

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:17-cv-22209-GAYLES/OTAZO-REYES

**MICHAEL VASQUEZ, *et al.*,
individually, and on behalf of all others
similarly situated,**

Plaintiffs,

v.

GENERAL MOTORS, LLC,

Defendant.

Class Action

**GENERAL MOTORS' MOTION TO TRANSFER
AND MEMORANDUM IN SUPPORT**

Pursuant to 28 U.S.C. § 1404(a), General Motors LLC respectfully moves this Court for transfer of this action to the United States District Court for the Eastern District of Michigan where it can proceed in coordination with four parallel actions.

BACKGROUND

On June 13, 2017, plaintiffs filed this putative class action alleging various claims against GM relating to the 2015-2017 Chevrolet Corvette Z06's capability for closed track racing. ECF No. 1 [Compl.] ¶¶ 1-9. Plaintiffs initially asserted claims for fraudulent concealment, violation of state consumer protection laws, breach of express warranty, and unjust enrichment under the laws of all fifty states and on behalf of fifty putative statewide classes of Z06 purchasers and lessees, as well as a claim under the federal Magnuson-Moss Warranty Act on behalf of a nationwide class of purchasers and lessees.

On September 25, 2017, GM moved to dismiss (ECF No. 19), and specifically moved to dismiss all claims brought by or on behalf of non-Florida residents for lack of personal jurisdiction. GM is not subject to general jurisdiction in Florida, and the non-Florida plaintiffs cannot exercise specific jurisdiction over GM in this Court for claims bearing no relationship to the state of Florida. On October 25, 2017, in response to GM's motion, plaintiffs voluntarily dismissed all claims on behalf of non-Florida residents. ECF No. 30.

On October 30, 2017, plaintiffs' counsel filed materially identical putative class actions on behalf of state-wide classes of Z06 purchasers and lessees in California (*Jasper, et al. v. General Motors LLC*, No. 5:17-cv-06284-NC (N.D. Cal.)), Washington (*Minarik v. General Motors LLC*, No. 2:17-cv-01615-JCC (W.D. Wash.)), and Illinois (*Jankovskis et al. v. General Motors LLC*, No. 1:17-cv-07822 (N.D. Ill.)). On November 1, 2017, plaintiffs filed a motion

under 28 U.S.C. § 1407 with the United States Judicial Panel on Multidistrict Litigation (“JPML”), seeking to transfer and coordinate the cases in a single forum. *See* ECF No. 39.

In support of their motion before the JPML, plaintiffs argued that the complaints are “nearly identical”; each asserts the same legal claims under their respective state’s laws and the same federal claims under the Magnuson-Moss Warranty Act, and each will require a court to construe the same written warranty, assess the same conduct of GM, and address class certification and liability for owners and lessees of the same vehicle, the 2015-2017 Corvette Z06. *See* ECF No. 39-1 at 1. Plaintiffs further argued that transfer to a single venue was necessary to avoid “the repetitive depositions of the same GM representatives, other current and former employees, and expert witnesses, as well as production of the same records, and responses to duplicative interrogatories and documents requests in jurisdictions around the country.” *Id.* at 6. GM concurred in plaintiffs’ request to create an MDL.

On February 2, 2018, the JPML denied plaintiffs’ motion. While the Panel concluded that an MDL was not necessary, it noted the benefits of coordinating these related cases and advised the parties that “transfer under Section 1404 to a single, agreed-upon district appears to be a viable option to place the cases before a single judge for all purposes.” ECF No. 61 at 1.

On February 20, 2018, plaintiffs’ counsel filed a fifth action in the Eastern District of Michigan, where GM is subject to general jurisdiction. This new action, *Matanky et al. v. General Motors LLC*, 2:18-cv-10601-VAR-AP (E.D. Mich.) (Roberts, J.), asserts identical facts and brings the same federal claim and parallel state law claims on behalf of eleven putative statewide classes of Z06 purchasers and lessees in Colorado, Connecticut, Georgia, Kansas, Michigan, Missouri, Nevada, Ohio, Pennsylvania, South Carolina, and Texas.

On February 27, 2018, plaintiffs informed GM of their intention to move to transfer the *Minarik*, *Jankovskis*, and *Jasper* actions to the Eastern District of Michigan to be consolidated and/or coordinated with the *Matanky* action. On March 8, 2018, GM agreed to stipulate to transfer those three cases, and requested that plaintiffs further stipulate to transfer this *Vazquez* action to the Eastern District of Michigan, as well. Despite having moved to centralize this case with the others before the JPML, plaintiffs now refuse to transfer this action.

