

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

DANIEL HAAK, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

Generac Power Systems, Inc.,

Defendant.

Civil Action No. 8:22-CV-02470

**DEFENDANT GENERAC POWER SYSTEMS, INC.’s UNOPPOSED  
MOTION TO STAY**

Defendant Generac Power Systems, Inc. (“Generac”) respectfully moves the Court to stay this action and defer ruling on its motion to dismiss (ECF No. 24) until the Judicial Panel on Multidistrict Litigation (“JPML”) determines whether to consolidate this case with four others filed in several federal district courts. On March 3, 2023, the plaintiff in one of those cases filed a motion (the “MDL Motion”) to transfer this case, and others seeking relief for alleged harm purportedly arising in connection with a Generac product, to a proposed Multidistrict Litigation.

Courts in this district, including this court, have frequently stayed motions pending a JPML ruling on the creation of an MDL in similar circumstances. A stay will not prejudice Plaintiff—who does not oppose this motion—because this case is not procedurally advanced and because the stay will likely be short-lived. Denying a stay would, however, prejudice Generac by raising the prospect of costly and

unnecessary discovery and related motion practice. A ruling on the pending motion to dismiss would create the potential for inconsistent adjudication of similar issues across the transferor and transferee courts. Judicial economy is also best served by staying this action. Because an MDL court would have to address similar merits claims to those confronting this Court pending the JPML decision—as well as similar discovery issues, including any disputes arising between the parties—staying this litigation would conserve judicial resources and ensure consistent outcomes across the related cases.

### **BACKGROUND**

Plaintiff Daniel Haak (“Haak”) filed this putative class action on October 28, 2022, seeking to represent a nationwide class of all persons that purchased and installed residential solar energy systems equipped with a Generac rapid-shutdown device known as the SnapRS. Compl., ECF No. 1. Generac filed its motion to dismiss Haak’s complaint on December 28, 2022 and the motion is now fully briefed.

Four similar putative class actions have been filed since November 2022 in three other district courts, all claiming on behalf of a nationwide putative class that the plaintiffs and/or putative class members suffered economic losses, and in some cases claiming potential property damage, as a result of a purported defect in their SnapRS devices. *See* Ex. 1 (Corrected Schedule of Actions).<sup>1</sup> All five cases involve the same or

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<sup>1</sup> The cases are *Basler et al. v. Generac Power Systems, Inc.*, Case No. 2:22-cv-01386 (E.D. Wis.) (“*Basler*”); *Moon v. Generac Power Systems, Inc. et al.*, Case No. 5:22-cv-09183 (N.D. Cal.) (“*Moon*”); *Dillon v. Generac Power Systems, Inc.*, Case No. 2:23-cv-00034

similar factual allegations with respect to the purported defect and Generac's marketing and communications regarding its PWRcell residential solar and battery storage system, and all five raise the same or similar warranty and tort claims, among others.

The MDL Motion, filed on March 3, 2023 by the plaintiff in *Moon*, seeks to transfer all five related cases to the Northern District of California pursuant to 28 U.S.C. § 1407. Ex. 2. The JPML set a briefing schedule for the case, MDL No. 3078, with Generac's response due on March 28, 2023 and any reply due on April 4, 2023. Briefing will therefore be complete well before the next JPML hearing date of May 25, 2023.<sup>2</sup> Generac supports consolidating the cases in MDL No. 3078, as do the plaintiffs in all five cases, though not necessarily in the Northern District of California.

The parties in this action have conferred and Haak does not oppose this motion to stay. Ex. 3 (March 10, 2023 Email). Likewise, counsel for plaintiffs in the four related actions have informed Generac that they support or do not oppose a stay of those actions pending the JPML ruling. For the following reasons, Generac requests that the Court grant its unopposed motion to stay this action.

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(E.D. Wis.) ("*Dillon*"); and *Locatell v. Generac Power Systems, Inc. et al.*, Case No. 2:23-cv-00203 (E.D. Cal.) ("*Locatell*"). *Basler* and *Dillon* were recently consolidated by the court in the Eastern District of Wisconsin.

<sup>2</sup> <https://www.jpml.uscourts.gov/hearing-information>, last accessed March 6, 2023.

## ARGUMENT

The discretion to stay proceedings is part of a court's inherent power to control its docket. *Indep. Serv. Provider, LLC v. Cain*, 2021 WL 2828264, at \*1 (M.D. Fla. June 2, 2021); *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”). That discretion extends to stays granted “pending the outcome of related proceedings in another forum” such as the JPML. *Ephraim v. Abbott Labs., Inc.*, 601 F. Supp. 3d 1274, 1275 (S.D. Fla. 2022) (quoting *CTI-Container Leasing Corp. v. Uiterwyk Corp.*, 685 F.2d 1284, 1288 (11th Cir. 1982)). “In deciding if a case should be stayed pending resolution of a motion to the JPML, the district court should consider three factors: (1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party if the action is not stayed; and (3) the judicial resources that would be saved by avoiding duplicative litigation if the cases are in fact consolidated.” *Cain*, 2021 WL 2828264, at \*1 (citation and internal quotation marks omitted).

Courts in this District, including this Court, have frequently stayed litigation pending resolution of motions before the JPML. *Hedberg v. Actavis Grp.*, 2010 WL 963196, at \*1 (M.D. Fla. Mar. 16, 2010) (Covington, J.); Order, *Hamblen v. Davol, Inc.*, Case No. 8:17-cv-1613, ECF No. 67 (M.D. Fla. May 1, 2018) (Covington, J.); *Stanton v. Wells Fargo & Co.*, 2017 WL 3701143, at \*1 (M.D. Fla. Jan. 23, 2017) (“Courts routinely stay an action pending a transfer decision by a MDL panel”); *Reid v. Bayside Orthopaedics, Inc.*, 2021 WL 6644368, at \*1 (M.D. Fla. Dec. 20, 2021) (staying case

pending JPML decision); *Tonge v. Novartis Pharm. Corp.*, 2021 WL 3130185, at \*2 (M.D. Fla. July 23, 2021) (same); *Cain*, 2021 WL 2828264, at \*1 (same); *C. Pepper Logistics LLC v. Nunez*, 2021 WL 2792054, at \*1 (M.D. Fla. June 2, 2021) (same); *Pippen v. Juul Labs, Inc.*, 2019 WL 13247915, at \*1 (M.D. Fla. Sept. 18, 2019) (same); *Clarke v. Bristol-Myers Squibb Co.*, 2016 WL 4319840, at \*1 (M.D. Fla. July 6, 2016) (same); *Hemphill v. Cuckler*, 2016 WL 3570956 (M.D. Fla. July 1, 2016) (same).

