

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THOMAS DANIELKIEWICZ, et al.,

Plaintiffs,

v.

WHIRLPOOL CORPORATION,

Defendant.

Case No. 2:18-cv-13599

HONORABLE STEPHEN J. MURPHY, III

**ORDER GRANTING DEFENDANT'S  
MOTION TO CONSOLIDATE CASES [43]  
AND REFERRING THE CASE FOR MEDIATION**

On November 19, 2018, Plaintiffs filed a class action complaint against Defendant Whirlpool Corporation. ECF 1. The case was reassigned to the undersigned as a companion case to an earlier filed class action complaint, *Schechner, et al. v. Whirlpool Corporation*, 2:16-cv-12409, ECF 4, and was consolidated with a third-filed companion case, *Angerman, et al. v. Whirlpool Corporation*, No. 2:18-cv-13832, ECF 12. On March 29, 2019, Plaintiffs filed an amended, consolidated class action complaint. ECF 30. On September 18, 2019, a fourth case involving Defendant's "AquaLift" self-cleaning oven technology was filed in Oakland County Circuit Court. *McEachern v. Whirlpool Corporation*, 2:19-cv-13084, ECF 1-2. *McEachern* was removed to federal court and reassigned to the undersigned as a companion case to *Danielkiewicz* and *Schechner*. *Id.* at ECF 1, 4. On October 22, 2019, Defendant filed a motion to consolidate *McEachern* and *Danielkiewicz*. ECF 43.

Under Fed. R. Civ. P. 42(a)(1), the Court may consolidate actions that "involve a common question of law or fact." The Court has broad discretion to consolidate cases to "administer [its] business with 'expedition and economy while providing justice to the parties.'" *Advey v. Celotex Corp.*, 962 F.2d 1177, 1180 (6th Cir. 1992) (citation omitted). The Court "weighs the interests of judicial economy against the potential for new delays, expense, confusion, or prejudice." *Gamboa v. Ford Motor Co.*, 381 F. Supp. 3d 853, 866 (E.D. Mich. 2019).

Here, both cases involve allegations that Defendant falsely advertised its self-cleaning oven technology. The cases are substantially similar—they raise substantially similar claims, make similar allegations, and request the same relief. Compare ECF 30 (consolidated amended complaint) with *McEachern*, Case No. 2:19-cv-13084, ECF 1-2; see also *Gamboa*, 381 F. Supp. 3d at 866–67. Plaintiffs, in response, do not dispute that the cases are substantially similar. Rather, they argue that the Court does not have subject-matter jurisdiction over the *McEachern* case and that they will be seeking remand in that case. ECF 45, PgID 2767. But the *McEachern* Plaintiff has not filed a motion for remand, and the Court certainly has subject-matter jurisdiction over the *McEachern* matter.<sup>1</sup> See 28 U.S.C. § 1332(d).

Consolidation avoids the risk of inconsistent adjudication of overlapping and related issues, reduces the time and other burdens on the parties and witnesses,

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<sup>1</sup> On November 19, 2019, Plaintiff in the *McEachern* case filed a motion to voluntarily dismiss the case and stated that she unintentionally defined the proposed class in which minimal diversity would be met under CAFA. See *McEachern v. Whirlpool Corporation*, Case No. 2:19-cv-13084, ECF 9, PgID 191–92.

conserves judicial resources, and reduces expenses for all parties. *See Cantrell v. GAF Corp.*, 999 F.2d 1007, 1011 (6th Cir. 1993). In the interests of judicial economy, the Court will grant Defendant's motion to consolidate the cases.

The Court will also refer the consolidated cases, along with the companion case, *Schechner*, for mediation with the Honorable Layn Phillips and Mr. Gregory Lindstrom.<sup>2</sup> The three cases have had extensive activity on each of the dockets in the last several months. To preserve judicial economy and to reduce litigation costs for the parties, the Court will refer the cases for mediation to attempt to either narrow the issues involved or to facilitate an early resolution of the matter.

**WHEREFORE**, it is hereby **ORDERED** that Defendant's motion to consolidate cases [43] is **GRANTED**. The Clerk of the Court shall **CONSOLIDATE** the following cases:

- Case No. 2:18-cv-13599, *Danielkiewicz, et al. v. Whirlpool Corp.*, before the Honorable Stephen J. Murphy, III, and
- Case No. 2:19-cv-13084, *McEachern v. Whirlpool Corp.*, before the Honorable Stephen J. Murphy, III.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall **DOCKET** a copy of this order in both cases.

**IT IS FURTHER ORDERED** that the case is **REFERRED** to the Honorable Layn Phillips and Mr. Gregory Lindstrom for mediation.

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<sup>2</sup> Judge Phillips and Mr. Lindstrom are members of Phillips ADR Enterprises and may be reached by telephone at (949) 760-5288 and by email at LPhillips@phillipsadr.com and GLindstrom@phillipsadr.com.

**IT IS FURTHER ORDERED** that the parties shall proceed in compliance with Local Rule 16.4. The mediation and settlement discussions shall occur no later than **March 31, 2020**, or as otherwise set by Judge Phillips and Mr. Lindstrom.<sup>3</sup> The parties shall contact Judge Phillips and Mr. Lindstrom and provide them with a copy of this order as soon as practicable and shall **NOTIFY** the Court of the date of the mediation session once it is scheduled.

**IT IS FURTHER ORDERED** that Judge Phillips and Mr. Lindstrom shall **NOTIFY** the Court within seven days of completion of mediation, stating only the "date of completion, who participated, whether settlement was reached, and whether further alternative dispute resolution proceedings are contemplated." E.D. Mich. LR 16.4(e)(6). If a settlement is reached, the parties shall **NOTIFY** the Court immediately upon completion of mediation and shall **SUBMIT** a proposed order of dismissal within 21 days. *Id.* at 16.4(e)(7). If a settlement is not reached, the parties shall **NOTIFY** the Court within seven days of the completion of mediation.

**SO ORDERED.**

s/ Stephen J. Murphy, III  
STEPHEN J. MURPHY, III  
United States District Judge

Dated: January 15, 2020

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 15, 2020, by electronic and/or ordinary mail.

s/ David P. Parker  
Case Manager

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<sup>3</sup> The Court corresponded with Judge Phillips, and he informed the Court that he has availability to mediate the case, along with the companion cases, in February or March.