

**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.

OPINION

1 MAYER BROWN LLP ELSPETH V. HANSEN (SBN 292193) 2 ehansen@mayerbrown.com
Two Palo Alto Square, Suite 300 3 3000 El Camino Real Palo Alto, CA 94306 4 Telephone: (650)
331-2000 Facsimile: (650) 331-2060 5 Attorney for Defendants 6 Generac Power Systems, Inc.
and Generac Holdings Inc. 7 8 9 UNITED STATES DISTRICT COURT 10 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 4 QRDER 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
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