ARGUMENT

Under 28 U.S.C. § 1404(a), “[f]or the convenience of the parties and witnesses, in the interests of justice, a district court may transfer any civil action to any other district or division where it might have been brought” The primary purpose of this statute is “to avoid unnecessary inconvenience to the litigants, witnesses and the public, and to conserve time, energy, and money.” *Game Controller Tech. LLC v. Sony Comput. Entm’t Am. LLC*, 994 F. Supp. 2d 1268, 1271 (S.D. Fla. 2014) (quoting *Cellularvision Tech. & Telecomms., L.P. v. Alltel Corp.*, 508 F. Supp. 2d 1186, 1189 (S.D. Fla. 2007)). The statute reflects a broad recognition that “[l]itigation of related claims in the same tribunal is favored in order to avoid duplicitous [sic] litigation, attendant unnecessary expense, loss of time to courts, witnesses and litigants, and inconsistent results.” *Invenco PVBA Antwerp v. Maersk Line*, No. 91-1691-CV-DAVIS, 1992 WL 442695, *3 (S.D. Fla. Oct. 19, 1992) (internal citation omitted).

Courts use a two-step process for considering the appropriateness of transfer. First, a court “must determine whether the case may have been brought in the desired district of transfer.” *AASI Beneficiaries’ Tr. by & Through Welt v. AVX Corp.*, No. 16-CV-23691, 2017 WL 3503400, at *2 (S.D. Fla. June 14, 2017) (Gayles, J.). Second, a court must evaluate a series of “private and public interest factors to determine whether a transfer is appropriate,” including the

convenience of the witnesses and parties, the location of the relevant documents, the locus of operative facts, trial efficiency, the interests of justice, and the weight accorded a plaintiff's choice of forum. *Id.*; see also *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 n.1 (11th Cir. 2005).

Plaintiffs could have brought this action in the Eastern District of Michigan where the majority of GM's actions alleged in the complaint occurred. GM is subject to general jurisdiction in that district, and plaintiffs' counsel has now elected to file one action and transfer three other parallel actions there. The relevant factors weigh heavily in favor of transferring this action to the Eastern District of Michigan, where it can proceed in tandem with the *Matanky, Jasper, Minarik*, and *Jankovskis* actions.

A. The Convenience of the Witnesses and Parties Favors Transfer

"The convenience of witnesses is probably the single most important factor in transfer analysis." *EcoServices, LLC v. Certified Aviation Servs., LLC*, No. 16-CV-21454, 2016 WL 4433169, at *3 (S.D. Fla. Aug. 22, 2016) (Gayles, J.) (citation omitted); see also *Fintalert Corp. v. Int'l Bus. Machines Corp.*, No. 15-22845-CIV-GAYLES, 2015 WL 9474640 (S.D. Fla. Dec. 29, 2015) (same); *Osgood v. Disc. Auto Parts, LLC*, 981 F. Supp. 2d 1259, 1264 (S.D. Fla. 2013) (same). As plaintiffs conceded in their motion to the JPML, "[c]entralization [of these actions] in one district... is highly appropriate" because these cases involve "overlapping issues of fact and law" and will require, among other things, the "depositions of the same GM representatives, other current and former employees, and expert witnesses." ECF No. 39-1 at 6.

The most likely GM witnesses in these actions are located in Michigan. In GM's initial disclosures, GM identifies its Product Manager, Chevrolet Corvette & Camaro; Vehicle Systems Engineer – Thermal; Executive Chief Engineer, Chevrolet Corvette; and Brand Quality Manager,

Chevrolet Corvette as likely to have discoverable information. All of these employees are located in Michigan. No witnesses other than the Florida plaintiffs are likely to be located in Florida.

Likewise, GM's headquarters is located in the Eastern District of Michigan. In addition, because the same plaintiffs' counsel represents the plaintiffs in all five lawsuits, it will be more convenient for them to appear in one court. As plaintiffs told the JPML, "consolidating litigation in one court benefits both plaintiffs and defendants" because, *inter alia*, it "would reduce discovery delays, the need to duplicate discovery already completed, and costs for plaintiffs, and permit plaintiffs' counsel to coordinate their efforts and share the pretrial workload." ECF No. 39-1 at 7.

