UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: FCA US LLC MONOSTABLE
ELECTRONIC GEARSHIFT LITIGATION

MDL No. 2744

Case Number 16-md-02744
Honorable David M. Lawson
Magistrate Judge David R. Grand

_______________________________________/

OPINION AND ORDER GRANTING MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

After this multidistrict litigation was initiated on October 5, 2016, the Judicial Panel on Multidistrict Litigation (JPML) transferred to this Court for pretrial proceedings six civil actions pending in various districts. One of them originated in Central District of California. The case was brought in the name of 24 plaintiffs. At the time the complaint was filed, three of them resided in that district, but 20 others had no apparent connection to California. Defendant FCA US LLC (commonly referred to as Fiat Chrysler Automotive, Chrysler, or FCA) has moved under Federal Rule of Civil Procedure 12(b)(2) to dismiss the first amended consolidated master class action complaint (FACMC) as to those 20 plaintiffs for want of personal jurisdiction. After hearing oral argument on the motion on April 12, 2017, the Court agrees that those plaintiffs have not furnished a basis for personal jurisdiction over the defendant in California; therefore, the motion will be granted.

I.

This case deals with claims that defendant FCA manufactured vehicles that were defective because they were equipped with "monostable electronic gearshifts," which, allegedly, do not shift into "Park" properly, and rollaway incidents can and have resulted as a consequence. After the JPML transferred several putative class action complaints to the undersigned, the Court ordered the

plaintiffs to file a consolidated master complaint. One of the transferred cases has come to be known as the *Andollo v. FCA US* matter. That case was filed as a putative class action in the Central District of California. Three plaintiffs in that case (David Goldsmith, Michael Vincent Nathan, Jr., and Pascual Pietri) alleged that they are domiciled in California and bought their cars there. (One other California plaintiff, Deryl Wall, filed a Rule 41 notice of voluntary dismissal of his claims against the defendant on October 17, 2016). In this motion, however, the defendant challenges the exercise of personal jurisdiction over it by the California district court (and, by extension, this Court), as to the claims of 20 other plaintiffs named in the *Andollo* complaint, who alleged that they reside and bought their vehicles in various states other than California. Those plaintiffs are: Jeffrey Guy, Casey E. Perkins, Justine Andollo, Ken McDonald, Lindsey Wells, Scott Michael Youngstrom Jr., Todd Machtley, Melvin Scott, Eliam M. Marrero Bernal, Clare Colrick, Jacob Gunnells, Danielle and Joby Hackett, Todd Fisher, John and Mary Metzger, Robert F. Hyatt IV, Cameron Phelps, Karen Stedman, and Cameron Webster.

Chrysler argues that it is not subject to general personal jurisdiction in the State of California, because it is incorporated in Delaware and headquartered in Michigan. The defendant contends that the 20 plaintiffs have not alleged any facts sufficient to show that the exercise of specific personal jurisdiction by a California district court would be proper; those 20 plaintiffs allege that they live and bought their cars in other states, and no pleaded facts suggest that their dealings with the defendant have any apparent connection to the forum. The defendant argues that it also does not have sufficient minimum contacts with California — or, indeed, any pertinent contacts at all — with respect to the claims of the 20 non-resident plaintiffs. It matters not, says Chrysler, that it is headquartered in this district, because in the context of an MDL litigation, if the transferor court

could not validly exercise personal jurisdiction over the claims before the transfer, then this Court cannot do so after a transfer, regardless whether those plaintiffs could have elected to file their claims here in the first instance.

The plaintiffs do not contend that Chrysler would be subject to general personal jurisdiction in California. But they do insist that general personal jurisdiction over the defendant is valid in *this* district, so this Court may adjudicate the claims of all of the plaintiffs in the *Andollo* case, especially since all the claims were consolidated in the FACMC. In the main, however, the plaintiffs place most of their reliance on the doctrine of "pendent personal jurisdiction," which the Ninth Circuit has applied to permit the exercise of personal jurisdiction over claims that "arise out of a common nucleus of operative facts with a claim in the same suit over which the court does have personal jurisdiction."