Here, too, all three factors favor a stay.

**I. Plaintiff Will Suffer No Meaningful Prejudice From A Stay.**

Haak does not oppose this motion, and will not be materially prejudiced by a stay because of the early stage of this litigation and the likely brevity of the requested stay.

This action is not procedurally advanced and discovery is not yet underway, so Plaintiff would not be harmed by a short stay. *Cain*, 2021 WL 2828264, at \*1 (“This case is in the early stages and discovery has not yet commenced so a stay is not likely to unduly prejudice or tactically disadvantage Plaintiff.”); *Ali v. 7-Eleven, Inc.*, 2022 WL 713665, at \*2 (S.D. Fla. Mar. 10, 2022) (fact that case “is in its infancy ... minimizes any potential prejudice to the Plaintiff from a stay”). Plaintiff seeks no emergency relief and has neither propounded nor received any discovery requests, nor scheduled any depositions. Staying this case would therefore neither disadvantage Plaintiff tactically nor impose any rescheduling burden or any other harm.

In any event, a stay pending a decision by the JPML is likely to be brief and therefore not prejudicial. “[T]he JPML is typically prompt in determining whether a

transfer is appropriate.” *Id.* (quoting *Gray v. Target Corp.*, 2014 WL 12600138, at \*2 (S.D. Fla. Jan. 27, 2014)). “In most cases the [JPML] decides the matter before it within a short period after arguments are held or after the briefing is completed if the parties waive oral argument.” *Gray*, 2014 WL 12600138, at \*2 (citation omitted). Because briefing on the MDL Motion will be complete by April 4, 2023, and the next available JPML hearing date is May 25, 2023, past practice suggests a ruling by the JPML promptly thereafter. Any prejudice to Plaintiff from such “a brief stay is minimal.” *Ali*, 2022 WL 713665, at \*2; *Fowler v. Hamilton Med. Ctr., Inc.*, 2008 WL 11336192, at \*2 (N.D. Ga. May 7, 2008) (where JPML ruling was likely “within the next two or three months,” the nonmoving parties “will suffer little, if any, prejudice from such a short stay”).

## **II. Generac Will Suffer Prejudice If A Stay Is Denied.**

By contrast, Generac would suffer harm in the absence of a stay. If this litigation proceeds pending a ruling on the MDL Motion, Generac would face the potential for costly and unnecessary discovery, as well as the risk of inconsistent rulings across forums. This outcome would defeat the purposes of the MDL mechanism. “A stay pending a consolidation and transfer decision by the JPML serves the primary purposes of the multidistrict litigation device, which is to ‘eliminate duplicative discovery; prevent inconsistent pretrial rulings . . . and conserve the resources of the parties, their counsel, and the judiciary.’” Order, *Hamblen*, Case No. 8:17-cv-1613, ECF No. 67 (Covington, J.) (quoting *In re Cal. Retail Nat. Gas & Elec. Antitrust Litig.*, 150 F. Supp. 2d 1383, 1384 (J.P.M.L. 2001)); *Cain*, 2021 WL 2828264, at \*1 (where

cases subject to JPML transfer motion appeared to stem from same alleged conduct and shared questions of fact and law, “it would be judicious to grant the stay because if the JPML consolidates and transfers the cases to a single transferee court to adjudicate, Defendants will be saved from having to expend resources to defend in multiple forums and from the possibility of inconsistent or contradictory rulings by different courts”); *Ephraim*, 601 F. Supp. 3d at 1276 (staying action pending JPML decision would promote the purposes of multidistrict litigation and eliminate “the possibility of inconsistent rulings and duplicative litigation”).

The actions subject to the MDL Motion raise nearly identical allegations and fact discovery should therefore proceed under uniform parameters in a single forum to reduce the risk of duplicative efforts. Discovery requests, ESI protocols, and protective orders or confidentiality agreements negotiated between the parties in this action could be rendered moot by creation of an MDL and the corresponding need to renegotiate terms with a different group of plaintiffs. *See, e.g., Short v. Hyundai Motor Am., Inc.*, 2019 WL 3067251, at \*2 (W.D. Wash. July 12, 2019) (“requiring parties to comply with their Rule 26(f) and initial disclosures obligations before the JPML decision would be prejudicial given that the contours of the case may change following consolidation and transfer.”) (citation and internal quotation marks omitted). Any discovery disputes between the parties in this action would also raise the risk of unnecessary motion practice that may later be undone by an MDL court. These are precisely the sort of costs that multidistrict litigation was designed to avoid.

Staying this case will also ensure that Generac is not subject to “the possibility of inconsistent or contradictory rulings by different courts.” *Cain*, 2021 WL 2828264, at \*1; *see also Stanton*, 2017 WL 3701143, at \*1 (stay pending JPML decision merited to “avoid inconsistent rulings”); *Ali*, 2022 WL 713665, at \*2 (same); *Ephraim*, 601 F. Supp. 3d at 1276 (same); *Poarch Band of Creek Indians v. Amneal Pharms., LLC*, 2020 WL 3833009, at \*7 (S.D. Ala. July 8, 2020) (denial of stay would subject defendants “to the heavy burden of litigating the same issues in multiple fora contemporaneously, with the risks of inconsistent proceedings and inconsistent results dogging their footsteps at every turn”). This risk is substantial here if the Court were to rule on Generac’s motion to dismiss, because an MDL court would need to address many of the same merits issues once more on a motion to dismiss a consolidated complaint. Any discovery disputes between the parties could similarly create the potential for divergent rulings if discovery proceeds in this case.

A brief stay would mitigate all of these duplicative costs and risks of harm to Generac and further the purposes of multidistrict litigation.

### **III. A Stay Would Conserve Judicial Resources.**

For the same reasons of efficiency and consistency, a stay would promote judicial economy. Courts, like litigants, benefit from avoiding duplicative motion practice and time spent overseeing unnecessary discovery. *Norman v. Koninklijke Philips N.V.*, 2021 WL 4852054, at \*1 (S.D. Ga. Sept. 24, 2021) (stay would save judicial resources by preventing duplicative pretrial practice and discovery). Because at least some duplicative effort is likely while an MDL motion is pending, it is generally



considered “a waste of judicial resources to proceed with [a case] when the JPML is considering the consolidation of cases’ in an MDL.” *Ali*, 2022 WL 713665, at \*2 (quoting *Gray*, 2014 WL 12600138, at \*2); *Ephraim*, 601 F. Supp. 3d at 1276 (same); *Suarez v. Abbott Labs., Inc.*, 2022 WL 1314367, at \*2 (S.D. Fla. May 2, 2022) (same). As a result, “a majority of courts have concluded that it is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved.” *Hess v. Volkswagen Grp. of Am., Inc.*, 2016 WL 3483166, at \*3 (N.D. Ala. June 27, 2016) (quoting *Rivers v. Walt Disney Co.*, 980 F. Supp. 1348, 1362 (C.D. Cal. 1997)).

