

**BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

In re Samsung Top-Load Washing Machine Litigation

MDL No. _____

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO TRANSFER AND
CONSOLIDATE FOR PRETRIAL PROCEEDINGS**

Defendants Samsung Electronics America, Inc. (“SEA”), Samsung Electronics Co., Ltd. (“SEC”) (together, “Samsung”), Best Buy Co., Inc. (“Best Buy”), Lowe’s Home Centers, LLC (“Lowe’s”), and Sears Holdings Corporation (“Sears”) (collectively, “Defendants”) respectfully submit this memorandum of law in support of their motion, pursuant to 28 U.S.C. § 1407, to transfer and consolidate for pretrial proceedings twenty-four actions involving multiple common questions of fact currently pending in twenty different federal districts across the United States to the United States District Court for the Western District of Oklahoma.

PRELIMINARY STATEMENT

This transfer motion covers twenty-four putative class-action Complaints filed by forty plaintiffs in twenty separate federal districts concerning the same Samsung top-load washing machine models. The Complaints propose overlapping, and in many cases, identical, putative nationwide classes and/or multiple state classes. At center stage of each of these Complaints are allegations that these washers possess certain defects that manifest themselves during the spin cycle and pose a risk of harm to consumers and their property, as well as allegations concerning the damages that consequentially flow therefrom. The Complaints each claim that Defendants purportedly knew of the defects and concealed them from consumers while they continued to sell the machines. More specifically, each of the Complaints allege that, due to these defects,

components, such as the washers' tops or drain pumps, detach during the machines' spin cycle, resulting in property damage or personal injury. Each of these actions, which are at markedly similar procedural postures, presents "one or more common questions of fact" and raises substantially similar, and in most cases, identical, allegations and claims arising from the same models of allegedly defective top-load washing machines. *See* 28 U.S.C. § 1407(a).

Accordingly, because there are twenty-four "civil actions involving one or more common questions of fact . . . pending in [twenty] different districts," centralized proceedings "will promote the just and efficient conduct of such actions" and would serve "the convenience of parties and witnesses" from avoiding having to litigate twenty-four separate putative class actions on multiple stages simultaneously in geographically-dispersed districts across the United States. *See id.* With document and deposition discovery looming in two of the class actions, which would call for substantial document production and depositions that would be duplicative and overlap across all twenty-four actions to a significant degree, and new similar putative class actions continuing to be filed, this massive litigation is ripe "for coordinated or consolidated pretrial proceedings." *See id.*

As the Panel has recognized, because these actions are putative class actions involving proposed overlapping national and statewide classes, MDL "[c]entralization will . . . prevent inconsistent pretrial rulings, *especially with respect to class certification.*" *In re Anheuser-Busch Beer Labeling Mktg. & Sales Practices Litig.*, 949 F. Supp. 2d 1371, 1372 (J.P.M.L. 2013) (emphasis added). Moreover, voluntary coordination is not practical given the large number of involved federal districts and at least five different plaintiffs' counsel groups. *See id.* (rejecting voluntary coordination "argument [as] not persuasive considering that six putative class actions are pending in six geographically dispersed districts and the overlap in counsel is minimal").

In addition, the appropriate venue for centralized proceedings is the Western District of Oklahoma before the Honorable Timothy D. DeGiusti, for the following reasons:

- A plurality of the subject actions are pending before Judge DeGiusti.
- Transfer to the Western District of Oklahoma affords the Panel an opportunity to assign a multidistrict litigation to an experienced jurist, in a centrally located district, who has not yet had the opportunity to preside over centralized proceedings.
- This venue is supported by all of the defendants and more than half of the forty plaintiffs in the twenty-four actions.

BACKGROUND

This 28 U.S.C. § 1407 transfer motion is made in connection with a series of twenty-four putative class-action lawsuits brought by forty different plaintiffs and five groups of attorneys in twenty separate federal districts across the United States, seeking certification of proposed overlapping national and statewide classes. Each of these actions raises substantially similar, and in most cases, identical, allegations and claims relating to the same models of allegedly defective top-load washing machines manufactured by SEC, distributed in the United States by SEA, and sold to consumers by the retailer defendants—models that were later subject to a voluntary recall announced by SEA and the United States Consumer Product Safety Commission on November 4, 2016.

