

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

IN RE: SMITTY’S/CAM2 303 TRACTOR)	
HYDRAULIC FLUID MARKETING, SALES)	
PRACTICES, AND PRODUCTS LIABILITY)	MDL No. 2936
LITIGATION)	
)	Master Case No. 4:20-MD-02936-SRB
ALL ACTIONS)	

ORDER

Before the Court is Plaintiffs’ Motion for Order Adopting Master/Superseding Consolidated Amended Complaint Model and Allowing Direct Joinder of Additional Plaintiffs. (Doc. #28.) As set forth below, the motion is GRANTED.

I. BACKGROUND

This multidistrict litigation (“MDL”) arises from the manufacture, sale, and marketing of tractor hydraulic fluid, a multifunctional lubricant designed to offer certain protective benefits when used in tractors and heavy equipment as a hydraulic fluid, transmission fluid, and gear oil. Plaintiffs represent a putative class of consumers who purchased at least one of four allegedly defective THF products at issue in this case, manufactured by Defendants Smitty’s Supply Inc. and CAM2 International, LLC, and sold nationwide by multiple retailers under various label names. Tractor Supply is a retailer that sold and marketed some of the 303 THF Products purchased by Plaintiffs.

In an Order dated July 8, 2020, the Court directed the parties to brief the issue of whether the Consolidated Amended Complaint (“CAC”) in this case should be administrative or

substantive in nature. (Doc. #25, p. 1.)¹ In *In re Syngenta*, Judge Lungstrum explained the differences between administrative and substantive/master complaints:

Cases consolidated for MDL pretrial proceedings ordinarily retain their separate identities. The filing of an ‘administrative complaint’ does not alter the separate identities of the cases. Such complaints are merely an ‘administrative summary of the claims brought by all the plaintiffs . . . [and] do not merge plaintiffs into a single case, nor do they merge all defendants into a single case In contrast to an ‘administrative’ complaint the parties ‘may elect’ to file a so-called ‘Master Complaint’ and a corresponding ‘consolidated answer.’ Such complaints supersede, like any other amended pleading, prior individual complaints. They can be (1) used to effect service, (2) set deadlines for substantive answers/responses, and (3) serve as the basis for motion to dismiss practice. The implication of a superseding complaint is that the individual complaints merge into a single case that are later severed, if necessary, upon remand by the JPML.

In re Syngenta, Case No. 14-md-2591-JML-JPO, Doc. #287, pp. 1-2 (D. Kan. Mar. 10, 2015) (citations omitted).

Here, the parties dispute whether the CAC should be substantive or administrative in nature. Plaintiffs move for a substantive CAC and for the direct joinder of additional plaintiffs. Defendants argue that the CAC should only be administrative and that direct joinder should not be permitted. These issues are addressed below.

II. APPLICABLE LAW

“A transferee court may require parties to file consolidated amended complaints superseding original ones.” *In re Korean Air Lines Co., Ltd.*, [642 F.3d 685, 699](#) (9th Cir. 2011). “In general, courts that have ordered consolidated complaints over the objections of some of the parties have concluded the benefits outweighed any prejudice to the parties opposing unified treatment.” Diana E. Murphy, *Unified and Consolidated Complaints in Multidistrict Litig.*, [132 F.R.D. 597, 602](#) (1991) (citing cases). In *In re Dollar General Corp.*, the Court ordered the

¹ Any citation to a page number refers to the pagination automatically generated by CM/ECF. The deadline for Plaintiffs to file the CAC is on or before September 1, 2020. (Doc. #25, p. 1.)

filing of a substantive and superseding CAC even though some of the parties (there, the plaintiffs) objected to that approach. *In re Dollar General Corp.*, Case No. 16-02709-MD-W-GAF, Doc. #10, pp. 1-12; Doc. #23, pp. 1-2 (W.D. Mo. July 15, 2016) (Fenner, J.).

III. DISCUSSION

Here, Plaintiffs move the Court to adopt a substantive CAC model similar to that ordered in *In re Syngenta* and *In re Dollar General*. Plaintiffs' proposal would "combine[] all the parties and claims in the transferred and/or individual state cases into a substantive and superseding 'Master' [CAC] for purposes of all MDL consolidated proceedings before this Court." (Doc. #29, p. 4.) All subsequent MDL pleadings, briefs, and Court rulings on pretrial matters would then be based on the Master CAC. Plaintiffs' proposal would also allow the joinder of additional, new parties and claims directly into the consolidated MDL proceedings through inclusion in the CAC. This means that the new parties would not have to first file their claims in a different court and then seek transfer to this MDL proceeding. Once the consolidated proceedings are complete, then the claims relevant to each case in the Master CAC would be separated from the CAC and remanded or transferred to the appropriate venue.

