

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Locatell v. Generac Power Systems, Inc.

Locatell · No. 2:23-cv-00203-TLN-JDP · Decided March 15, 2023

SUMMARY

The document is a joint stipulation and order staying the action pending the Judicial Panel on Multidistrict Litigation’s resolution of a motion to transfer and centralize related putative class actions. The parties agree to a stay, deadlines for responding to the complaint and conducting the Rule 26(f) conference if transfer is denied, and preservation of defendants’ jurisdictional and other defenses.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
DECIDED	March 15, 2023
DOCKET	2:23-cv-00203-TLN-JDP
DISPOSITION	other
PROCEDURAL POSTURE	The parties jointly stipulated to stay the putative class action pending the Judicial Panel on Multidistrict Litigation's resolution of a motion to transfer related actions for coordinated or consolidated pretrial proceedings.
PRECEDENTIAL VALUE	Unknown; stipulated stay order
PARTIES	Kathryn Locatell v. Generac Power Systems, Inc., Generac Holdings Inc.

TOPICS

- civil procedure
- class actions
- consumer protection

PRACTICE AREAS

- civil procedure
- multidistrict litigation
- consumer protection
- product liability

QUESTIONS PRESENTED

- Whether the court should stay the action pending the JPML's resolution of the motion to transfer related actions for coordinated or consolidated pretrial proceedings.
- What deadlines and procedural protections should apply if the JPML denies the transfer motion.

HOLDINGS

1. The court ordered the action stayed pending the JPML's resolution of the motion to transfer.
2. If the JPML denies the transfer motion, the parties must notify the court promptly; defendants will have 45 days from the denial to respond to the complaint, and the parties will have 60 days from the denial to conduct the Rule 26(f) conference.

KEY QUOTATIONS

“in light of the possibility that this action may not proceed in this Court, the Parties agree that briefing a motion to dismiss, or conducting other motion practice or discovery, in the instant action would require expenditure of party and judicial resources that would be duplicative and/or unnecessary if the JPML Motion is granted, and would create a risk of inconsistent adjudication of similar issues” (at 4)

FACTUAL BACKGROUND

The action concerns alleged defects in the SnapRS component of Generac's PWRcell system and asserts warranty and California consumer-protection claims on behalf of a putative nationwide class. A related action and three other putative class actions were the subject of a motion before the JPML seeking transfer, coordination, or consolidation. The parties supported or did not oppose centralization and agreed that proceeding with motion practice or discovery before the JPML ruled could create duplicative litigation and inconsistent adjudications.

PROCEDURAL HISTORY

Plaintiff filed an amended complaint on March 13, 2023. Defendants had not responded to the amended complaint, and discovery had not begun, when the parties submitted their joint stipulation on March 14, 2023. The court ordered the action stayed pending resolution of the JPML transfer motion.

DISPOSITION

other

CASES CITED

- Huitt v. Teva Pharms. USA, Inc., 2020 WL 8483907, at *1 (E.D. Cal. Dec. 15, 2020)
- Rubio v. Arndal, 2013 WL 796669, at *5 (E.D. Cal. Mar. 4, 2013)

OPINION

Locatell v. Generac Power Systems, Inc.

PER CURIAM.

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Generac Power Systems, Inc. and Generac Holdings Inc. 7 8 9

UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

11 12 13 KATHRYN LOCATELL, as an individual and CASE NO. 2:23-cv-00203-TLN-JDP 14
on behalf of all others similarly situated, 15 Plaintiff, JOINT STIPULATION AND ORDER
STAYING CASE PENDING JUDICIAL

16 v. PANEL ON MULTIDISTRICT

LITIGATION RESOLUTION OF

17 GENERAC POWER SYSTEMS, INC. and MOTION TO TRANSFER

GENERAC HOLDINGS, INC.,

18 Defendants. 19

20 21 22 23 24 25 26 27 1 Plaintiff Kathryn Locatell (“Plaintiff”) and Defendants Generac Power
Systems, Inc. 2 (“Generac”) and Generac Holdings Inc. (“Generac Holdings,” with Generac Power
Systems, 3 Inc., “Defendants”) (collectively, the “Parties”) by and through their respective
counsel, hereby 4 stipulate and agree pursuant to Local Rule 143 as follows: 5 WHEREAS,
Plaintiff filed an Amended Complaint (Dkt. 8) on March 13, 2023; 6 WHEREAS, Defendants’
counsel has agreed to receive service of the Amended 7 Complaint as of March 13, 2023, without
waiving any defenses, including challenges to personal 8 jurisdiction or venue; 9 WHEREAS, on
March 3, 2023, the named plaintiff in Moon v. Generac Power Systems, 10 Inc., et al., Case No.
3:22-cv-09183-CRB (N.D. Cal.) filed a “Motion of Plaintiff for Transfer of 11 Actions to the
Northern District of California Pursuant to 28 U.S.C. § 1407 for Coordinated or 12 Consolidated
Pretrial Proceedings” (“JPML Motion,” attached hereto as Exhibit A) with the 13 Judicial Panel on
Multidistrict Litigation; 14 WHEREAS, the JPML has assigned MDL No. 3078 and set a deadline
to file responses 15 to the JPML Motion by March 28, 2023 and a reply by April 4, 2023 (MDL
No. 3078, Dkt. 4); 16 WHEREAS, the JPML Motion seeks to transfer five actions (the “Putative
Class 17 Actions”), including the above-referenced matter, for consolidation or coordination (Ex.
A at 18 PDF p. 22-23); 19 WHEREAS, the Putative Class Actions all assert claims related to
alleged defects in the 20 SnapRS component of Generac’s PWRcell system on behalf of a putative
nationwide class; 21 WHEREAS, the Moon action and the instant action are both brought on
behalf of a 22 California plaintiff asserting breach of express and implied warranty, breach of
express and 23 implied warranty under the Song-Beverly Act, violation of the Unfair Competition
Law, and 24 violation of the California Consumers Legal Remedies Act; 25 WHEREAS, counsel
for Defendants has conferred with counsel for the named plaintiffs 26 in each of the Putative Class
Actions and understands that the named plaintiffs and Defendants 27 all support or do not oppose
the centralization of the actions in a multidistrict litigation; 1 WHEREAS, Defendants also
understand that named plaintiffs in each of the Putative 2 Class Actions and Defendants all support
or do not oppose staying the Putative Class Actions 3 pending the resolution of the JPML Motion;