II.

The parties agree on the general legal principles. When personal jurisdiction is challenged in a motion filed under Federal Rule of Civil Procedure 12(b)(2), the plaintiff bears the burden of establishing the Court's authority to proceed against the defendant. *Theunissen v. Matthews*, 935 F.2d 1454, 1458 (6th Cir. 1991) (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936); *Am. Greetings Corp. v. Cohn*, 839 F.2d 1164, 1168 (6th Cir. 1988); *Weller v. Cromwell Oil Co.*, 504 F.2d 927, 929 (6th Cir. 1974)). When the motion is supported by properly documented factual assertions, the plaintiff "may not stand on his pleadings but must, by affidavit or otherwise, set forth specific facts showing that the court has [personal] jurisdiction." *Ibid.* There is no factual dispute raised by the motion. The plaintiff need only present a *prima facie* case for personal

jurisdiction, and the Court views the submissions in the light most favorable to the plaintiff. *Id.* at 1458-59.

General jurisdiction over a foreign business entity — that is, the power of a court to adjudicate any claims against it, regardless of their origin — exists when that entity "'essentially [is] at home in the forum State.'" *Daimler AG v. Bauman*, 134 S. Ct. 746, 751 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). "At home," "[w]ith respect to a corporation, [and by extension, a limited liability company,] [means] the place of incorporation and principal place of business." *Id.* at 760. Those are the "'paradig[m] . . . bases for general jurisdiction.'" *Ibid.* (quoting *A General Look at General Jurisdiction*, 66 Texas L. Rev. 721, 735 (1988)). The plaintiffs observe, correctly, that Chrysler's principal place of business is in the Eastern District of Michigan. And because this MDL has been centralized in this Court in this district, the plaintiffs insist that this Court has general jurisdiction over the defendant for all claims, including those of the 20 challenged plaintiffs in the *Andollo* case.

That position, however, ignores the fact that, whether or not jurisdiction could be obtained over the defendant by a federal district court in Michigan to hear the claims of all these plaintiffs from various states, the pertinent inquiry, in the context of an MDL proceeding, is whether the claims properly could be entertained by the transferor court in the first instance. *In re Chinese Manufactured Drywall Prod. Liab. Litig.*, 742 F.3d 576, 583 (5th Cir. 2014) ("The . . . relevant question is whether [the defendant] established minimum contacts with [the transferor forum], rather than the MDL court, necessary to give rise to personal jurisdiction.") (citing Charles Alan Wright, 4 Federal Practice & Procedure Civil § 1067.3 (3d ed.) ("It also seems clear that the minimum contacts requirement does not apply to a plaintiff's contacts with the transferee forum in a case

transferred pursuant to the multidistrict litigation (MDL) statute.")). As this Court explained earlier in this case, the authority of a transferee court to exercise case management and adjudicatory authority over a case under 28 U.S.C. § 1407 derives from the power initially enjoyed by the transferor court. *See* Op. & Order Granting Mot. to Strike [dkt. #81] at 4-5; *see also Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 28 (1998).

It is well accepted that "[t]he transferee judge inherits the entire pretrial jurisdiction that the transferor court could have exercised had the case not been transferred." 15 Fed. Prac. & Proc. Juris. § 3866 (4th ed.) (citing *In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 699 (9th Cir. 2011)). "There are limits, however, to what the transferee court can do," and because "the consolidated cases retain their individual status, MDL should not be managed in a way that fails to recognize that the cases will be returned to their transferor courts." *Ibid.* Once again, in arguing that the claims of the non-California plaintiffs should be permitted to proceed, now that their case has been (temporarily) transferred here, the plaintiffs disregard the elementary principle that the power of this Court to act with respect to their claims derives from the power of the California court so to act. If that court had no authority over those claims, then this Court cannot inherit power where there was none to be inherited — or at least none that could be exercised consistently with the limiting principles of the Due Process Clause.

