

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: BANK OF AMERICA WAGE AND HOUR  
EMPLOYMENT PRACTICES LITIGATION**

Avashaye Gidden v. Bank of America Corp., et al.,                    )  
S.D. Florida, No. 0:12-60294    )

MDL No. 2138

**TRANSFER ORDER WITH SIMULTANEOUS  
SEPARATION AND REMAND OF CERTAIN CLAIMS**

**Before the Panel:**\* Pursuant to Panel Rule 7.1, plaintiff moves to vacate our order conditionally transferring this action (*Gidden*) to MDL No. 2138 and remanding an unrelated claim to the transferor court. Plaintiffs in MDL No. 2138 and defendants Bank of America Corp., Bank of America, N.A., and BOFA Advisors, LLC (collectively Bank of America) oppose the motion.

Plaintiff argues against transfer, *inter alia*, that (1) MDL No. 2138 is so far advanced that transfer would not be just or efficient; (2) transfer would prejudice plaintiff, as she has not had the opportunity to participate in discovery; and (3) Section 1407 runs contrary to the Fair Labor Standards Act (FLSA) itself, which requires an individual’s written consent to join a collective action. We respectfully disagree with these arguments.

Transfer of this action, in which the plaintiff seeks to recover unpaid overtime compensation under the FLSA on behalf of herself and those similarly situated, is consistent with the Panel’s previous transfer orders in this docket, and will allow the action to proceed before a transferee judge who is already familiar with the complex questions at issue in this litigation. The status of the proceedings in MDL No. 2138 does not preclude transfer. Discovery as to class and collective action certification has concluded and motions for class and collective certification have been filed. Discovery on the merits, however, is ongoing, and indeed, the transferee court has yet to schedule a date for its conclusion. The Panel repeatedly has held that, while transfer of a particular action might inconvenience some parties to that action, such transfer is often necessary to further the expeditious resolution of the litigation taken as a whole. *See, e.g., In re Crown Life Ins. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001). The Panel also has rejected plaintiff’s argument that transfer over plaintiff’s objection is prohibited by the FLSA and has transferred many FLSA actions over the objections of some parties. Indeed, the Panel centralized MDL No. 2138 despite a similar argument advanced by plaintiff in one of the constituent actions.

After considering all argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2138, and that transfer will serve the

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\* Judge Kathryn H. Vratil took no part in the decision of this matter.

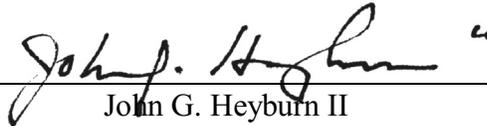
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convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Like many of the already-centralized actions, this action involves factual questions arising from allegations that Bank of America routinely fails to pay its employees for overtime work in violation of the FLSA. *See In re Bank of Am. Wage & Hour Emp't Practices Litig.*, 706 F. Supp. 2d 1369, 1371 (J.P.M.L. 2010). In particular, as with many actions already a part of MDL No. 2138, plaintiff alleges Bank of America's time keeping system allowed her supervisors to delete or force plaintiff to delete time worked from her time records.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the District of Kansas and, with the consent of that court, assigned to the Honorable John W. Lungstrum for inclusion in the coordinated or consolidated pretrial proceedings.

IT IS FURTHER ORDERED THAT Count II in this action, which does not relate to the failure to pay for overtime work, is separated and simultaneously remanded, under 28 U.S.C. § 1407(a), to the Southern District of Florida.

PANEL ON MULTIDISTRICT LITIGATION



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