I. THE ALLEGATIONS IN THE COMPLAINTS¹

Each of these cases alleges that defects in the same models of Samsung top-load washing machines cause components of the machines to dislodge during the spin cycle, resulting in damages. Moreover, all but one of these actions further alleges that Samsung's voluntary recall program was inadequate because it failed to adequately compensate consumers for the resulting harm they purportedly suffered as a result of their machines, and failed to remedy the alleged defects in the washers.² These actions include (1) twenty actions filed by one law firm, with the operative action proceeding in the Western District of Oklahoma, (2) an action pending in the Southern District of Florida, (3) an action pending in the District of New Jersey, (4) an action pending in the Eastern District of Pennsylvania, and (5) an action pending in the Western District of Pennsylvania.

SEC is a South Korean corporation located in Seoul, South Korea, and is the manufacturer of the top-load washing machines at issue. *See, e.g.*, Ex. 1 ¶ 15; Ex. 22 ¶ 136; Ex. 21 ¶ 13; Ex. 23 ¶ 6. SEA, a wholly-owned subsidiary of SEC, is the machines' U.S. distributor and is a New York corporation, with its headquarters in Ridgefield Park, New Jersey. *See, e.g.*, Ex. 1 ¶ 16; Ex. 21 ¶ 14; Ex. 22 ¶ 139; Ex. 23 ¶ 5; Ex. 24 ¶ 12. As for the retailer defendants, Best Buy is a Minnesota corporation with its headquarters located in Richfield, Minnesota; The Home Depot, Inc. ("Home Depot") is a Delaware corporation with its headquarters in Atlanta, Georgia; Lowe's is a North Carolina limited liability corporation with its headquarters in

¹ Copies of the subject Complaints are annexed to the accompanying Declaration of Susan L. Shin, executed June 19, 2017, as Exhibits 1 through 24.

² The *Wagner* complaint was filed prior to the announcement of Samsung's voluntary recall, and therefore does not contain allegations relating to the recall. *See* Ex. 21.

Wilkesboro, North Carolina; and Sears is a Delaware corporation with its headquarters located in Hoffman Estates, Illinois. *See, e.g.*, Ex. 1 ¶¶ 17–21.

At the core of each Complaint are allegations that, between March 2011 and November 2016, Samsung manufactured, warranted, and sold to consumers thirty-four models of purportedly defective washing machines, which were later the subject of a voluntary recall on November 4, 2016. *See, e.g.*, Ex. 1 ¶¶ 1–2, 6–7; Ex. 21 ¶ 2; Ex. 22 ¶¶ 2, 148–49; Ex. 23 ¶ 1; Ex. 24 ¶ 2. According to the Complaints, these defects, which manifest during the spin cycle, can cause certain components to dislodge, such as the washers’ tops or drain pumps. *See, e.g.*, Ex. 1 ¶¶ 28–30; Ex. 21 ¶¶ 7, 30–31; Ex. 22 ¶ 149; Ex. 23 ¶¶ 20–22; Ex. 24 ¶ 2. Although the Complaints each speculate as to the purported underlying cause of the washers’ malfunctions, they all allege that the underlying defects cause the top to detach in a manner that may result in bodily harm and/or property damage. *See, e.g.*, Ex. 1 ¶¶ 28–29; Ex. 21 ¶¶ 2, 28, 30; Ex. 22 ¶¶ 149–150, 166; Ex. 23 ¶¶ 19–22; Ex. 24 ¶ 2. Each Complaint further alleges that these defects, although present at the point of sale, did not manifest until a later date, often following the expiration of the Limited Warranty that accompanied the washer. *See, e.g.*, Ex. 1 ¶ 30; Ex. 21 ¶ 44; Ex. 22 ¶ 150; Ex. 23 ¶ 31; Ex. 24 ¶ 3. Indeed, each Complaint challenges the enforceability of the same Limited Warranty. *See, e.g.*, Ex. 1 ¶ 124; Ex. 21 ¶ 46; Ex. 22 ¶ 156; Ex. 23 ¶ 33; Ex. 24 ¶ 80.

