

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

*In re: Midwestern Pet Foods Marketing, Sales
Practices and Product Liability Litigation*

Case No.: 3:21-CV-00007-RLY-MPB

ORDER ON PLAINTIFFS' MOTION TO CONSOLIDATE CASES

Plaintiffs Tiffany Carlson, Tammy Johnson, Stephanie Romero, David Starnes, Staci Foote, Ashley Lill, Crystal Fabela, Harvey Williams, Owen Woodall, Vollie Griffin, Mel Labefre, Charles Foster, and Shanda Marshall (“Plaintiffs”) filed six separate proposed class actions against Defendant Midwestern Pet Foods, Inc. (“Midwestern”) in this District and have requested consolidation pursuant to Local Rule 42-1. Defendant does not oppose the motion. The actions are:

1. *Carlson v. Midwestern Pet Foods, Inc.*, Case No. 3:21-cv-00007-RLY-MPB;
2. *Johnson v. Midwestern Pet Foods, Inc.*, Case No. 3:21-cv-00009-RLY-MPB;
3. *Romero, et al. v. Midwestern Pet Foods, Inc.*, Case No. 3:21-cv-00014-RLY-MPB;
4. *Williams, et al. v. Midwestern Pet Foods, Inc.*, Case No. 3:21-cv-00022-RLY-MPB;
5. *Foster, et al. v. Midwestern Pet Foods, Inc.*, Case No. 1:21-cv-00360-JPH-TAB; and
6. *Marshall v. Midwesern Pet Foods, Inc.*, Case No. 3:21-cv-00050-

RLY-MPB. (collectively, the “Actions”).

Under Rule 42 of the Federal Rules of Civil Procedure, a court may consolidate actions

that “involve a common question of law or fact.” [Fed. R. Civ. P. 42](#). “Consolidation is preferred if it will promote judicial economy and efficiency without prejudice to the parties.” [See Adams v. Northern Public Service Co.](#), 2012 WL 23575324, at *1 (N.D. Ind. June 22, 2012). Courts should consider “whether the risks of prejudice and possible confusion were overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on the parties, witnesses and available judicial resources posed by multiple lawsuits, and the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned.” *Id.* (citing [Arnold v. Eastern Airlines, Inc.](#), 681 F.2d 186, 193 (4th Cir.1982); [Ikerd v. Lapworth](#), 435 F.2d 197, 204 (7th Cir. 1970); [Van Patten v. Wright](#), 2009 WL 1886010, *2 (E.D. Wis. 2009); [Back v. Carter](#), 933 F. Supp. 738, 748 (N.D. Ind. 1996)).

All of the Actions are against the same defendant, Midwestern; arise out of the recalls of Midwestern’s pet food announced in December 2020 and January 2021; involve the same pet food products; and involve common questions of fact, such as, among other things, whether Midwestern’s pet food products were advertised as providing “targeted nutrition to pets,” “100% guaranteed taste and nutrition,” and “complete and balanced nutrition,” yet were at risk of contamination with excessive levels Aflatoxin, which Plaintiffs allege could and did cause illness and death in pets. Additionally, the Actions involve common questions of law, such as whether Midwestern violated state consumer protection statutes and has been unjustly enriched, among other things. Finally, all the Actions are brought on behalf of persons in the United States who purchased Midwestern’s pet food products.

Consolidation of the Actions will likewise serve the convenience of the parties and witnesses and promote the just and efficient course of this litigation. Consolidation will

eliminate duplicative discovery and prevent inconsistent rulings, including on the issues of whether Midwestern knowingly and/or recklessly sold contaminated pet foods, whether Midwestern failed to implement appropriate and required testing, and/or whether Midwestern engaged in false and deceptive advertising. Consolidation will also conserve the resources of the parties, their counsel and the judiciary.

Plaintiffs' motion to consolidate cases ([Docket No. 17](#)) is **GRANTED**. The Clerk is **DIRECTED** to consolidate Cause Nos. 3:21-cv-00009-RLY-MPB, 3:21-cv-00014-RLY-MPB, 3:21-cv-00022-RLY-MPB, 1:21-cv-00360-JPH-TAB, and 3:21-cv-00050-RLY-MPB ("the consolidated actions") into Cause No. 3:21-cv-00007-RLY-MPB and close the other actions. The Clerk is **FURTHER DIRECTED** to docket this entry in the consolidated actions prior to their closure. No final judgment will issue in the consolidated actions.

The Court directs that all future filings be made in 3:21-cv-00007-RLY-MPB and directs that all future filings shall bear the following caption:

In re: Midwestern Pet Foods Marketing, Sales Practices and Product Liability Litigation

Case No.: 3:21-CV-00007-RLY-MPB

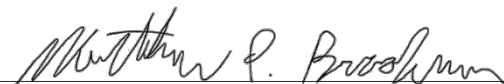
The Court also enters the following schedule:

- (1) The deadline to file an application(s) for the appointment of Interim Counsel by **Monday, April 19, 2021** of entry of this Order; and

(2) The deadline for the filing of a consolidated complaint is within 60 days of the entry of an order appointing Interim Counsel.

IT IS SO ORDERED.

Dated: 3/29/2021



Matthew P. Brookman
United States Magistrate Judge
Southern District of Indiana

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