A stay would be especially likely to conserve judicial resources in this litigation. The parties have fully briefed Generac’s motion to dismiss, and staying the case would eliminate any risk that Haak and other plaintiffs may ultimately file a consolidated complaint in an MDL court after this Court has already devoted time and attention to the parties’ briefs and to ruling on that motion. *Milrot v. Apple Inc.*, 2010 WL 3419699, at \*2 (S.D. Fla. Aug. 27, 2010) (“It is far better for judicial economy and the orderly determination of these cases for any pretrial determination of the merits of this case to be handled by the transferee court selected by the JPML”); *Short*, 2019 WL 3067251, at \*2 (defendants’ motion to dismiss “will require the court’s attention absent a stay.... This effort will be duplicative if the JPML grants the MDL Motion”). The procedural posture of this case also creates a risk of potentially inconsistent rulings on claims common to all of the litigation sought to be consolidated in MDL No. 3078, a fact that

courts consider in weighing judicial economy as well as prejudice to the moving party. *See, e.g., Stanton*, 2017 WL 3701143, at \*1.

Even in cases where there is uncertainty about the JPML's likely decision, a court should still find that this factor weighs in favor of a stay if judicial resources would be conserved in the event the MDL is created. *Short*, 2019 WL 3067251, at \*2 ("At this stage, the court does not weigh the likelihood that the JPML will grant the transfer motion; rather, the court considers whether judicial resources "would be saved by avoiding duplicative litigation if the cases are in fact consolidated"). Because staying this case would promote judicial economy if the MDL Motion is granted, this factor supports a stay regardless of the JPML's ultimate decision.

### **CONCLUSION**

For these reasons, Generac respectfully requests that the Court stay all proceedings pending resolution of the MDL Motion.

Dated: March 14, 2023

Respectfully submitted,

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**Local Rule 3.01(g) Certification**

I certify that defense counsel conferred with counsel for Plaintiff via teleconference and email in an effort to resolve the matters referenced in the above motion, and Plaintiff does not oppose this motion.

By: /s/ Samantha C. Duke  
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**Certificate of Service**

I hereby certify that on March 14, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to the following: Jacob A. Flint at Jacob@jacobflintlaw.com; James J. Rosemergy at Jrosemergy@careydanis.com; and Matthew Lee Baldwin at Matthew@vargasgonzalez.com.

By: /s/ Samantha C. Duke  
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# **EXHIBIT 1**

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

**MDL No. \_\_\_\_\_, In re: Generac Solar Power Systems Marketing, Sales Practices and  
Products Liability Litigation**

**CORRECTED SCHEDULE OF ACTIONS**

<b>Case Captions</b>	<b>Court</b>	<b>Civil Action No.</b>	<b>Judge</b>
Kathryn Locatell, as an individual and on behalf of all others similarly situated v. Generac Power Systems, Inc. and Generac Holdings, Inc.	U.S. District Court for the Eastern of California, Sacramento Division	2:23-cv-00203	Hon. Troy L. Nunley
Dustin Moon, as an individual and on behalf of all others similarly situated v. Generac Power Systems, Inc. and Generac Holdings, Inc., Wisconsin Corporation, and DOES 1 through 100, inclusive	U.S. District Court for the Northern of California, San Francisco Division	3:22-cv-09183	Hon. Charles R. Breyer
Daniel Haak, individually and behalf of all others similarly situated v. Generac Power Systems, Inc.	U.S. District Court for the Middle District of Florida, Tampa Division	8:22-cv-02470	Hon. Virginia M. Covington
Nicole Kibert Basler, Gail Amend, Violet Wheat, Michael Donley, Becky Herrington, Juan Leon, Barbara Quednau, Lisa Goeke, Kerri Vincent, Miles Fawcett, Christian Figueroa, Kevin Hemphill, Geoff Edwards, and Lori Morse, individually and on behalf of all others similarly situated, and Consolidated Plaintiff John Dillon v. Generac Power Systems, Inc.	U.S. District Court for the Eastern District of Wisconsin, Milwaukee Division	2:22-cv-01386	Hon. Nancy Joseph

Case Captions	Court	Civil Action No.	Judge
John Dillon, individually and on behalf of all others similarly situated v. Generac Power Systems, Inc. <i>(Consolidated with C.A.                      No. 2:22-cv-01386)</i>	U.S. District Court for the Eastern District of Wisconsin, Milwaukee Division	2:23-cv-00034	Hon. Nancy Joseph

# **EXHIBIT 2**



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

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**In re: Generac Solar Power System  
Marketing, Sales Practices and  
Products Liability Litigation**

**MDL No. \_\_\_\_\_**

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**MOTION OF PLAINTIFF FOR TRANSFER OF ACTIONS TO THE NORTHERN  
DISTRICT OF CALIFORNIA PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED  
OR CONSOLIDATED PRETRIAL PROCEEDINGS**

Pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation (the “Panel”), Plaintiff Dustin Moon (hereinafter “Plaintiff” or “Movant”) hereby moves to consolidate and transfer all actions identified in the accompanying Schedule of Actions, as well as any actions subsequently filed against Defendants Generac Power Systems, Inc. and Generac Holdings, Inc. (hereinafter “Defendants” or “Generac”) or affiliates thereof involving similar facts or claims, to a single district for all pre-trial proceedings. Plaintiff Dustin Moon further requests transfer of the litigation to the United States District Court for the Northern District of California before the Honorable Charles R. Breyer.

Dated:

Dated: March 3, 2023

Respectfully submitted,

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

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**In re: Generac Solar Power System  
Marketing, Sales Practices and  
Products Liability Litigation**

**MDL No. \_\_\_\_\_**

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**BRIEF IN SUPPORT OF PLAINTIFF DUSTIN MOON'S MOTION FOR TRANSFER  
OF ACTIONS TO THE NORTHERN DISTRICT OF CALIFORNIA PURSUANT TO  
28 U.S.C. § 1407 FOR COORDINATED OR CONSOLIDATED  
PRETRIAL PROCEEDINGS**

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Pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation (the “Panel”), Plaintiff Dustin Winter (“Plaintiff” or “Movant”) respectfully submits this brief in support of his Motion for Transfer of Actions to the Northern District of California Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings. Plaintiff seeks the transfer of all actions identified in the Schedule of Actions, as well as any actions subsequently filed against Defendants Generac Power Systems, Inc. and Generac Holdings, Inc. (hereinafter “Defendants” or “Generac”) or affiliates thereof involving similar facts or claims (“Actions”), to a single district for all pre-trial proceedings. Movant can represent that the majority of plaintiffs in the litigation support consolidation and transfer.