Moreover, the Complaints each assert that Samsung allegedly possessed actual or constructive knowledge that these machines were defective and posed a serious risk of harm, but continued to manufacture, warrant, and sell the washers to consumers without adequate disclosure. *See, e.g.*, Ex. 1 ¶ 7; Ex. 21 ¶ 35; Ex. 22 ¶ 157; Ex. 23 ¶¶ 23–24; Ex. 24 ¶ 52. Collectively, the Complaints attribute the basis for Samsung’s alleged knowledge to similar

sources: (1) reports and complaints received by Samsung concerning its washers “coming apart,” including reports of personal injuries; (2) warranty claims Samsung received from customers; (3) Samsung’s receipt of notice in October 2013 that a consumer in California suffered physical injury as a result of her machine; (4) Service Bulletins that were issued that failed to remedy the problems; and (5) Samsung’s internal testing. *See, e.g.*, Ex. 1 ¶¶ 2, 34; Ex. 21 ¶ 47; Ex. 22 ¶¶ 157–58. They allege that, had Samsung disclosed that the machines were defective and the associated risks, plaintiffs would not have purchased them. *See, e.g.*, Ex. 1 ¶¶ 78, 99; Ex. 21 ¶¶ 10, 64; Ex. 22 ¶ 175; Ex. 24 ¶ 87. Lastly, twenty-three of the twenty-four Complaints claim that Samsung’s voluntary recall efforts associated with the machines were inadequate.³ *See, e.g.*, Ex. 1 ¶ 8; Ex. 22 ¶ 4; Ex. 23 ¶¶ 26, 33; Ex. 24 ¶ 23. The Complaints each assert common claims that sound in breach of warranty, tort, and violation of state consumer-protection and unfair business practices laws, each of which arises from Defendants’ sales of the same series models of top-load washing machines.

In sum, liability in each of these twenty-four actions will necessarily turn on allegations concerning purported defects within thirty-four Samsung washing machine models, the degree of knowledge Defendants possessed concerning the presence of such defects, and whether the recall adequately addressed any harm caused by the alleged defects. Because the same factual allegations will take center stage in determining liability in this litigation, the overwhelming majority of document discovery and depositions of witnesses will necessarily overlap to a significant degree, as will the factual and legal questions that call for judicial resolution.

³ Although the *Wagner* complaint does not mention the voluntary recall because it was filed prior to the announcement of the November 2016 voluntary recall, there is no doubt that the damages claims at issue in *Wagner* will be impacted substantially by the voluntary recall.

II. THE LAWSUITS SUBJECT TO THIS TRANSFER MOTION

A. The Twenty Identical Lawsuits Led by the Operative Action Proceeding in the Western District of Oklahoma

Beginning January 13, 2017, plaintiffs' firm Federman & Sherwood ("Federman") filed the first of twenty currently pending putative class-action lawsuits against Samsung in connection with Samsung's voluntary recall program for washing-machine models whose components, such as the tops, can "break apart" during the washers' spin cycle as a result of design or manufacturing defects. *See, e.g.*, Ex. 1 ¶ 28. In addition to Samsung, sixteen of the twenty Complaints named as defendants Best Buy, Home Depot, Lowe's, and Sears—retailers that allegedly sold the Samsung top-load washer models at issue. The twenty Complaints allege the following claims: (1) breach of warranty; (2) violation of the Magnuson-Moss Warranty Act; (3) unjust enrichment; (4) strict liability; (5) negligence; (6) fraud; (7) violation of various consumer-protection and unfair business practices laws; and (8) declaratory and injunctive relief. Plaintiffs assert each count on behalf of a nationwide putative class, or, alternatively, multiple state putative classes, of "residents . . . who purchased a new . . . [recalled] [w]ashing [m]achine, primarily for household use and not for resale." *See, e.g.*, Ex. 1 ¶¶ 65, 66.

These twenty actions are presently pending in sixteen different districts across the country. The twenty-two named plaintiffs are residents of sixteen states (*i.e.*, California, Delaware, Florida, Georgia, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New York, North Carolina, Oklahoma, South Carolina, Texas, and Wisconsin). Pursuant to an agreement by the parties, *Wells* and *Higginbotham*, the two actions filed in the Western District of Oklahoma by Federman and assigned to the Honorable Timothy D. DeGiusti, were consolidated together under *Wells* on March 20, 2017. *See* Ex. 25 ¶ 1; Ex. 26 ¶ 1. The two named plaintiffs in the *Wells/Higginbotham* consolidated action are residents of, and purchased