The plaintiffs contend that allowing the claims of these 20 persons to proceed is proper because the consolidated master complaint "superseded" the previous pleadings in the underlying case. But that pleading does not supersede any of the previous *civil actions*, that were transferred to this Court, which each "retain their separate identities" throughout the MDL process, *Gelboim v. Bank of America Corp.*, --- U.S. ---, 135 S. Ct. 897, 904 (2015). And the Court has an express

duty under the MDL statute "to remand any such action to the original district 'at or before the conclusion of such pretrial proceedings,'" *Lexecon*, 523 U.S. at 28 (quoting 28 U.S.C. § 1407(a)). Regardless of what legal effect the consolidated complaint has on the litigation, "the filing of a consolidated complaint in a multidistrict case *[does not merge] the plaintiffs' actions permanently*," and the impact of that pleading is "*limited to the duration of the pretrial proceedings*." *In re Refrigerant Compressors Antitrust Litigation*, 731 F.3d 586, 592 (6th Cir. 2013) (emphasis added). "[W]hen the pretrial phase ends and cases not yet terminated return to their originating courts for trial, *the plaintiffs' actions resume their separate identities*." *Ibid.*

Personal jurisdiction, therefore, must be assessed under the rules that apply in the transferror court. If a California court would have jurisdiction over a defendant, so would a federal district court sitting in that state. *Daimler*, 134 S. Ct. at 753 (explaining that "[f]ederal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons"); *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017) ("Federal courts apply state law to determine the bounds of their jurisdiction over a party.") (citing Fed. R. Civ. P. 4(k)(1)(A)). "California's long-arm statute permits the exercise of jurisdiction to the full extent that such exercise comports with due process." *Ibid.* (citing Cal. Code Civ. P. § 410.10). But, "[t]he Due Process Clause of the Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a judgment of its courts." *Walden v. Fiore*, --- U.S. ---, 134 S. Ct. 1115, 1121 (2014).

The plaintiffs do not contend that the defendant is subject to general personal jurisdiction in California. "'Specific' or 'case-linked' jurisdiction depends on an affiliation between the forum and the underlying controversy (i.e., an 'activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation')." *Walden*, 134 S. Ct. at 1122 n.6 (quoting *Goodyear*,

564 U.S. at 919). "When a plaintiff relies on specific jurisdiction, he must establish that jurisdiction is proper for 'each claim asserted against a defendant.'" *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015) (citing *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir. 2004)). The plaintiffs make no effort to validate the exercise of specific personal jurisdiction by the California district court over the claims of the non-California plaintiffs.

The plaintiffs' alternative argument is that a California court — and therefore this Court — may exercise personal jurisdiction over the claims of the non-California plaintiffs under the doctrine of "pendent personal jurisdiction." The theory is that the claims of unrelated plaintiffs from different states could be heard by a California district court because they have some common factual basis, even though none of the dealings between the remote plaintiffs and the defendant have any articulable connection to the California forum. That position is unsupported by the case law and flatly contrary to the recent controlling decisions of the Supreme Court on point (principally the Court's holding in *Walden*). And the plaintiffs have offered nothing to sustain their burden of showing that a California district court properly could, within the confines of the Due Process Clause, exercise such boundless power to adjudicate claims that have no conceivable intersection with its territorial jurisdiction.

All of the circuit court decisions cited by the plaintiffs, and all of those relied upon by the Ninth Circuit when it endorsed the concept of pendent personal jurisdiction, are readily distinguishable from the circumstances of this case. In all of those decisions, the courts of appeals construed the concept of "pendent personal jurisdiction" as being congruent to, and going hand-in-hand with, the related doctrine of pendent or supplemental subject-matter jurisdiction, which concerns the authority of a federal court to hear claims *between the same parties*, in a single

proceeding, where the case involves claims under both federal and state law that are premised on the same underlying facts. This concept of supplemental subject-matter jurisdiction, or the power to hear factually intertwined state-law claims as part and parcel of a case where the same parties already are before the Court on related federal claims, was articulated by the Supreme Court in *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966) ("The state and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole.").