B. The Location of the Relevant Documents and Locus of Operative Facts Favor Transfer

In initial disclosures, plaintiffs say they will seek discovery about "(1) The design and development of the Corvette Z06; (2) The value of the ability [to] use the Corvette Z06 on both the road and the track; (3) The marketing and advertising related to the Corvette Z06. [and] (4) The issues regarding the overheating of the Corvette Z06." The documents on these subject matters are at GM facilities in Michigan. The operative facts or events relating to the design, development and marketing of the Z06 took place in Michigan.

C. Trial Efficiency and the Interests of Justice Favor Transfer

At its core, Section 1404(a) transfer is rooted in the principles of efficiency. *Invenco*, 1992 WL 442695, *3 ("[l]itigation of related claims in the same tribunal is favored in order to avoid duplicitous [sic] litigation, attendant unnecessary expense, loss of time to courts, witnesses and litigants, and inconsistent results.") (citation omitted). Courts therefore routinely transfer cases when overlapping litigation is pending in different districts. *See, e.g., Motorola Mobility, Inc. v. Microsoft Corp.*, 804 F. Supp. 2d 1271, 1278 (S.D. Fla. 2011) ("[t]here is no overriding

public interest that should require this Court to adjudicate satellite litigation here, especially when the resources required to adjudicate this case could be streamlined with the cases already pending” in the transferee district); *Meterlogic, Inc. v. Copier Sols. Inc.*, 185 F. Supp. 2d 1292, 1301 (S.D. Fla. 2002) (“[T]o permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that [Section] 1404(a) was designed to prevent.”) (*quoting Cont’l Grain Co. v. The FBL-585*, 364 U.S. 19, 26 (1960)).

Where the pending cases involve the same central issue, as they do here, transfer is particularly appropriate. *See Tingley Sys., Inc. v. Bay State HMO Mgmt., Inc.*, 833 F. Supp. 882, 887 (M.D. Fla. 1993). Plaintiffs told the JPML that the actions have “overlapping claims, based on multiple common factual allegations, and will involve common legal theories and themes.” ECF No. 39-1 at 4. It makes no sense to join four of these cases together, and leave one behind in Florida. *See Chicken Kitchen USA, LLC v. Tyson Foods, Inc.*, No. 17-21503-CIV-WILLIAMS, 2017 WL 6760811, *4 (S.D. Fla. Oct. 4, 2017) (“[R]efusing transfer here would needlessly duplicate judicial resources and result in simultaneous litigation on the same issues, contravening the policies underlying § 1404(a) and risking inconsistent judgments”); *see also SOC-USA, LLC v. Office Depot, Inc.*, No. 09-80545-CIV, 2009 WL 2365863, *4 (S.D. Fla. July 30, 2009).¹

¹ The same day GM filed this motion, the parties filed a joint stipulation transferring the *Jasper* case from the Northern District of California to the Eastern District of Michigan “[t]o conserve the resources of the Court and the Parties.” Ex. 1 at 2. Again, plaintiffs admit the *Vazquez, Jasper, Minarik, and Jankovskis* “actions involve common factual issues arising from nearly identical putative statewide class actions that concern the marketing, sale and performance of the 2015-2017 model years Corvette Z06.” *Id.* at 1. And plaintiffs confirm that “[t]he *Mantanky* complaint [pending in the Eastern District of Michigan] alleges the same factual allegations as the four other actions and asserts parallel putative statewide class claims on behalf of Z06 purchasers in eleven states.” *Id.*

D. Plaintiff's Choice of Forum Deserves Less Weight

A plaintiff's choice of forum is entitled to deference, but it is not a more important factor than the presence of related proceedings in the transferee district. *SOC-USA, LLC*, 2009 WL 2365863, *3 (“the most compelling reason for transfer... is that there are ongoing related proceedings pending in the” transferee court). A plaintiff's choice of forum is given less weight when the operative facts underlying the plaintiff's claims have only limited connection to the district. *See Motorola Mobility*, 804 F. Supp. 2d at 1276 (claims in Motorola's complaint have limited connection with the district, thus “only minimal deference” given to its choice of forum); *Windmere Corp. v. Remington Prod.*, 617 F. Supp. 8, 10 (S.D. Fla. 1985) (“[W]here the operative facts underlying the cause of action did not occur within the forum chosen by the Plaintiff, the choice of forum is entitled to less consideration”) (internal citations omitted); *Delorenzo v. HP Enterprise Services, LLC*, 79 F. Supp. 3d 1277, 1283 (M.D. Fla. 2015).