4 WHEREAS, this Court has the authority to stay this action pending the decision of the 5 JPML (Huitt v. Teva Pharms. USA, Inc., 2020 WL 8483907, at *1 (E.D. Cal. Dec. 15, 2020) 6 (explaining district courts consider 1) potential prejudice to the non-moving party; 2) hardship 7 and inequity to the moving party if the action is not stayed; and 3) the judicial resources that 8 would be saved by avoiding duplicative litigation if the cases are in fact consolidated) (citations 9 omitted)); 10 WHEREAS, courts routinely stay actions pending the resolution of a JPML decision on a 11 motion to transfer (e.g., Rubio v. Arndal, 2013 WL 796669, at *5 (E.D. Cal. Mar. 4, 2013)); 12 WHEREAS, Defendants have not yet responded to the Amended Complaint and 13 discovery has not yet begun; 14 WHEREAS, in light of the possibility that this action may not proceed in this Court, the 15 Parties agree that briefing a motion to dismiss, or conducting other motion practice or discovery, 16 in the instant action would require expenditure of party and judicial resources that would be 17 duplicative and/or unnecessary if the JPML Motion is granted, and would create a risk of 18 inconsistent adjudication of similar issues; 19 WHEREAS, the Parties anticipate that the JPML will schedule the JPML Motion for its

20 May 25, 2023 Hearing Session and will rule on the motion shortly thereafter;

21 THEREFORE, IT IS HEREBY STIPULATED by the parties that: 22 (1) the instant action be STAYED pending the JPML's resolution of the JPML Motion; 23 (2) the Parties shall promptly notify the Court if the JPML Motion is denied and shall 24 submit a proposed order regarding the stay within three court days; 25 (3) should the JPML Motion be denied, Defendants shall have 45 days from the date of 26 the denial to respond to the Complaint, including but not limited to filing motions under Federal 27 Rule of Civil Procedure 12(b)(2) and 12(b)(6); 1 (4) should the JPML Motion be denied, the Parties shall have 60 days from the date of the 2 denial to confer as required by Federal Rule of Civil Procedure 26(f); 3 (5) in appearing in this action and filing this stipulation, and in filing required disclosures, 4 Defendants do not waive (and should not be construed to waive) any defenses, including a 5 challenge to personal jurisdiction. 6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD. 7 Date: March 14, 2023 MAYER BROWN LLP 8 By: /s/ Elspeth V. Hansen 9 Elspeth V. Hansen 10 Elspeth V. Hansen (SBN 292193) 11 ehansen@mayerbrown.com Two Palo Alto Square, Suite 300 12 3000 El Camino Real Palo Alto, CA 94306 13 Telephone: (650) 331-2000 Facsimile: (650) 331-2060 14 15 Attorneys for Defendants Generac Power 16 Systems, Inc. and Generac Holdings Inc. 17

LIEFF CABRASER HEIMANN &

18 BERNSTEIN, LLP

19 By: /s/_Michael Levin-Gesundheit____ 20 Michael Levin-Gesundheit (as authorized on March 14, 2023) 21 22 Michael Levin-Gesundheit (SBN 292930) Nicholas Ryan Hartmann (SBN 301049) 23 mlevin@lchb.com nhartmann@lchb.com 24 275 Battery Street, 29th Floor San Francisco, CA 94111-3339 25 Telephone: 415.956.1000 Facsimile: 415.956.1008 26 Mark P. Chalos (pro hac vice) 27 mchalos@lchb.com 222 2nd Avenue South, Suite 1640 Nashville, TN 37201-2379 | Telephone: 615.313.9000 Facsimile: 615.313.9965 3 Attorneys for Plaintiff Kathryn

Locatell

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5 || PURSUANT TO STIPULATION, IT IS SO ORDERED. 6 □□ /

| DATED: March 15, 2023 “ \ | 7 Lo nw 9 United States District Judge 10 11 12 13 14 15 16 17 18
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