their washing machines in, Oklahoma. Ex. 1 ¶¶ 10, 13. Stays have subsequently been sought and granted in twelve separate actions in other federal districts pending the final disposition of the Western District of Oklahoma consolidated action, which the parties have designated as the “operative complaint,” and another four such motions remain pending. Decl. of Jonathan E. Green ¶¶ 5, 8, 9 (“Green Decl.”). Stays, however, were denied in three instances. *Id.* ¶ 10. Thereafter, 28 U.S.C. § 1404(a) transfer motions were filed and granted in each of those three actions, thereby resulting in the transfer of venue of each of those three cases to the Western District of Oklahoma. *Id.* Following transfer, the transferred actions were reassigned to Judge DeGiusti, although they have, to date, remained dormant. *Id.* ¶¶ 10, 13. A motion was recently filed with Judge DeGiusti to stay the transferred actions pending the final disposition of the operative *Wells/Higginbotham* action. *Id.* ¶ 11. That motion remains pending. *Id.* Federman has also indicated that he intends to continue to file more actions in other federal districts. *Id.* ¶ 14. Pursuant to the same agreement by which the parties agreed to consolidate the *Wells* and *Higginbotham* actions and stay or transfer the remaining Federman actions to the Western District of Oklahoma, Defendants also reserved their rights to file the instant motion. *See* Ex. 25 ¶ 5.

As for the *Wells/Higginbotham* operative action proceeding before Judge DeGiusti, Samsung and the defendant retailers filed motions to dismiss the consolidated complaint on May 30, 2017. Green Decl. ¶ 12. Briefing on those motions is set to be completed on July 19, 2017. *Id.* There has been no activity in any of the other nineteen cases. *Id.* ¶ 13. Thus, each of the twenty Federman actions is at a nascent procedural stage.

B. The Southern District of Florida Action

Cooper v. Samsung Electronics America, Inc., No. 17-61022 (S.D. Fla. 2017), is a putative class action recently filed on May 23, 2017 in the Southern District of Florida before the

Honorable Ursula M. Ungaro. This action, like the others, alleges that Samsung's top-load washing machines are "defective and inherently dangerous as the[ir] . . . tops unexpectedly detach from the . . . [m]achines' chassis during regular use, posing a risk of injury and/or property damage from the impact." Ex. 24 ¶ 2. The plaintiff here seeks to represent a proposed statewide class of all Florida residents "who purchased, not for resale, a new Samsung [r]ecalled [w]ashing [m]achine from March 2011 and November 2016, primarily for household use," and asserts, on their behalf, (1) breach-of-warranty claims (2) violations of the Magnuson-Moss Act, and (3) violations of the Florida unfair business practices law. *Id.* ¶¶ 39, 47–89. Thus, she seeks to represent the very same statewide Florida class identified by the twenty Federman actions.

As the newest filing of any of the actions subject to this motion, SEA was recently served on May 30, 2017 and its answer is currently due by June 20, 2017.⁴ Green Decl. ¶ 16.

C. The District of New Jersey Action

Moore v. Samsung Electronics America, Inc., et al., No. 16-04966 (D.N.J. 2016), is pending before the Honorable Kevin McNulty in the District of New Jersey. This putative class action was initially filed in the Southern District of Indiana on March 9, 2016 on behalf of three named plaintiffs, but was subsequently dismissed and refiled in the District of New Jersey on August 12, 2016 after SEA filed a motion to dismiss on jurisdictional grounds. Green Decl. ¶ 19. On October 22, 2016, SEA again moved to dismiss the complaint. *Id.* ¶ 20. On November 4, 2016, Samsung announced its voluntary recall program of the thirty-four washing-machine models. *Id.* ¶ 21. Following the recall announcement, the *Moore* plaintiffs amended their complaint to add allegations concerning the purported inadequacy of the recall (akin to the

⁴ On June 16, 2017, SEA filed an unopposed motion for an extension of time until July 11, 2017 to respond to the complaint. *See* Green Decl. ¶ 17. In so doing, it also reserved the right to seek a stay of the *Cooper* action pending the JPML's resolution of the instant transfer motion. *See id.* That unopposed motion, however, was denied by Judge Ungaro the same day.

twenty Federman actions) and added twelve new plaintiffs who purportedly experienced similar difficulties with the same Samsung washer models as those plaintiffs involved in the twenty lawsuits brought by Federman. *See id.* ¶ 22. Similarly, the *Moore* plaintiffs' damages are allegedly based on the claimed inadequacy of the Samsung voluntary recall program. The fifteen named plaintiffs—residents of California, Colorado, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, New Jersey, Ohio, Pennsylvania, and Texas—purchased their machines from various retailers, including Lowe's, Home Depot, and Sears, and assert nearly identical claims to the Federman cases: (1) breach of warranty; (2) violations of the Magnuson-Moss Warranty Act; (3) unjust enrichment against all Defendants; (4) strict liability; (5) negligence; (6) violation of various consumer-protection, unfair business practices, and consumer fraud laws; and (7) declaratory and injunctive relief. The *Moore* plaintiffs assert each count on behalf of an identical proposed nationwide putative class, or, alternatively, identical proposed multiple state putative classes to those identified in the twenty Federman actions: "All residents . . . who purchased a new [recalled] [w]ashing [m]achine or otherwise acquired a [w]ashing [m]achine, primarily for household use and not for resale." Ex. 22 ¶ 221.