Movant further requests that the Actions be transferred to the United States District Court for the Northern District of California before the Honorable Charles R. Breyer.

## **I. INTRODUCTION**

This litigation involves a home solar power system defect that has caused homes to catch fire, poses dangers of electrocution and other physical harm, causes loss of residential power and energy production, and other economic and property damage. The systems, called the PWRcell system (“Systems” or “Solar Products”), are manufactured, marketed, sold, supplied, distributed, and warranted by Generac. The Systems operate in conjunction with home solar panels to provide, boost, regulate, convert, store, and monitor energy produced through solar panels. Each of the class action lawsuits at issue in this Motion allege that Generac’s PWRcell system is defective.

The defect relates to a purported safety component for the PWRcell system, called SnapRS (Rapid Shutdown) devices. If working properly and according to the requirements of the National Electric Code (“NEC”), they prevent shock, electrocution, physical harm, equipment damage, and damage to property. However, rather than provide and enhance safety for the System and home, the Snap RS devices malfunction by becoming overactive, repeatedly turning off and on, causing

them to overheat, bubble, burn, and explode (“Defect”). The Systems are sold on a nationwide basis and have been installed throughout the country.

Pursuant to 28 U.S.C. § 1407 (“section 1407”) and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation (“Rule 6.2”), Dustin Moon, Plaintiff in the case styled *Moon v. Generac Power Systems, Inc. and Generac Holdings, Inc.*, Case No. 5:22-cv-09183, United States District Court for the Northern District of California (“Movant”), respectfully moves the Panel for an Order transferring the five cases listed in the Schedule of Actions<sup>1</sup> filed concurrently herewith (the “Actions”), as well as any tag-along cases subsequently filed involving similar facts or claims, to the United States District Court for the Northern District of California before the Honorable Charles R. Breyer for consolidated pretrial proceedings.

Each of the five pending Actions, pending in four district courts, are consumer class cases involving the alleged Defect, and Movant anticipates that many additional cases will be filed. Plaintiffs in each of the Actions allege that Generac engaged in unlawful, deceptive, fraudulent, and unfair marketing, sales, and business practices and breached its express and implied warranties. All of the Actions involve common allegations, common questions of fact, and are essentially in the same procedural posture, where motions to dismiss have not been decided.<sup>2</sup> The cases are at stages in the proceedings that are ripe for coordination, consolidation, and transfer.

For the reasons discussed below, consolidation and transfer is appropriate and these and

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<sup>1</sup> The accompanying Schedule of Action references the following cases: 1) *Dustin Moon v. Generac Power Systems, Inc. and Generac Holdings, Inc.*, Case No. 5:22-cv-09183 (N.D. Cal.) (“*Moon*”); 2) *Kathryn Locatell v. Generac Power Systems, Inc. and Generac Holdings, Inc.*, Case No. 2:23-cv-00203-TLN-JDP (E.D. Cal.) (“*Locatell*”); 3) *Nicole Kibert Basler, Gail Amend, Violet Wheat, Michael Donley, Becky Herrington, Juan Leon, Barbara Quednau, Lisa Goeke, Kerri Vincent, Miles Fawcett, Christian Figueroa, Kevin Hemphill, Geoff Edwards, and Lori Morse v. Generac Power Systems, Inc.*, Case No. 2:22-cv-01386 (E.D. Wisc.) (“*Basler*”); 4) *Daniel Haak v. Generac Power Systems, Inc.*, Case No. 8:22-cv-02470-VMC-AEP (M.D. Fla.) (“*Haak*”); and 5) *John Dillon v. Generac Power Systems, Inc.*, Case No. 2:23-cv-00034 (E.D. Wisc.) (“*Dillon*”).

<sup>2</sup> Motions to dismiss have not yet been filed in *Locatell* or *Dillon*. The *Dillon* case was recently consolidated with *Basler* pursuant to an unopposed intra-district consolidation motion.

subsequent Actions should be transferred to the Northern District of California before the Honorable Charles R. Breyer for pretrial purposes.

## **II. LEGAL STANDARD**

Centralization under section 1407 is warranted when: (1) “civil actions involving one or more common questions of fact are pending in different districts”; and (2) it will serve “the convenience of parties and witnesses and [ ] promote the just and efficient conduct of such actions.” Section 1407. The purpose of centralization is to “eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel, and the judiciary.” *In re: Rail Freight Fuel Surcharge Antitrust Litig. (No. II)*, 437 F. Supp. 3d 1365, 1365 (J.P.M.L. 2020); *see also* Manual for Complex Litigation (Fourth) § 20.131 (2004) (citing *In re Plumbing Fixture Cases*, 298 F. Supp. 484 (J.P.M.L. 1968)). Each of these factors favors consolidation and transfer of the Actions filed against Generac.

## **III. ARGUMENT**

### **A. The Requirements for Consolidation and Transfer Under Section 1407 Are Satisfied**

Pretrial transfer and consolidation under section 1407 is critical for achieving efficiencies and economy in this litigation, particularly before pleading challenges are decided and discovery is underway. All of the Actions involve similar allegations and causes of action, and Movant anticipates that several additional cases are on the horizon. Failure to consolidate and transfer these Actions to a single court for pretrial proceedings will result in inconsistent rulings, confusion, duplicative discovery, and unnecessarily waste the resources of the parties and courts.

Movant can represent that the majority of plaintiffs in the litigation support consolidation and transfer. Seventeen of the eighteen named plaintiffs, constituting plaintiffs in four of the five Actions – *Moon*, *Locatell*, *Basler*, and *Dillon* – are in favor of centralizing this matter.



## 1. The Actions Involve Common Questions of Fact

There is overwhelming factual overlap between the Actions at issue. Each complaint alleges that the SnapRS components for Generac's PWRcell system are defective and that the Defect is characterized by a common malfunction: they become overactive, repeatedly turn on and off, causing them to overheat, melt, and catch fire. In each of the complaints, Plaintiffs contend that the Defect constitutes a safety risk and results in loss of power generation or power failure to consumers' homes. Plaintiffs further contend that Generac concealed and/or failed to disclose the Defect from consumers and that Generac's misconduct caused economic damages, including as it relates to the cost of the System, cost to repair or replace the System and its components, damage to property, and energy failure or loss of energy production. The Actions also assert the same or similar common law and statutory violations rooted in breach of express and implied warranty, fraud, misrepresentation, and/or unfair and deceptive business practices violations. In addition, the Actions seek certification of similar classes or subclasses. Every complaint is brought on behalf of a nationwide class and state-specific subclasses.