Plaintiffs argue that their proposal is the "most appropriate and efficient because it streamlines the pleading, briefing, and orders to achieve the desired MDL efficiencies for the Court and the Parties." (Doc. #29, p. 6.) To preserve Defendants' applicable claims, defenses, and/or jurisdictional objections, Plaintiffs agree that the transferor forums' choice-of-law principles would apply to the respective claims, and that the Master CAC and direct joinder of additional plaintiffs would not waive venue or jurisdictional objections. (Doc. #29, pp. 8-9) (citing *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, [523 U.S. 26](#) (1988)).

Defendants oppose a substantive/master CAC and direct joinder. In part, Defendants argue that their consent is required for a substantive CAC. Defendants also contend that a substantive/master CAC with direct filings would violate their due process rights and “circumvent jurisdictional arguments as well as the application of choice of law from the forum states[.]” (Doc. #39, p. 7.) Defendants further argue that a substantive/master CAC would “undoubtedly cause more satellite litigation over issues such as jurisdiction, venue, choice of law and remand.” (Doc. #39, p. 17.)

Upon review of the record, the Court finds that a substantive/master CAC is warranted in this case. First, the Court finds that it can direct the filing of a substantive/master CAC over Defendants’ objections and also allow direct joinder. *See In re Korean Air Lines Co., Ltd.*, [642 F.3d at 699](#); *In re Takata Airbag Prods. Liab. Litig.*, [379 F. Supp. 3d 1333, 1338](#) (S.D. Fla. May 3, 2019) (recognizing that “direct filing complaints in MDL proceedings is not uncommon, nor is it *per se* impermissible under the MDL statute, the JPML Rules of Procedure, or interpretive case law”).

The Court rejects Defendants’ argument that their consent is required. Defendants primarily argue that their consent is required under *Gelboim v. Bank of Am. Corp.*, [574 U.S. 405](#) (2015). In *Gelboim*, the Supreme Court noted that “[p]arties may elect to file a ‘master complaint’ and a corresponding ‘consolidated answer,’ which supersede prior individual pleadings.” *Id.* at 413 n.3. Although this passage recognizes that a master CAC may be filed upon consent, it does not hold that a court lacks authority to order a master CAC over objections. Moreover, Defendants’ objections primarily relate to their jurisdictional and other defenses. As set forth below, those defenses will be preserved.

Second, the Court finds that this MDL can be resolved far more efficiently and effectively through a substantive/master CAC and direct joinder. On this issue, Plaintiffs emphasize that “[t]he Master CAC in *Dollar General* worked efficiently. Judge Fenner was able to issue unified and centralized rulings on any Rule 12 motion, class certification motion, summary judgment motion, Daubert expert challenges, and everything up to the trial of the transferred and tag-along cases.” (Doc. #29, p. 7.)

IV. PROCEEDINGS MOVING FORWARD

Based on the foregoing, the CAC in this MDL will be deemed a master/superseding and substantive pleading for all actions while they are consolidated for pre-trial purposes. The Court also orders the following as proposed by Plaintiffs:

- All the parties and claims in the transferred and/or individual state cases shall be combined into the Master CAC for purposes of all MDL consolidated proceedings before this Court.
- Upon the filing of the Master CAC, all subsequent MDL pleadings, briefs, and Court rulings on any pretrial matters shall be based on the Master CAC.
- Additional Plaintiffs (putative Class Representatives) and their claims may be directly joined in the consolidated actions through their inclusion in the Master CAC.
- Once these consolidated proceedings are complete, the claims relevant to each case in the Master CAC will be separated from the CAC and remanded or transferred to the appropriate venue.
- Finally, (a) the CAC will supersede and replace all previously-filed class action allegations in the original complaints; (b) the transferor forums’ choice-of-law principles will apply to the respective claims notwithstanding the filing of the CAC;

and (c) the filing and use of the CAC and the direct joinder of additional Plaintiffs in the CAC does not waive Plaintiffs' or Defendants' venue or jurisdictional objections pursuant to *Lexecon, Inc.*, [523 U.S. 26](#).

V. CONCLUSION

For the reasons set forth above, it is hereby **ORDERED** that Plaintiffs' Motion for Order Adopting Master/Superseding Consolidated Amended Complaint Model and Allowing Direct Joinder of Additional Plaintiffs (Doc. #28) is GRANTED.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: August 3, 2020