Procedurally, Samsung filed its motion to dismiss on April 28, 2017 and plaintiffs filed their response on June 1, 2017. Green Decl. ¶ 24. Briefing on the motion is scheduled to be completed by June 26, 2017. *Id.* Although plaintiffs served Rule 30(b)(6) notices of deposition on SEA and SEC, these notices remain pending. *Id.* ¶ 23. Recently, however, the court ordered briefing on whether discovery should be stayed pending resolution of Samsung's motion to dismiss and for the duration of mediation. *Id.* ¶ 25. On June 9, 2017, Samsung moved to stay discovery pending the outcome of this motion, and plaintiffs filed a brief in opposition to that motion. *Id.* ¶ 26. That stay motion currently remains pending. *Id.* Thus, *Moore* remains at a

similar procedural posture to *Cooper* and the twenty lawsuits currently being led in the Western District of Oklahoma by the *Wells/Higginbotham* operative action.

D. The Eastern District of Pennsylvania Action

Wagner v. Samsung Electronics America, Inc., et al., No. 16-3623 (E.D. Pa. 2016), which was filed on June 30, 2016, is pending before the Honorable Thomas N. O’Neill, Jr. in the Eastern District of Pennsylvania. The claims in *Wagner*, like the twenty actions filed by Federman and the *Cooper* and *Moore* cases, stem from allegations that defects in the Samsung washers trigger, during the spin cycle, the detachment of certain components, such as the machines’ tops or drain pumps, thereby resulting in property damage or serious bodily injury. *See* Ex. 21 ¶ 30. Plaintiff purchased her washer from Lowe’s and asserts seven claims on behalf of essentially identical proposed classes to those identified by the twenty Federman actions and the *Moore* plaintiffs: a national or Pennsylvania state class composed of “all persons who purchased or otherwise acquired in the United States a Samsung-designed or -manufactured Washing Machine, primarily for personal, family, or household purposes, and not for resale.” *Id.* ¶¶ 12, 71. These include claims of (1) breach of warranty, (2) strict liability, (3) negligence, (4) failure to warn, (5) violations of the Pennsylvania unfair trade practices and consumer protection law, and (6) injunctive and declaratory relief. *Id.* ¶¶ 83–178.

The *Wagner* complaint was filed before the announcement of the voluntary recall and therefore does not allege claims directly challenging its adequacy; however, as with the other twenty-three class actions subject to this litigation, the adequacy of the voluntary recall will be front and center in the damages discovery in *Wagner*. Indeed, the *Wagner* complaint contains multiple allegations concerning the absence of a recall in connection with the Samsung-top load washing machines as of June 30, 2016, when the complaint was filed, and even seeks injunctive

relief specifically requiring Samsung to issue a recall of the washing machines. *See id.* ¶¶ 26, 49, 54, 55, 105, 109, 117, 126, 127, 137, 141, 145, 174.

Although *Wagner* is the most advanced action subject to this litigation, it remains in a similar procedural posture as the other actions. SEA’s motion for partial summary judgment and to dismiss the complaint were only recently resolved in December 2016 and discovery has only just begun with plaintiff serving her document request on Samsung on April 7, 2017. Green Decl. ¶¶ 28–30. On May 10, 2017, the parties filed a Rule 26(f) preconference statement, and on May 16, 2017, Judge O’Neill granted the parties’ proposed scheduling order for discovery following a Rule 16 conference, providing that plaintiff could file any amendments to her complaint by January 15, 2018. *Id.* ¶¶ 31–32. On June 15, 2017, Samsung requested a stay of discovery pending the resolution of this transfer motion. *Id.* ¶ 33.