The Panel has consistently found that consumer class litigation involving common factual issues and asserting the same or similar causes of action concerning an alleged defective product are appropriate for consolidation and transfer pursuant to section 1407. *See, e.g., In re Michelin N. Am., Inc.*, 536 F. Supp. 2d 1365, 1365 (J.P.M.L. 2008) (granting section 1407 motion centralizing four putative class cases involving common questions of fact relating to defective "run-flat" tires and alleged damages in the form of costs of repair and replacement); *In re Land Rover LR3 Tire Wear Prods. Liab. Litig.*, 598 F. Supp. 2d 1384, 1385 (J.P.M.L. 2009) (centralizing cases involving common questions of fact involving alleged alignment defect); *In re Certaineed Corp. Roofing Shingle Prods. Liab. Litig.*, 474 F. Supp. 2d 1357, 1358 (J.P.M.L. 2007) (centralizing overlapping putative class cases involving common questions of fact based on

allegedly defective roofing shingles); *In re Navistar Maxxforce Engines Mktg., Sales Practices & Prods. Liab. Litig.*, 67 F. Supp. 3d 1382, 1383 (J.P.M.L. 2014) (centralizing putative class cases asserting claims for breach of express and implied warranties based in part on alleged defects in defendants' emission control system).

For these reasons, the common questions of fact across these Actions warrant centralization.

## **2. Consolidating and Transferring These Cases Will Avoid Duplicative Discovery**

The common allegations, causes of action, and questions of fact referenced above will also elicit overlapping discovery issues. Similarly, where the Actions implicate nationwide and state-specific subclasses, they will all be subject to discovery propounded for (and against) class certification.

For instance, across the Actions, discovery will focus on issues such as:

- The alleged SnapRS Defect;
- The extent and nature of electronic data maintained by Generac to monitor the performance of its Solar Products;
- Generac's manufacture, design, marketing, sales, and distribution of its Solar Products;
- Whether and when Generac knew or should have known about the alleged Defect;
- Generac's concealment, nondisclosure, and/or misrepresentations concerning its Solar Products and alleged Defect;
- Safety hazards and concerns presented by the Defect;
- Numerosity, commonality, typicality, adequacy, predominance and superiority

pursuant to Federal Rule of Civil Procedure 23;

- Consumer complaints concerning Generac's Solar Products, including the SnapRS Defect;
- Investigations by governmental agencies concerning the alleged Defect and related safety hazards or concerns;
- Generac's warranty program;
- Internal testing, investigations, reports, memoranda, meetings, and communications regarding the alleged Defect;
- Communications with its authorized installers and repair network concerning the Defect, requested repairs, complaints, replacements, warranties, and repair or replacement costs;
- Communications with customers concerning the alleged Defect;
- Generac's design, manufacture, distribution, and performance of next-generation SnapRS units and/or software updates to address the alleged Defect;
- Solar energy disruption and failures that occur as a result of the Defect; and
- Generac's acquisition of companies that designed, developed, manufactured, and/or sold solar energy technologies and products that were involved in or integral to the development and operation of Generac's PWRcell system.

Plaintiffs across the Actions will likely request to depose the same witnesses in this litigation. Likewise, Generac will raise the same defenses, arguments against class certification, discovery objections, the same or similar protective orders, and assert the same privileges in each case. Failing to consolidate and transfer this litigation to a single district court for pretrial proceedings will engender inefficiency and require the parties, counsel, and courts to confront duplicative discovery issues and the same or similar discovery motions concerning those issues.

Consolidation and transfer is appropriate.

**3. Consolidating and Transferring This Litigation Will Avoid Inconsistent Pretrial Rulings and Conserve the Resources of the Parties, Counsel and Judiciary**

Centralization of this litigation is critical for coordinating pretrial proceedings and avoiding inconsistent rulings involving the same or similar questions of fact and law, as well as procedural questions concerning class certification. *See, e.g., Najarian v. Charlotte Russe, Inc. (In re Charlotte Russe, Inc., FACTA Litig.)*, 505 F. Supp. 2d 1377, 1378 (J.P.M.L. 2007) (coordinating and transferring two actions and finding that “[c]entralization under Section 1407 will . . . prevent inconsistent pretrial rulings, especially with respect to class certification”); *see also In re United States Office of Pers. Mgmt. Data Sec. Breach Litig.*, 138 F. Supp. 3d 1379, 1380 (J.P.M.L. 2015) (granting transfer motion in litigation consisting of three cases and finding that “[c]entralization will . . . prevent inconsistent pretrial rulings on class certification and other issues”).

Here, each of the Actions are putative class cases and involve the same or similar questions of law and fact. The likelihood of inconsistent rulings on pretrial motions in these and subsequent related cases significantly increases without consolidation and transfer to a single court. For example, Plaintiff anticipates pleading challenges in the form of motions to dismiss, motions to resolve discovery disputes, summary judgment motions, and motions for class certification in each of the cases. Inconsistent rulings by different courts on the pleadings as well as dispositive, discovery, and procedural motions would create confusion and conflict throughout the litigation on issues that are otherwise overlapping and duplicative.

For similar reasons, consolidating this litigation and transferring it to a single court will “conserve the resources of the parties, their counsel, and the judiciary.” *In re the United States Office of Pers. Mgmt. Data Sec. Breach Litig.*, 138 F. Supp. 3d at 1380; *see also In re Panacryl Sutures Prods. Liab. Litig.*, 572 F. Supp. 2d 1375, 1376 (J.P.M.L. 2008) (same). Centralization

and early organization will promote judicial efficiency and economy by allowing parties to brief core factual, legal, discovery and procedural issues that apply across the litigation. In addition, because each of the cases in this litigation arise from the same alleged conduct and implicate the same or similar issues, Generac's anticipated defenses will raise consistent challenges that can and should be efficiently managed and decided by a single court. Accordingly, centralization and transfer will avoid inconsistencies and promote efficiencies across these Actions.

#### **4. The Number of Actions Currently at Issue Supports Consolidation and Transfer**

There are currently five class action cases pending against Generac related to its allegedly defective PWRcell system and SnapRS components. Movant believes that additional class cases will soon be filed on behalf of Generac consumers in federal courts across the United States.

