2012 WL 8147135, at *2 (N.D. Cal. Sept. 12, 2012) (citing *Alltrade*, 946
19 F.2d at 625).

20 A court may, in its discretion, decline to apply the first-to-file rule in the interests of equity
21 or where the Section 1404(a) balance of convenience weighs in favor of the later-filed action.
22 *Adoma v. Univ. of Phoenix, Inc.*, 711 F. Supp. 2d 1142, 1149 (E.D. Cal. 2010); *Ward v. Follett*
23 *Corp.*, 158 F.R.D. 645, 648 (N.D. Cal. 1994). Exceptions to the first-to-file rule include where the
24 filing of the first suit evidences bad faith, anticipatory suits, and forum shopping. *Alltrade*, 946
25 F.2d at 628. The Ninth Circuit has cautioned that relaxing the first-to-file rule on the basis of
26 convenience is a determination best left to the court in the first-filed action. *Ward*, 158 F.R.D. at
27 648 (citing *Alltrade*, 946 F.2d at 628).

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1 Here, the Michigan Complaint was filed prior to the California Complaint. While the
2 California Complaint was removed to federal court before the Michigan Complaint was removed,
3 the date of removal is immaterial to the first-to-file analysis. *See Hartford Acc. & Indem. Co. v.*
4 *Margolis*, 956 F.2d 1166 (9th Cir. 1992); *Innovation Ventures, L.L.C. v. Custom Nutrition*
5 *Laboratories, L.L.C.*, 534 F.Supp.2d 754, 756 (E.D.Mich. 2008).

6 The issues to be litigated in the two cases are identical. Likewise, the parties are nearly
7 identical, with the only difference being that Livernois is not a party to the Michigan Complaint.
8 However, Livernois' principal place of business was Michigan, making transfer to Michigan a
9 benefit to Livernois, should it ever appear in this litigation. Moreover, any dispute between
10 Livernois and Motiv is subject to an arbitration provision, and Motiv has apparently already filed a
11 demand for arbitration, making the choice of venue essentially irrelevant to Livernois. The dispute
12 between Comerica and Motiv is not subject to that arbitration provision.


13 Comerica filed its action first, in Michigan. Motiv has offered no reasons in equity why this
14 matter should not be transferred, nor does the Court find any.

15 Accordingly, the Motion to Transfer based upon first filing is **GRANTED**. This action is
16 transferred to the Eastern District of Michigan. Consequently, the Court does not reach the merits
17 of the motion, in the alternative, for a transfer on convenience grounds.

18 This Order terminates Docket No. 12.

19 **IT IS SO ORDERED.**

20 Date: January 9, 2014

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22 YVONNE GONZALEZ ROGERS
23 UNITED STATES DISTRICT COURT JUDGE
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