E. The Western District of Pennsylvania Action

Troyan v. Samsung Electronics America, Inc., et al., No. 16-01873 (W.D. Pa. 2016), which was filed on December 16, 2016, is a putative class action currently pending in the Western District of Pennsylvania before the Honorable David S. Cercone. Ex. 23 ¶ 4. As with *Cooper*, *Moore*, *Wagner*, and the twenty actions filed by Federman, *Troyan* alleges that the Samsung washers are defective because they can “explode” during the spin cycle, thereby “causing significant damage and potential personal injury to insured and other property.” *Id.* ¶ 19. *Troyan* differs from the Federman actions, *Cooper*, *Moore*, and *Wagner*, though, in that all of its lead and putative class members’ washing machines allegedly underwent repairs; but, due to the alleged inadequacy of the voluntary recall program, these plaintiffs claim that they were not adequately reimbursed for their out-of-pocket expenses incurred in making those repairs. *Id.* ¶¶ 26, 33. The putative state and national classes defined in the *Troyan* complaint are a subset of the members captured by the Federman actions, *Moore*, and *Wagner*: those consumers who

purportedly paid for out-of-pocket repairs to their Samsung machines and seek reimbursement for such costs. *Id.* ¶ 33. The named plaintiff seeks to bring the following claims on behalf of these proposed classes: (1) breach of warranty; (2) strict liability; (3) negligence; (4) negligent misrepresentation; and (5) violations of the Magnuson-Moss Warranty Act. *Id.* ¶¶ 43–92.

Like the consolidated action in the Western District of Oklahoma and *Moore*, briefing on Samsung’s motion to dismiss is underway; Samsung’s motion was filed on April 7, 2017 and plaintiff’s response brief was filed on May 19, 2017. Green Decl. ¶ 35. Briefing on the motion is set to be completed by June 22, 2017. *Id.*

* * *

For the reasons set forth below, Defendants’ transfer motion should be granted and the actions that are the subject of this motion should be centralized for pretrial case management before Judge DeGiusti in the Western District of Oklahoma.

ARGUMENT

I. CONSOLIDATION IN A SINGLE DISTRICT IS THE MOST CONVENIENT, JUST, AND EFFICIENT METHOD OF COORDINATING PRETRIAL PROCEEDINGS FOR THIS MASSIVE LITIGATION

Where, as here, multiple “civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to a single district for consolidated pretrial proceedings.” 28 U.S.C. § 1407(a). Because “transfers for such proceedings will be for the convenience of the parties and witnesses,” and will eliminate duplicative discovery across these twenty-four substantially similar, overlapping putative class actions, centralized proceedings “will promote the just and efficient conduct of such actions.” *Id.*

A. The Large Scale of This Litigation Calls for Centralized Proceedings

While all relevant factors strongly favor consolidation, the sheer number of pending actions in this litigation—twenty-four in total, pending in twenty separate districts, and involving forty named plaintiffs—makes a compelling case for centralization. Indeed, this Panel has previously held that a large number of procedurally-similar actions will make the case for centralization compelling, and has routinely ordered centralized proceedings in cases involving even fewer lawsuits. *See In re: Boehringer Ingelheim Pharm., Inc., Fair Labor Standards Act (FLSA) Litig.*, 763 F. Supp. 2d 1377, 1378 (J.P.M.L. 2011); *see also e.g., In re Mobile Telecomms. Tech., LLC*, No. MDL 2722, 2016 WL 4153603, at *2 (J.P.M.L. Aug. 5, 2016) (granting transfer motion consisting of fourteen actions pending in two districts); *In re Dollar Gen. Corp. Motor Oil Mktg. & Sales Practices Litig.*, 190 F. Supp. 3d 1361, 1362 (J.P.M.L. 2016) (ordering centralized proceedings for litigation involving eighteen actions pending in eighteen districts); *Anheuser-Busch*, 949 F. Supp. 2d at 1372 (centralizing six actions pending in six districts); *In re: Subway Footlong Sandwich Mktg. & Sales Practices Litig.*, 949 F. Supp. 2d 1369 (J.P.M.L. 2013) (centralizing seven actions pending in five districts); *In re: 5-Hour Energy Mktg. & Sales Practices Litig.*, 949 F. Supp. 2d 1357 (J.P.M.L. 2013) (centralizing nine actions pending in eight districts); *In re: Fontainebleau Las Vegas Contract Litig.*, 657 F. Supp. 2d 1374, 1375 (J.P.M.L. 2009) (centralizing proceedings for litigation involving two actions filed in separate districts); *In re Fosamax Prods. Liab. Litig.*, 444 F. Supp. 2d 1347, 1348 (J.P.M.L. 2006) (granting transfer motion for litigation involving eighteen actions in five districts). The likelihood of inconsistent rulings and the staggering amount of resources that will be consumed in the overlapping prosecution, defense, and adjudication of pretrial proceedings in twenty-four substantially similar putative class actions are precisely the reasons why § 1407 was enacted.