The Panel has granted section 1407 motions to consolidate and transfer litigation consisting of five and even fewer cases. *See, e.g., Najarian v. Charlotte Russe, Inc. (In re Charlotte Russe, Inc., FACTA Litig.)*, 505 F. Supp. 2d at 1377 (coordinating and transferring two actions); *In re Michelin N. Am., Inc.*, 536 F. Supp. 2d at 1365 (consolidating and transferring four cases involving allegedly defective tire product); *In re United States Office of Pers. Mgmt. Data Sec. Breach Litig.*, 138 F. Supp. 3d at 1379 (consolidating and transferring three cases); *In re Wireless Tel. Replacement Prot. Programs Litig.*, 180 F. Supp. 2d 1381, 1382 (J.P.M.L. 2002) (consolidating three consumer protection cases); *In re JP Morgan Auction Rate Secs. Mktg. Litig.*, 717 F. Supp. 2d 1374, 1375 (J.P.M.L. 2010) (consolidating and transferring five actions to a single district court). The result should be no different here.

For these reasons, and where additional tag-along actions related to the alleged Defect are likely to be filed, consolidation and transfer is appropriate.

**B. This Litigation Should Be Transferred to the Northern District of California Before the Honorable Charles R. Breyer**

The most appropriate district for transferring this litigation is the Northern District of California. This district will promote the just and efficient conduct of the overall litigation and represents a geographic location that is readily accessible and highly relevant for the litigation, including for potential witnesses, experts, documents, Generac customers and installers, and its business activities dating back to its entry into the residential solar power market.

California is at the forefront of residential rooftop solar energy, with significant investments in solar energy production and technology and developing regulatory infrastructure to support and manage solar industry growth. According to the Solar Energy Industries Association (“SEIA”), “the national trade association for the solar and solar + storage industries,”<sup>3</sup> California is *ranked 1<sup>st</sup> in the nation* for total installed solar capacity, enough solar installed to power 10,510,648 homes.<sup>4</sup> California has 2,378 solar companies, including 386 manufacturers and 934 installers/developers.<sup>5</sup> California *ranks first in installations* and “has the largest solar market in the U.S.”<sup>6</sup> By contrast, Florida and Wisconsin – the two other states where cases in this litigation are pending – are ranked 3<sup>rd</sup> and 23<sup>rd</sup> respectively for total installed solar capacity. According to SEIA, “Florida’s solar policies have lagged behind other states” and Wisconsin has enough solar installed to power only “182,187 homes.”<sup>7</sup>

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<sup>3</sup> (SEIA.org, *About SEIA*, at <https://www.seia.org/about> (last visited on Mar. 2, 2023).)

<sup>4</sup> (SEIA.org, *Where It’s Happening, State-By-State Map, California*, at <https://www.seia.org/state-solar-policy/california-solar> (last visited on Mar. 2, 2023).)

<sup>5</sup> (*Id.*)

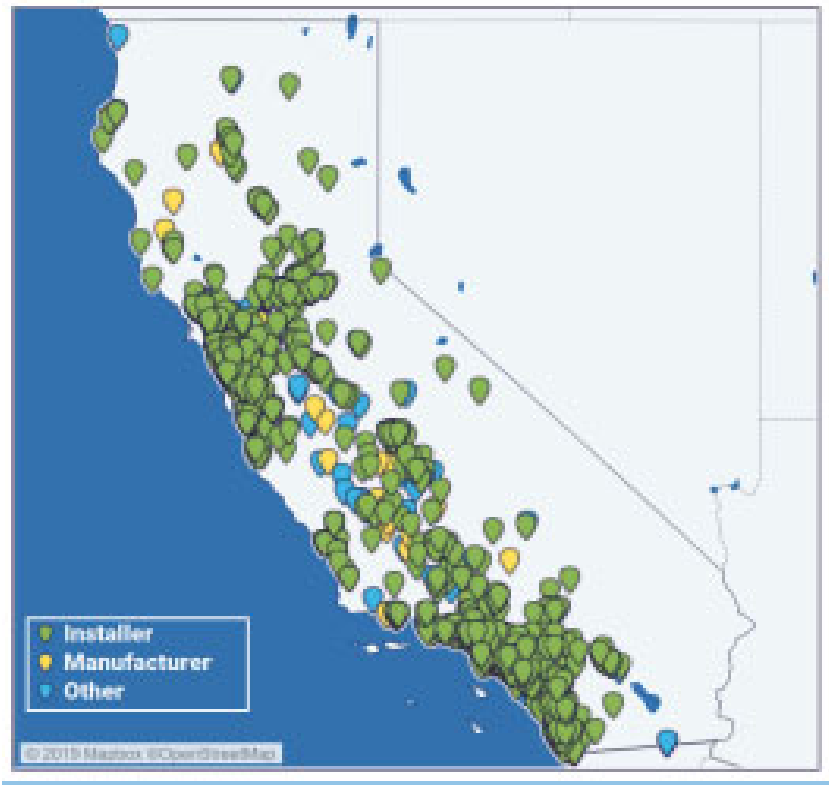
<sup>6</sup> (*Id.*)

<sup>7</sup> (SEIA.org, *Where It’s Happening, State-By-State Map, Florida and Wisconsin*, at <https://www.seia.org/state-solar-policy/florida-solar> and <https://www.seia.org/state-solar-policy/wisconsin-solar> (last visited on Mar. 2, 2023).)

California’s “solar rush” was in part prompted by its first-in-the-nation requirement that, starting in 2020, all new home construction must be equipped with rooftop solar panels:

In 2018, California created a mandate that new single-family homes and multi-family dwellings up to three stories high must install solar panels. The California solar mandate took effect on January 1, 2020, and is part of California’s building codes. The mandate was created by the California Energy Commission (“CEC”) . . . and is the first such mandate in the United States.<sup>8</sup>

