

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

ZEPHYR RAIL SERVICES, L.L.C.,

Plaintiff,

vs.

CHARLES C. JENSEN, and PETER  
MESSINA, JR.

Defendants.

**8:16CV428**

**ORDER**

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ZEPHYR RAIL SERVICES, L.L.C.,  
and OWEN RAILWAY SUPPLY  
COMPANY, L.L.C.,

Plaintiffs,

vs.

NATIONAL PASSENGER CAR  
REPAIR, L.L.C., MORRISTOWN &  
ERIE RAILWAY, INC., and  
CHARLES C. JENSEN,

Defendants.

**8:17CV84**

The above-captioned cases were consolidated for all stages other than appeal. See 8:16CV428, Filing No. [43](#); 8:17CV84, Filing No. [17](#). On July 6, 2017, the court ruled that a Nebraska forum lacks personal jurisdiction over Defendants National Passenger Car Repair, L.L.C. (NPCR), Morristown & Erie Railway, Inc. (M&E), and Charles C. Jensen. See 8:16CV428, Filing No. [55](#); 8:17CV84, Filing No. [32](#).

The court did not immediately enter a judgment as to the dismissed parties. Instead, the magistrate judge conferred with counsel regarding how they wish to proceed on the above-captioned lawsuits. Following that discussion, the parties filed a joint stipulation to withdraw pending motions, and to transfer 8:16CV428-JMG-CRZ, *Zephyr Rail Services, L.L.C. v. Messina* to the United States District Court for the District of New Jersey. And the court conferred with counsel today to clarify their intent with respect to the joint stipulation, Defendant Charles C. Jensen, and any transfer of 8:17CV84. See audio, 8:16CV428, Filing No. [60](#); 8:17CV84, Filing No. [35](#).

Accordingly,

IT IS ORDERED that upon review of the parties' joint stipulation, (8:16CV428, Filing No. [59](#); 8:17CV84, Filing No. [34](#)), which is hereby granted:

- 1) In 8:16CV428-JMG-CRZ, *Zephyr Rail Services, L.L.C. v. Messina et al.*
  - a. The clerk's entry of default, (Filing No. [51](#)), is stricken;
  - b. Plaintiff's Motion for Default Judgment, (Filing No. [49](#)), is denied as moot;
  - c. Defendant Messina's Motion to Set Aside Default Judgment Fed. R. Civ. P. 55(c), (Filing No. [52](#)), is denied as moot;
  - d. Plaintiff's Motion for Attorney Fees and Reimbursement of Service Expenses incurred in effectuating service on Defendant Peter Messina, Jr., (Filing No. [48](#)), is denied

without prejudice to re-filing this motion after transfer to the New Jersey federal court; and

- e. Defendant Charles C. Jensen is dismissed without prejudice for lack of personal jurisdiction, judgment to be entered accordingly.
  - f. The clerk shall transfer 8:16CV428-JMG-CRZ, *Zephyr Rail Services, L.L.C. v. Messina* to the United States District Court for the District of New Jersey.
- 2) 8:17CV84-JMG-CRZ *Zephyr Rail Services, L.L.C. et al v. National Passenger Car Repair, L.L.C. et al*, is dismissed without prejudice for lack of personal jurisdiction, and judgment will be entered accordingly.

Dated this 17th day of July, 2017.

BY THE COURT:

s/ John M. Gerrard  
United States District Judge