The courts of appeals that accept the notion of "pendent personal jurisdiction" have treated it as being a corollary to the concept of supplemental or pendent subject-matter jurisdiction. It comes into play when specific jurisdiction over one of a plaintiff's claims against a defendant may exist, but not as to another claim by that plaintiff against that defendant. The limiting principle, however, is that the court already has personal jurisdiction over a defendant with respect to certain claims brought by the same plaintiff in that case. Those courts reasoned that because the defendant was summoned properly before the court, due process was not offended by exercising personal jurisdiction over the defendant for the purpose of hearing additional, factually intertwined claims brought in the same case, *by the same plaintiffs*, without regard to whether personal jurisdiction separately could be obtained over those other claims alone. *E.g.*, *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011) ("We conclude that a California court may exercise specific personal jurisdiction over AcademyOne with respect to the misappropriation claim. Under the doctrine of pendent personal jurisdiction, the court may also exercise jurisdiction over the

balance of CollegeSource's claims, which 'arise out of a common nucleus of operative facts' with the misappropriation claim."); *CE Distribution, LLC v. New Sensor Corp.*, 380 F.3d 1107, 1113 (9th Cir. 2004) ("[The plaintiff's] claims for tortious interference with contract and for breach of contract arise from a common nucleus of fact. Thus, the intentional interference claim may serve as the basis for the exercise of pendent personal jurisdiction over the breach of contract claim."); *Action Embroidery*, 368 F.3d at 1180 ("Having established personal jurisdiction over Wolcott for Action and Vanguard's antitrust claims, we must determine whether the court also has personal jurisdiction over Wolcott with respect to their California state-law claims."); *Robinson Eng'g Co. Pension Plan & Trust v. George*, 223 F.3d 445, 449 (7th Cir. 2000) ("[W]e conclude that service in Canada was authorized at least for the claims under the Securities Act and the Securities Exchange Act. What of the other claims? The RICO claim arises out of the same nucleus of operative fact as the securities claims; it was therefore proper for the federal court to assert personal jurisdiction over George for it as well, under the idea of pendent personal jurisdiction."); *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617, 629 (4th Cir. 1997) ("In this case, the parties agree that the federal court has subject matter jurisdiction over the ESAB Group's claims and is thus competent to adjudicate them. They also agree that the factual nucleus for the state claims and the RICO claim is the same. Since the court has personal jurisdiction over the defendants under service of process authorized by the Federal Rule of Civil Procedure 4(k)(1)(D) and by the RICO statute, we can find no constitutional bar to requiring the defendants to defend the entire constitutional case, which includes both federal and state claims arising from the same nucleus of facts, so long as the federal claim is not wholly immaterial or insubstantial."); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1057 (2d Cir. 1993) ("We need not reach the question whether personal jurisdiction as to the

state law claims was otherwise available because the district court had personal jurisdiction over the defendants under [ERISA's Multiemployer Pension Plan Amendments Act] and the state law claims derive from a common nucleus of operative facts with the federal claims."); *Oetiker v. Jurid Werke, GmbH*, 556 F.2d 1, 4 (D.C. Cir. 1977) ("Section 293 [of Title 35 of the United States Code] enabled plaintiff to obtain personal jurisdiction over the foreign defendant with respect to his claims of patent invalidity and noninfringement. In our view, this enabled plaintiff to obtain personal jurisdiction over the defendant with respect to any of his claims that arose out of the same core of operative facts as those claims which clearly fell within the scope of [section 293].") (citing *Gibbs*, 383 U.S. at 725); *Robinson v. Penn Cent. Co.*, 484 F.2d 553, 555 (3d Cir. 1973) ("Secondary authorities which have considered the issue have suggested that the better view is that pendent state law claims may be included when in personam jurisdiction is based upon extraterritorial service authorized by a federal statute.").