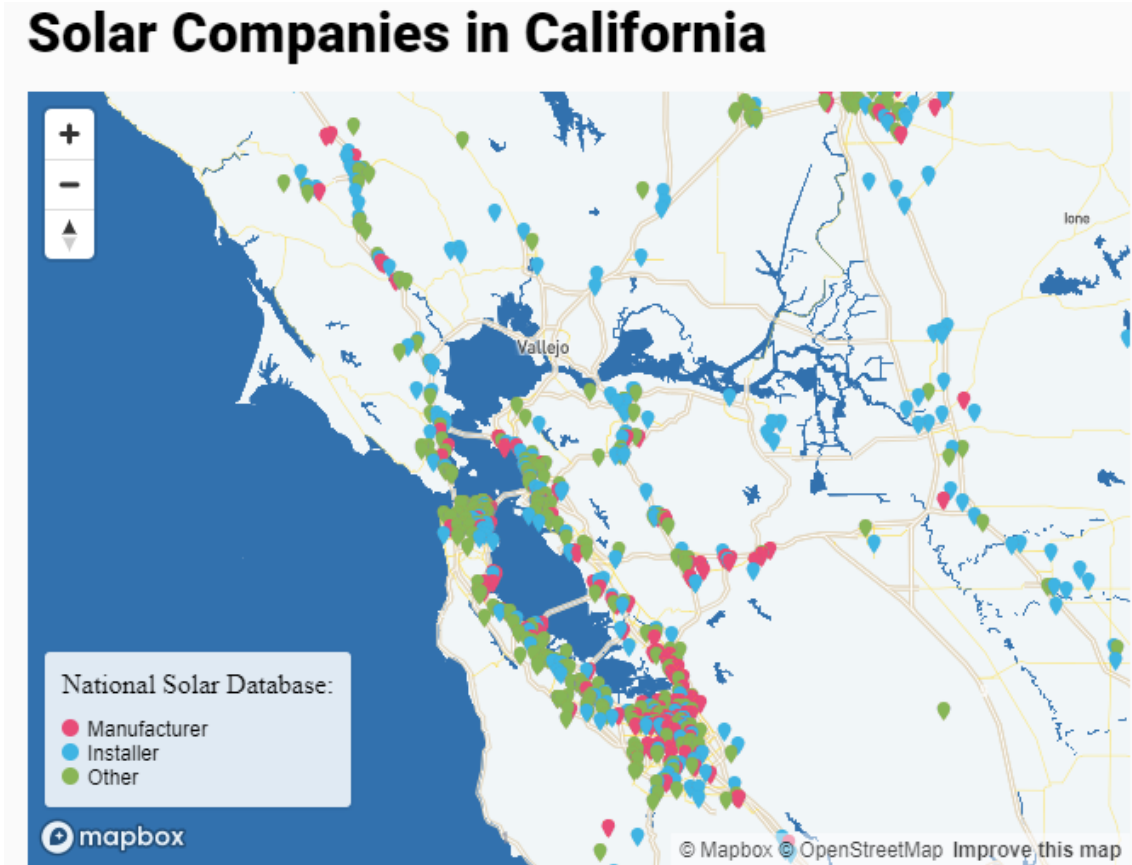
It is no surprise that California is the hub of solar energy production and technology in the nation. This is readily apparent from the following graphics showing California solar companies – including installers, manufacturers and other solar companies – and their significant concentration in the San Francisco Bay Area, where the Northern District of California is located:



(SEIA.org, *Where It’s Happening, State-By-State Map, California, Download the Factsheet*, at

<sup>8</sup> (Greenlancer.com, *Blog, The California Solar Mandate: What It Is And What Solar Businesses Should Know*, dated Mar. 17, 2022, at <https://www.greenlancer.com/post/california-solar-mandate> (last visited on Mar. 2, 2023); see also SEIA.org, *Where It’s Happening, State-By-State Map, California*, at <https://www.seia.org/state-solar-policy/california-solar> (“Beginning in 2020, all new homes built in California must have solar”).)

<https://www.seia.org/sites/default/files/2023-01/California.pdf> (last visited on Mar. 2, 2023).)



(SEIA.org, *Where It's Happening, State-By-State Map, California*, at <https://www.seia.org/state-solar-policy/california-solar>.) Indeed, Generac's network of residential solar power installers are located throughout the state. (See, e.g., <https://solarbuildermag.com/energy-storage/generac-partners-with-a-leading-southern-california-solar-installer/> ("Generac partners with a leading Southern California solar installer"); <https://www.sierrapacifichome.com/solar/storage-battery-energy/generac-pwrcell> ("Generac PWRCELL Systems in Sacramento CA"); <https://enlightenedsolar.com/generac-pwrcell-partner/> ("As a Generac PWRcell expert installer, our team at Enlightened Solar provides Generac installation and maintenance services for properties in Orange County, CA."), last visited on Mar. 2, 2023).)

Residential solar power has also become more prominent in California as catastrophic wildfires and sometimes days' long utility power outages have become more commonplace.



Generac has specifically recognized this issue:

in California Public Safety Power Shutoff events have occurred whereby public utilities are turning off power supply to their customers under certain circumstances to prevent their transmission equipment from starting wildfires, which we anticipate may continue in the future. Taken together, we expect these factors to continue driving increased awareness of the need for backup power and demand for Generac’s products within multiple categories.

(*See, e.g.*, Generac Holdings, Inc. Form 10-K, at p. 6, filed on Dec. 31, 2022, *available at* <https://investors.generac.com/static-files/8c798ee3-be57-443a-80f2-2afb258bb909>.) With that in mind, Generac specifically markets its PWRcell system and incentive programs to California consumers who face these power shutoffs. (Generac.com, *Homeowners, Clean Energy, Free Home Backup Power System for Qualified California Homeowners*, at <https://www.generac.com/for-homeowners/clean-energy/sgip-consumer>, last visited on Mar. 2, 2023; *see also* Generac.com, *Homeowners, Clean Energy, Public Safety Power Shutoffs*, at <https://www.generac.com/for-homeowners/clean-energy/prepare-for-public-safety-shutoffs>, last visited on Mar. 2, 2023 (“If you want to save money and be prepared, you have to get a Generac PWRcell system’ [by] Ryan W. – California”).

Generac entered into the solar market in part through California’s burgeoning solar power industry and acquired West Coast companies to rapidly develop its solar energy system business. Generac’s home solar business is the result of several recent acquisitions of existing solar technology companies that occurred from 2019 through 2021. Generac has been in the solar business for *only four years*. (*See, e.g.*, Generac Holdings, Inc. Form 10-K, at p. 3, filed on Dec. 31, 2022, *available at* <https://investors.generac.com/static-files/8c798ee3-be57-443a-80f2-2afb258bb909> (“Generac has made significant investments in recent years to expand its capabilities into energy technology solutions, beginning with the March 2019 acquisition of Neuroio Technology Inc.”).)

