

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

ASHLEY SMITH et al.,

Plaintiffs,

v.

CASE NO. 4:14cv223-RH/CAS

JOHNSON & JOHNSON CONSUMER
COMPANIES, INC.,

Defendant.

ORDER OF TRANSFER

This proposed class action is similar to an earlier-filed proposed class action in the Southern District of New York. Both actions challenge the same defendant's representations about and marketing of the same products. The only significant differences are that in the New York action the claims arise under New York law and the proposed class consists of New York consumers, while in this Florida action the claims arise under Florida law and the proposed class consists of Florida consumers.

The defendant moved to transfer this action to the Southern District of New York under 28 U.S.C. § 1404(a) and the first-filed rule: “Where two actions involving overlapping issues and parties are pending in two federal courts, there is a strong presumption across the federal circuits that favors the forum of the first-filed suit under the first-filed rule.” *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 (11th Cir. 2005); *see also Collegiate Licensing Co. v. Am. Cas. Co. of Reading, Pa.*, 713 F.3d 71, 78-79 (11th Cir. 2013). The defendant moved to stay this action until a ruling was entered on the § 1404 motion.

The plaintiffs moved to transfer this action to the Judicial Panel on Multidistrict Litigation and filed in this court a motion to stay further proceedings pending the JPML’s transfer decision. By order entered on July 19, 2014, proceedings were stayed pending the JPML’s decision.

The defendant now has filed a second motion—this one consented—to transfer this action to the Southern District of New York. The defendant says the plaintiffs now have withdrawn their JPML motion and have consented to the defendant’s motion to transfer this action to the Southern District of New York. Under § 1404(a), “[f]or 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 brought” This action could properly have been brought in the Southern District of New York.

Factors informing a court's application of § 1404(a) include relevant public and private interests. *See generally Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253, 260 (11th Cir. 1996); *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879-80 (3d Cir. 1995); 15 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure: Jurisdiction* §§ 3847-3854 (3d ed. 2011). Primarily because of the pendency of the first-filed action in the Southern District of New York, I conclude, as a matter of discretion, that this action should be transferred to that court.

For these reasons,

IT IS ORDERED:

The motions to transfer, ECF Nos. 5 and 23, are GRANTED. This action is transferred to the United States District Court for the Southern District of New York. The clerk must take all steps necessary to effect the transfer.

SO ORDERED on September 14, 2014.

s/Robert L. Hinkle
United States District Judge