By contrast, in cases where the only claim that plausibly could support personal jurisdiction was dismissed, the conclusion has been that the propriety of exercising personal jurisdiction vanished along with that claim, where no other claims remained in the case for which sufficient minimum contacts could be established. *E.g.*, *United States v. Botefuhr*, 309 F.3d 1263, 1274 (10th Cir. 2002) ("This conclusion . . . ignores the fact that once the § 3713 count disappeared, there was no claim before the district court for which it could be said [that the defendants] had 'minimum contacts' with Oklahoma.")

In support of their pendent personal jurisdiction argument, the plaintiffs cite the decision of only one California district court that has gone so far as they desire: *Allen v. Similasan Corp.*, No. 12-376, 2013 WL 2120825 (S.D. Cal. May 14, 2013). But that decision did not engage in any

minimum contacts analysis with respect to the out-of-forum plaintiff or discuss the impact of the Due Process Clause. "For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State." *Walden*, 134 S. Ct. at 1121. In a single paragraph, with no substantial analysis, and with no examination of the controlling decisions on point, the court in that case simply concluded that "pendent personal jurisdiction" could apply because the claims involved the same product, regardless of the fact that the Florida plaintiff's claims had no asserted relationship to the forum:

> Plaintiff Allen . . . alleges that she purchased Defendant's products in Florida, and has not otherwise alleged a connection between her transactions and [California]. Nonetheless, in the interest of judicial economy, the Court elects to exercise its discretion and retain jurisdiction over Plaintiff Allen's claims as per the pendent personal jurisdiction doctrine. Allen's claims arise out of the same common nucleus of operative fact as Rideout's claims, for which the Court does have jurisdiction over the defendant. There is no prejudice to Similasan in hearing both cases together.

Allen, 2013 WL 2120825, at *3. *Allen* preceded the Supreme Court's rulings in both *Daimler* and *Walden*. But it cannot be reconciled with those precedents. And the plaintiffs have not pointed to any court of appeals decision in any circuit that has extended the concept of pendent personal jurisdiction with such sweeping effect that can be squared with the constraints of the Due Process Clause.

Finally, the plaintiffs contend that it would be needlessly inefficient if they are forced to litigate the claims of the 20 non-California plaintiffs in separate forums around the nation, when they all share apparent common factual and legal issues, and all are brought against the same defendant, who ultimately will be called upon to defend against the claims of the three California plaintiffs in their home forum anyway. However, as the plaintiffs themselves point out, there is a federal court where the claims of all those plaintiffs indisputably could be lodged and litigated, and where they

would have no problem establishing personal jurisdiction (of the general form) over the defendant, regardless of where in the country — or the world — they may reside or happen to have bought their cars. That, of course, is here. If the 20 non-California plaintiffs want to re-file their claims here and rejoin this MDL, they no doubt know how to do so.

III.

The non-California plaintiffs in the transferred case of *Andollo v. FCA USA* have not established personal jurisdiction over the defendant, FCA US LLC.

Accordingly, it is **ORDERED** that the defendant's motion (and corrected motion) to dismiss based on Federal Rule of Civil Procedure 12(b)(2) [dkt. #37, 95] is **GRANTED**.

It is further **ORDERED** that the amended complaint in the transferred case of *Andollo v. FCA USA* and the first amended consolidated master class action complaint in this MDL proceeding is **DISMISSED WITHOUT PREJUDICE** as to Jeffrey Guy, Casey E. Perkins, Justine Andollo, Ken McDonald, Lindsey Wells, Scott Michael Youngstrom Jr., Todd Machtley, Melvin Scott, Eliam M. Marrero Bernal, Clare Colrick, Jacob Gunnells, Danielle and Joby Hackett, Todd Fisher, John and Mary Metzger, Robert F. Hyatt IV, Cameron Phelps, Karen Stedman, and Cameron Webster, **ONLY**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: April 19, 2017

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on April 19, 2017.

s/Susan Pinkowski
SUSAN PINKOWSKI