Many of the cornerstone companies that Generac acquired to start and develop its solar

energy business have headquarters in California, British Columbia, Oregon, and Colorado. Of particular relevance are Generac’s acquisitions of Neurio Technology Inc. (based in Vancouver)<sup>9</sup> and Chilicon Power LLC (based in Los Angeles).<sup>10</sup> Both of these companies are involved in the process of monitoring and managing the performance and electricity production of Generac solar energy systems purchased by consumers throughout the country. Since the performance (and malfunction) of these systems is at the center of this litigation, it is expected that significant discovery will take place with respect to employees and documents located in California and British Columbia. Additionally, it is expected that significant discovery will occur with respect to employees and documents maintained by the Bend, Oregon-based company, Apricity Code Corporation. Apricity is an engineering firm that was acquired by Generac in 2021 to help increase the reliability and functionality of home solar systems sold by Generac.<sup>11</sup> Another source of discovery resides with Denver-based company Enbala Power Networks, Inc., which Generac acquired in October 2020. Generac describes Enbala as “one of the leading providers of distributed

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<sup>9</sup> (Generac.com, *Investor Relations, Press Releases, Generac Announces Acquisition of Neurio Technology*, dated Mar. 13, 2019, available at <https://investors.generac.com/news-releases/news-release-details/generac-announces-acquisition-neurio-technology-inc>, last visited on Mar. 2, 2023 (“Neurio . . . [is] headquartered in Vancouver, British Columbia . . . Neurio’s hardware and software solutions equip users with the intelligence to manage and control electrical loads, solar systems and batteries to optimize energy consumption and increase savings”).)

<sup>10</sup> (Generac.com, *Investor Relations, Press Releases, Generac Enters Microinverter Market with Acquisition of Chilicon Power*, dated July 6, 2021, available at <https://investors.generac.com/news-releases/news-release-details/generac-enters-microinverter-market-acquisition-chilicon-power>, last visited on Mar. 2, 2023 (“California-based Chilicon’s unique approach to power inversion and monitoring technology maximizes PV production, lowers installation costs, and allows for easy integration of a battery or a generator, providing tremendous flexibility for installers and end-users.”).)

<sup>11</sup> (Generac.com, *Investor Relations, Press Releases, Generac Accelerates Clean Energy Developments with Acquisition of Apricity Code Corporation*, dated Sept. 1, 2021, available at <https://investors.generac.com/news-releases/news-release-details/generac-accelerates-clean-energy-developments-acquisition>, last visited on Mar. 2, 2023 (“Apricity . . . [is] an advanced engineering and product design company located in Bend, Oregon. Apricity’s advanced team of engineers is experienced in designing and prototyping energy-related products to increase reliability, add functionality, and improve performance . . . . ‘Adding Apricity to the Generac team will accelerate [Generac’s] our efforts to provide a broader energy technology portfolio and increase our speed to market for both our Clean Energy and Grid Services products and solutions’”).)

energy optimization and control software.”

Generac’s acquisition of West Coast companies such as Neurio, Chilicon, and Enbala, has enabled it to “establish[ ] an important presence in the rapidly growing residential clean energy market, focused on solar, battery storage and grid services applications.”<sup>12</sup> All of these Generac-acquired entities are in close proximity to the Northern District of California. California will be central for solar energy expertise in this litigation and discovery efforts relating to Generac’s customers, installer network, and product design and development.

In addition, two of the five cases are currently pending in California, with one of them (*Moon*) presently before Judge Breyer in the Northern District of California. These Actions should specifically be transferred to the Honorable Charles R. Breyer for pretrial proceedings. Judge Breyer has been described by the Panel as a “jurist who is thoroughly familiar with the nuances of complex, multidistrict litigation by virtue of having presided over nine MDL dockets, some of which involved numerous international defendants. We are confident that Judge Breyer will steer this controversy on a prudent and expeditious course.” *In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prods. Liab. Litig.*, 148 F. Supp. 3d 1367, 1369-70 (J.P.M.L. 2015). While Judge Breyer is listed as presiding over two MDLs – *In re: Volkswagen “Clean Diesel” Marketing, Sales, Practices, and Products Liability Litigation*, MDL No. 2672 (“*Volkswagen*”) and *In re: McKinsey & Company, Inc., National Prescription Opiate Consultant Litigation*, MDL No. 2996 (“*McKinsey*”) – *Volkswagen* is at or near its conclusion, and a settlement in principle has been reached for a substantial portion of claims pending in *McKinsey*. See J. Status Rep. at 1, Case No. 21-md-2996, ECF No. 436 (N.D. Cal. Oct. 26, 2022).

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<sup>12</sup> (See, e.g., Generac Holdings, Inc. Form 10-K, at p. 3, filed on Dec. 31, 2022, available at <https://investors.generac.com/static-files/8c798ee3-be57-443a-80f2-2afb258bb909>, last viewed on Mar. 2, 2023).)

For the reasons described above, these Actions should be consolidated and transferred to the Northern District of California before the Honorable Charles R. Breyer.

**IV. CONCLUSION**

For the foregoing reasons, Movant respectfully requests that the Panel consolidate these Actions pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation. Movant further requests that these Actions be transferred to the Northern District of California before the Honorable Charles R. Breyer for pretrial proceedings.

Dated: March 3, 2023

Respectfully submitted,

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*Attorneys for Movant/Plaintiff Dustin Moon*

# **EXHIBIT 3**

**Spadafora, Andrew**

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**Subject:** Haak v. Generac -- Request for Stay

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**From:** James Rosemergy <[jrosemergy@careydanis.com](mailto:jrosemergy@careydanis.com)>

**Sent:** Friday, March 10, 2023 1:01 PM

**To:** Gill, Michael J. <[MGill@mayerbrown.com](mailto:MGill@mayerbrown.com)>

**Cc:** [Matthew@VargasGonzalez.com](mailto:Matthew@VargasGonzalez.com); Olsen, Michael A. <[MOlsen@mayerbrown.com](mailto:MOlsen@mayerbrown.com)>; Gill, Michael J. <[MGill@mayerbrown.com](mailto:MGill@mayerbrown.com)>; Mitchell, Charlie <[cmitchell@rumberger.com](mailto:cmitchell@rumberger.com)>; Duke, Samantha <[Sduke@rumberger.com](mailto:Sduke@rumberger.com)>; Jacob Flint <[jacob@jacobflintlaw.com](mailto:jacob@jacobflintlaw.com)>

**Subject:** Haak v. Generac -- Request for Stay

**CAUTION: External Email** - Only click on contents you know are safe.

Mike,

Having given some thought to your request regarding a stay of the Haak action pending resolution of the 1407 motion, Plaintiff in the Haak action does not oppose a stay.

We likewise do not oppose consolidation.

We do not yet take a position on where it should go, and neither object to nor support any particular venue at this time.

Let me know if you have any questions.

Thanks and have a great weekend,  
James

**James J. Rosemergy, Esq.**

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