

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

YESENIA OLIVO, N.O, SCOTT MUIR, and
KENDLLENA KURDI,
Individually and on Behalf of All Others
Similarly Situated,

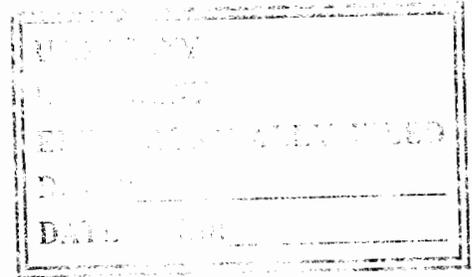
Plaintiffs,

vs.

RADIANCY, INC. and DOLEV RAFAELI

Defendants.

No. 15-CV-6281 (KMK)



JOINT STIPULATION TO TRANSFER VENUE

Pursuant to 28 U.S.C. § 1404, the Parties hereby file this Joint Stipulation to Transfer Venue to the United States District Court for the District of Columbia, and in support thereof, respectfully show:

On April 25, 2014, Plaintiffs filed an initial Complaint on behalf of themselves and all purchasers of the no!no! Hair removal device (the "product") against Defendants Radiancy Inc. and its CEO Dolev Rafaeli in the United States District Court for the District of Columbia, Case No. 1:14-cv-00722 (the "First Mouzon Action"). The Complaint in the First Mouzon Action charged Defendants with violations of the state consumer protection laws of New York, California, the District of Columbia, Florida, Illinois, Maryland, Virginia, Colorado, and Pennsylvania; breach of express warranty, breach of implied warranty of merchantability, breach of implied warranty of fitness for a particular purpose, and violations of the federal Magnuson-Moss Warranty Act. The Complaint proposed a nationwide class, or in the alternative, state subclasses for Plaintiffs located in New York, California, the District of Columbia, Florida, Illinois, Maryland, Virginia, Colorado, and Pennsylvania.

In its March 30, 2015 ruling on Defendants' motions to dismiss, Judge Kollar-Kotelly granted Defendant Rafaeli's motion to dismiss for want of personal jurisdiction, and granted Defendant Radiancy's motion to dismiss as to some claims with prejudice and some without prejudice. No. 1:14-cv-00722, ECF No. 20 and 21. Subsequent to Judge Kollar-Kotelly's denial of Plaintiff's motion for reconsideration and leave to amend its complaint, 1:14-cv-00722, ECF No. 26 and 27, on July 16, 2015, the same Plaintiffs commenced a new action in the United States District Court for the District of Columbia, docketed at 1:15-cv-01142 (the "Second Mouzon Action"), by filing a Complaint which they had previously proposed to be filed as an amended complaint in the First Mouzon Action. (The Complaint in the Second Mouzon Action is attached hereto as Exhibit 1). The Second Mouzon Action has the same Plaintiffs as the First Mouzon Action, has Radiancy as its sole Defendant, and makes the same legal claims as the First Mouzon Action (except those that were dismissed *with prejudice*).

Subsequently, on September 18, 2015, Plaintiffs Yesenia Olivo, minor N.O., Kendllena Kurdi, and Scott Muir filed an Amended Complaint¹ of behalf of themselves and all purchasers of the no!no! Hair removal device against Defendants Radiancy Inc. and its CEO Dolev Rafaeli in the United States District Court for the Southern District of New York, No. 7:15-cv-06281-KMK (the "Olivo Action"). Plaintiffs in the Olivo Action are represented by the same counsel as those in the Second Mouzon Action and the Complaint in the Olivo Action makes nearly identical factual and legal claims as those asserted in the Second Mouzon Action, with differences in the Complaint in the Olivo Action as follows: a) it includes both Radiancy and Dolev Rafaeli as Defendants, b) it asserts factual allegations specific to the Olivo, Kurdi and Muir Plaintiffs, c) its state consumer protection law claims are made under the laws of New York

¹ Plaintiffs filed an initial complaint on August 10, 2015, which they amended on September 18, 2015 to omit the name of the minor plaintiff in accordance with the Court's Order of the same day.

and West Virginia, and d) it proposes, in the alternative to a nationwide class, New York and West Virginia subclasses.

The Second Mouzon Action and the Olivo Action are therefore substantially similar. By this Stipulation, the Parties therefore agree to the transfer of the Olivo Action to the District of the District of Columbia for the purposes of consolidating it with the Second Mouzon Action.

Transfer of this matter is controlled by 28 U.S.C. § 1404, which provides:

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

Defendant Rafaeli also consents, for purposes of this consolidated action only and for the convenience of the Courts and parties, to personal jurisdiction in the District of Columbia for these actions, and thus waives the right to contest the Court's personal jurisdiction over him in these actions, only. This waiver is limited for the purposes of consolidating the Olivo Action and the Second Mouzon Action for the convenience of the Court and parties, and shall not be applicable for any other purposes.

The parties hereto respectfully suggest that consolidating the Olivo Action with the Second Mouzon Action in the District of Columbia will be consistent with principles of fairness, efficiency of judicial resources, will be most convenient for the parties and witnesses, and will ensure that consistent results are obtained to ensure justice to the parties hereto.

NOW, THEREFORE, in consideration of the foregoing, plaintiffs and Defendants Radiancy, Inc. and Dolev Rafaeli agree and hereby stipulate to:

Transfer this action to the United States District Court for the District of the District of Columbia for purposes of consolidation with the Second Mouzon Action;

Defendant Rafaeli consents to personal jurisdiction in the District of Columbia exclusively for purposes of consolidating these matters, and waives the right to contest the Court's personal jurisdiction over him in such consolidated actions. This waiver is limited for the purposes of consolidating the Olivo Action and Second Mouzon Action for the convenience of the Court and parties, and shall not be applicable for any other purposes.

DATED: October 12, 2015

Respectfully submitted,

/s/ Scott A. Martin

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Counsel for Defendants

So Ordered.

A handwritten signature in black ink, appearing to be 'ER' followed by a long horizontal stroke and a loop.

10/13/15

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 12, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record who have consented in writing to accept this notice as service of this document by electronic means.

/s/ Scott Martin
SCOTT MARTIN