Here, plaintiffs' complaint contains virtually no allegations about any events occurring in Florida. Rather, plaintiffs' principal allegations concern GM's design, development, marketing and advertising of the Z06, all of which occurred or originated in the Eastern District of Michigan. Accordingly, plaintiffs' choice of Florida as a forum for this action is entitled to minimal deference.²

² While courts sometimes defer to the venue of the first-filed action, that factor should be given little weight here because the other cases cannot be transferred to or consolidated here where there is no personal jurisdiction over GM. *See* 28 U.S.C. § 1404(a) (requiring that the transferred action could have been filed in the transferee forum). GM is subject to general jurisdiction in the Eastern District of Michigan and all cases may be transferred to that court. *See Meterlogic*, 185 F. Supp. 2d at 1302 (transfer is appropriate where transferee court would have personal jurisdiction over all parties).

CONCLUSION

GM respectfully requests that the Court issued an order, pursuant to 28 U.S.C. § 1404(a), transferring this action to the United States District Court for the Eastern District of Michigan.

DATED: March 9, 2018

Respectfully submitted,

/s/ Paul J. Schwiep

Paul J. Schwiep
COFFEY BURLINGTON LLP
2601 South Bayshore Dr
Penthouse One
Miami, FL 33133
Telephone: 305-858-2900
Facsimile: 305-858-5261
PSchwiep@coffeyburlington.com

Kathleen Taylor Sooy (admitted *pro hac vice*)
April N. Ross (admitted *pro hac vice*)
Jared Levine (admitted *pro hac vice*)
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington, DC 20004
Telephone: 202-624-2500
Facsimile: 202-628-5611
ksooy@crowell.com
aross@crowell.com
jlevine@crowell.com

Attorneys for Defendant General Motors LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 9, 2018 the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

Stuart Z. Grossman
Rachel Furst
GROSSMAN ROTH YAFFA COHEN
2525 Ponce de Leon, Suite 1150
Coral Gables, FL 33134
Telephone: (888) 296-1681
Facsimile: (305) 285-1668
Email: szg@grossmanroth.com
Email: rwf@grossmanroth.com

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
Email: steve@hbsslaw.com

Jason D. Weisser
David Kerner
SCHULER, HALVORSEN, WEISSER,
ZOELLER & OVERBECK
1615 Forum Place, Suite 4
West Palm Beach, FL 33401
Telephone: (561) 689-9180
Facsimile: (561) 684-9683
Email: jweisser@shw-law.com
Email: dkerner@shw-law.com

/s/ Paul J. Schwiep

Paul J. Schwiep

Exhibit 1

1 Shana E. Scarlett (SBN 217895)
HAGENS BERMAN SOBOL SHAPIRO LLP
2 715 Hearst Avenue, Suite 202
Berkeley, CA 94710
3 Telephone: (510) 725-3000
Facsimile: (510) 725-3001
4 Email: shanas@hbsslaw.com

5 Steve W. Berman (*pro hac vice*)
Shelby Smith (*pro hac vice*)
6 HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
7 Seattle, WA 98101
Telephone: (206) 623-7292
8 Facsimile: (206) 623-0594
Email: steve@hbsslaw.com
9 Email: shelbys@hbsslaw.com

10 *Attorneys for Plaintiffs and*
the Proposed Classes

11 [*Additional counsel on signature page*]

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 MICHAEL JASPER, KEVIN PRESSER, SUREN
16 MANUKYAN, and KYVAN SHAIGI-NEIK,
17 individually and on behalf of all others similarly
situated,

18 Plaintiffs,

19 vs.

20 GENERAL MOTORS LLC,

21 Defendant.

No. 5:17-cv-06284-NC

**JOINT STIPULATION AND
[PROPOSED] ORDER
TRANSFERRING CASE TO THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
MICHIGAN**

1 Pursuant to 28 U.S.C. § 1404, Plaintiffs Michael Jasper, Kevin Presser, Suren Manukyan, and
2 Kyvan Shaigi-Neik (“Plaintiffs”), and Defendant General Motors LLC (“GM”) (collectively, the
3 “Parties”), by counsel, hereby submit this JOINT STIPULATION AND PROPOSED ORDER TO
4 TRANSFER VENUE TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN
5 DISTRICT OF MICHIGAN.

6 Plaintiffs and GM, through their respective attorneys of record, agree and stipulate as
7 follows:

8 On June 13, 2017, Plaintiffs filed *Vazquez et al. v. General Motors LLC*, No. 1:17-cv-22209
9 (S.D. Fla.). On October 20, 2017, Plaintiffs’ counsel filed *Jasper et al. v. General Motors LLC*,
10 No. 5:17-cv-06284 (N.D. Cal.), *Minarik v. General Motors LLC*, No. 2:17-cv-01615-JCC (W.D.
11 Wash.), and *Jankovskis et al. v. General Motors LLC*, No. 1:17-cv-07822 (N.D. Ill.). These actions
12 involve common factual issues arising from nearly identical putative statewide class actions that
13 concern the marketing, sale and performance of the 2015-2017 model years Corvette Z06.