Moreover, centralization is all the more compelling here where every single lawsuit is at a markedly similar procedural posture. Only one of the twenty-four actions (*Wagner*) has had a dispositive motion resolved, and in that case, discovery has only just commenced, with initial discovery requests recently served on Samsung. Neither the production of documents nor depositions of any witnesses have taken place. In addition, there have been no substantive rulings to date in any of the twenty-three other actions. Given the large number of procedurally-similar actions involved, this litigation is an ideal candidate to benefit substantially from centralized proceedings. Indeed, the need for centralization is particularly pronounced in this case, given that new putative class actions, such as *Cooper*, concerning the same purportedly defective washing machines, continue to be filed.

B. Each of the Twenty-Four Actions Involves Multiple Common Factual Allegations

The claims and allegations at issue in each of the twenty-four actions stem from the same models of allegedly defective top-load Samsung washing machines, which, while in use, can purportedly cause property damage or result in personal injury due to the detachment of certain components, such as the machines' tops or drain pumps, during the spin cycle. In addition, these cases each involve allegations that Defendants possessed knowledge that the washers were defective, but failed to make adequate disclosures and continued to manufacture, warrant, and sell the machines to consumers, as well as the consequential damages that flow from any resulting liability on the part of Defendants. Liability in each of the actions will thus turn on the same alleged questions of fact. *See In re Auto Body Shop Antitrust Litig.*, 37 F. Supp. 3d 1388, 1390 (J.P.M.L. 2014) ("Transfer under Section 1407 does not require a complete identity of common factual issues or parties as a prerequisite to transfer, and the presence of additional facts

or differing legal theories is not significant where, as here, the actions still arise from a common factual core.”).

These claims will unquestionably involve the production of identical documents and witnesses, and are therefore well-suited to resolution through centralized proceedings. Indeed, while centralization requires only a single common question of law or fact, here, the overlap between the various claims and allegations approaches precision. For example, each Complaint alleges that the defects were present at the point of sale but did not manifest until a later date, often following the expiration of the warranty period. Each of the Complaints further alleges that Samsung knew or should have known of the defects and the potential for harm prior to any disclosure to the public, and that Samsung concealed the existence of a defect. Many of the Complaints even go so far as to allege the same or similar bases for Samsung’s knowledge of the defects, specifically, warranty claims and complaints from customers, notice of a physical injury suffered by one consumer in California, allegedly inadequate Service Bulletins that Samsung issued, and Samsung’s internal testing.

The legal and factual similarities in the instant cases easily surpass other matters that have been deemed appropriate for centralization. For example, in *In re: Discover Card Payment Protection Plan Marketing & Sales Practices Litigation*, this panel ordered centralization of four actions because each involved the marketing, sale, operation and/or administration of Discover’s payment protection plan. 764 F. Supp. 2d 1341, 1343 (J.P.M.L. 2011). The panel issued this order over one plaintiff’s objection that her action, which alleged that Discover marketed payment protection plans to individuals without inquiring as to whether they qualify for benefits, was factually distinct from the other claims, which focused on Discover’s alleged enrolling of individuals in the plans without their consent, charging higher fees than disclosed, and requiring

onerous steps to terminate the plan. *Id.* While agreeing that the objecting plaintiff's allegations were "somewhat different" from the other complaints, the panel nonetheless concluded that "the actions were sufficiently similar and contained enough overlapping facts concerning the marketing of the Discover payment protection plan to benefit from centralized proceedings." *Id.* Here, the twenty-four actions contain substantially similar allegations that arise from an identical factual core; that is, alleged defects in the same devices that manifest in similar ways, Defendants' knowledge of those defects, and Samsung's voluntary recall program.

Moreover, the facts relating to this motion are strikingly similar to those present in a recent litigation for which this Panel ordered centralized proceedings. In *Dollar General*, which involved eighteen actions pending in eighteen separate districts, and two related ongoing actions in two other districts, this Panel found that the actions involved common questions of fact because the plaintiffs had "uniformly allege[d] that Dollar General fail[ed] to adequately warn that the[ir] . . . products [were] unsuitable for use," and the plaintiffs "in all the actions allege[d] similar claims for breach of warranties, unjust enrichment, and violation of various state consumer protection acts." *Dollar Gen.*, 190 F. Supp. 3d at 1362. In addition, despite the presence of common counsel, the Panel was persuaded by the fact that, "in each of these actions[,] [the plaintiffs] w[ould] seek to obtain the same documentary and testimonial evidence from defendants and third-party witnesses," as well as expert discovery. *Id.*

Similarly, here, the washer class actions will call for substantially similar, and in many cases, identical, documentary and testimonial evidence from the same witnesses, as well as matching expert testimony concerning, among other things, the adequacy of the machines' design, manufacture, and internal testing procedures. Accordingly, "centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class

certification; and conserve the resources of the parties, their counsel, and the judiciary.” *In re: TD Bank, N.A., Debit Card Overdraft Fee Litig.*, 96 F. Supp. 3d 1378, 1379 (J.P.M.L. 2015).

