

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION

GERALDINE J. SMITH,)
individually and on behalf of)
all others similarly situated,)

Plaintiff,)

v.)

Case No. 7:17-cv-01661-TMP

L'ORÉAL USA, INC., and)
SOFT SHEEN-CARSON, LLC,)

Defendants.)

ORDER OF TRANSFER

Pending before the court is the Defendants' Motion to Consolidate. (Doc. 6). The Defendants seek to consolidate the above-styled action pursuant to Fed. R. Civ. P. 42 and 28 U.S.C. § 1404(a) with an action consolidated in the United States District Court for the Southern District of Alabama. Plaintiffs have consented to the transfer and consolidation of the above-styled action. (Doc. 7). The matter has been fully briefed, and the parties have consented to the exercise of dispositive jurisdiction by a magistrate judge pursuant to 28 U.S.C. § 636(c). (Doc. 9). Accordingly, the court enters the following Order GRANTING IN PART the Defendants' Motion to Consolidate.

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 been brought or to any district or division to which all parties have consented.” Generally, “the district court has discretion to grant or deny a motion to transfer under section 1404(a).” In re Ricoh Corp., 870 F.2d 570, 573 n.5 (11th Cir. 1989). “The analysis under § 1404(a) requires a balancing of practical considerations, which centers on convenience of the parties and witnesses, with the interest of justice, which focuses on fairness and efficiency.” A.J. Taft Coal Co., Inc., v. Barnhart, 291 F. Supp. 2d 1290, 1309 (N.D. Ala. 2003).

The court “find[s] that the balance of factors clearly weighs in favor of transfer.” Id. at 1310 (citing Robinson v. Giarmarco & Bill, P.C., 74 F.3d 253, 260 (11th Cir. 1996)). The convenience prong is satisfied because the parties will be able to save costs by conducting one round of discovery and undergoing one trial in the Southern District of Alabama, assuming the actions are subsequently consolidated, instead of conducting discovery in two actions and potentially having two trials with different results. Additionally, because both this action and the action consolidated in the Southern District of Alabama “are still in their infant pleading stages” (doc. 6-1, p. 6 n.2), judicial efficiency will not be hampered by transferring this matter to the Southern District of Alabama in the interests of justice. Furthermore, the parties have consented to the transfer of the above-styled

action to the Southern District of Alabama. See § 1404(a) (“a district court may transfer any civil action . . . to any district . . . which all parties have consented”).¹

The Defendants’ Motion to Consolidate is GRANTED IN PART, and it is ORDERED that the above-styled action hereby is TRANSFERRED, pursuant to 28 U.S.C. § 1404(a), to the United States District Court for the Southern District of Alabama. The court declines to rule on the consolidation request and leaves that decision to the Southern District of Alabama because this court does not have jurisdiction over the action pending and consolidated in the Southern District of Alabama.

¹ The second clause of § 1404(a) clearly allows the parties to consent to a venue that may not have been proper under 28 U.S.C. § 1391(b). In the above-styled action, the Southern District of Alabama would not have been a proper forum because “a substantial part of the events . . . giving rise to the claim [in the above-styled action] occurred” in the Northern District of Alabama, which is where the named plaintiff in the complaint resides and used the allegedly defective product. See § 1391(b)(2). It is not clear from the complaint, which names only one plaintiff, that “a substantial part of the events . . . giving rise to the claim” occurred in any other judicial district. The court cannot assume that “a substantial part of the events . . . giving rise to the claim” occurred in the Southern District of Alabama just because the named-plaintiff intends to represent a class of unnamed and unidentified plaintiffs at this stage. Because § 1391(b)(2) applies to the above-styled action, § 1391(b)(3) is inapplicable and could not have served as a proper basis for venue. See PNC Bank, Nat’l Ass’n v. Westcoop Mfg., Inc., No. 2:17-cv-1786-RDP, 2017 WL 6406521, at *1 n.1 (N.D. Ala. Dec. 15, 2017) (“[V]enue is appropriate in this district under § 1391(b)(3) because Plaintiff cannot ascertain an appropriate venue under § 1391(b)(1) or § 1391(b)(2).”). However, because the parties have consented to its jurisdiction, the Southern District of Alabama is a proper transferee court under § 1404(a).

The Clerk of Court is DIRECTED to transfer this case to the United States District Court for the Southern District of Alabama.

DONE and **ORDERED** on January 2, 2018.

A handwritten signature in black ink, appearing to read 'T. Michael Putnam', written in a cursive style.

T. MICHAEL PUTNAM
UNITED STATES MAGISTRATE JUDGE