14 On November 1, 2017, Plaintiffs’ counsel, on behalf of plaintiffs in all four actions, filed with
15 the United States Judicial Panel on Multidistrict Litigation (“JPML”) a motion to transfer all four
16 actions to the Southern District of Florida (*see In Re: Corvette Z06 Mktg. and Sales Practices Litig.*,
17 MDL No. 2815 (J.P.M.L. Nov. 1, 2017)). GM agreed that consolidation for pretrial purposes
18 pursuant to 28 U.S.C. § 1407 is appropriate.

19 On November 22, 2018, the Parties filed a stipulation extending the deadline for GM to
20 answer or otherwise respond to Plaintiffs’ Class Action Complaint in this action to 21 days after the
21 JPML ruled on Plaintiffs’ Motion for Transfer.

22 On February 2, 2018, the JPML issued its order declining to consolidate for pretrial purposes,
23 instructing that “[t]ransfer under Section 1404 to a single, agreed-upon district appears to be a viable
24 option to place the cases before a single judge for all purposes.”

25 On February 20, 2018, Plaintiffs’ counsel filed *Matanky et al. v. General Motors LLC*, No.
26 2:18-cv-10601-VAR-APP (E.D. Mich.). The *Matanky* complaint alleges the same factual allegations
27 as the four other actions and asserts parallel putative statewide class claims on behalf of Z06
28 purchasers in eleven states.

1 On February 23, 2018, GM filed a Motion to Dismiss the Class Action Complaint.

2 During the week of February 26, 2018, the Parties met and conferred regarding transfer of
3 venue to the Eastern District of Michigan.

4 On February 28, 2018, a Case Management Conference was held. The Court and Parties
5 discussed transferring this case to the Eastern District of Michigan. The Court’s February 28, 2018
6 Case Management Order instructs that “[b]y March 14, 2018, the parties shall file a stipulation to
7 transfer this case to the Eastern District of Michigan or a notice informing the Court that they do not
8 intend to transfer the case.”

9 To conserve the resources of the Court and the Parties, the Parties agree to transfer this case
10 to the Eastern District of Michigan for coordination and/or consolidation with the parallel *Matanky*
11 action pending in that court.

12 If the Court grants the Parties’ request to transfer this case to the Eastern District of
13 Michigan, GM hereby withdraws its Motion to Dismiss without prejudice. Defendant will have no
14 less than 30 days after receipt of the case by the Eastern District of Michigan to file an Answer or a
15 new motion to dismiss. In addition, the Parties ask that the schedule set by the Court in the February
16 28, 2018 Case Management Order be vacated. The Parties agree to promptly seek a status
17 conference with the transferee court to address a schedule for this action, including a deadline for
18 GM to answer or file a renewed motion to dismiss the complaint.

19 The Parties agree that neither side is prejudiced by the agreements set forth herein.

20 THEREFORE, the Parties hereby stipulate and agree, subject to Court approval, to transfer
21 this case to the Eastern District of Michigan.

22 IT IS SO STIPULATED.

23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: March 9, 2018

By: /s/ Shana E. Scarlett
Shana E. Scarlett (SBN 217895)
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
Email: shanas@hbsslaw.com

Steve W. Berman (admitted *pro hac vice*)
Shelby Smith (admitted *pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
Email: steve@hbsslaw.com
Email: shelbys@hbsslaw.com

Attorneys for Plaintiffs and the Proposed Class

Dated: March 9, 2018

By: /s/ April N. Ross
April N. Ross (admitted *pro hac vice*)
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington, DC 20004
Telephone: (202) 624-2687
Email: aross@crowell.com

Attorney for Defendant General Motors LLC

ATTESTATION OF FILING

Pursuant to Local Rule 5.1(i)(3), I hereby attest that concurrence in the filing of the foregoing **JOINT STIPULATION AND [PROPOSED] ORDER TRANSFERRING CASE TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN** has been obtained from counsel for General Motors Company.

Dated: March 9, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP

By: /s/ Shana E. Scarlett
Shana E. Scarlett (SBN 217895)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: March __, 2018.

The Honorable Lucy Koh
United States District Judge