C. Consolidation Would Serve the Convenience of the Parties and Witnesses

Consolidation of these actions also serves the convenience of the parties and witnesses, and “will offer the benefit of placing all related actions before a single judge who can structure pretrial proceedings to accommodate all parties’ legitimate discovery needs while ensuring that common witnesses are not subjected to duplicative discovery demands.” *Auto Body Shop*, 37 F. Supp. 3d at 1390.

The Complaints will undoubtedly involve the production of the same witnesses and documents. Many of the Samsung witnesses will have to be deposed in South Korea, further underscoring the need for coordinated discovery in an effort to minimize the burdens on all parties. Moreover, the potential for duplicative discovery demands and inconsistent pretrial rulings is very real, and would be remedied by consolidation before a single judge. In addition, plaintiffs’ counsel in twenty of the twenty-four actions are located in a single district (the Western District of Oklahoma), which would make consolidated proceedings in a single venue in this case increasingly efficient and convenient.

D. Consolidation Will Promote the Just and Efficient Conduct of These Actions

Consolidation will also “promote the just and efficient conduct of” these actions. *See* 28 U.S.C. § 1407(a). As set forth above, all of the cases at issue arise from the same alleged facts. In light of this overlap, consolidation is necessary “to avoid duplication of discovery, prevent inconsistent or repetitive rulings (such as those requiring class certification), and conserve the resources of the parties, their counsel and the judiciary.” *In re Meridia Prods. Liab. Litig.*, 217 F. Supp. 2d 1377, 1378 (J.P.M.L. 2002).

Moreover, all of the actions at issue are brought as putative class actions, each “of which overlap or duplicate each other, and, therefore the need for Section 1407 treatment is apparent.” *See In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975). In such a scenario, consolidation is necessary to ensure consistency in adjudications related to class certification and eliminate the risk of overlapping classes battling for control of the litigation. Indeed, this panel has “consistently held that transfer of actions under Section 1407 is appropriate, if not necessary, where the possibility of inconsistent class determinations exists.” *Id.*; *accord Anheuser-Busch*, 949 F. Supp. 2d at 1372 (“Centralization will . . . prevent inconsistent pretrial rulings, *especially with respect to class certification.*” (emphasis added)).

Finally, centralization would be beneficial to help facilitate the management of future cases, which, as noted, counsel for twenty of the twenty-four actions has indicated remain forthcoming, and new actions concerning the same Samsung washer models, such as *Cooper*, which continue to be filed. Should additional actions be filed, case management will further be complicated by the need for additional document discovery, depositions, and motion practice on the same subject matter. Section 1407 exists precisely to remedy this problem.

II. CENTRALIZED PROCEEDINGS SHOULD BE ASSIGNED TO THE WESTERN DISTRICT OF OKLAHOMA

Once centralized, this litigation would be most appropriately venued in the Western District of Oklahoma, which is currently handling four separate putative class actions subject to this motion—more than any other district or combination of districts within a single state. Indeed, as the only judge with more than two actions pending before him, one of which has motions to dismiss for which briefing is already underway, Judge DeGiusti will be “most familiar with the contours of th[e] litigation.” *In re: Bank of Am. Credit Prot. Mktg. & Sales Practices Litig.*, 804 F. Supp. 2d 1372, 1373 (J.P.M.L. 2011). Further, Judge DeGiusti is well-

positioned to manage a litigation of this size efficiently, with nearly ten years of experience on the federal bench. Lastly, plaintiffs' counsel in twenty of the twenty-four actions are local to the Western District of Oklahoma and this district is the only one in which all five defendants are already litigating claims.

CONCLUSION

Based on the foregoing, Defendants Samsung Electronics America, Inc., Samsung Electronics Co., Ltd., Best Buy Co., Inc., Lowe's Home Centers, LLC, and Sears Holdings Corporation respectfully request that their motion be granted and that these nearly identical matters be centralized for pretrial case management before Judge DeGiusti in the Western District of Oklahoma.

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