

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: UNITED PARCEL SERVICE “AIR-IN-GROUND”
MARKETING AND SALES PRACTICES LITIGATION**

MDL No. 2153

TRANSFER ORDER

Before the Panel: Plaintiff in the action listed on Schedule A (*Tucker*) moves under Panel Rule 7.1 to vacate our order that conditionally transferred *Tucker* to the Central District of California for inclusion in MDL No. 2153. Defendants United Parcel Service, Inc. (UPS) and The UPS Store, Inc. (TUPSS) oppose the motion.

The actions in MDL No. 2153 involve allegations that UPS improperly charged for air shipping services and jet fuel surcharges on shipments that were transported, on time, by ground modes of transport. See *In re United Parcel Service “Air-in-Ground” Mktg. & Sales Practices Litig.*, 716 F. Supp. 2d 1365 (J.P.M.L. 2010). Plaintiff argues that *Tucker* differs from MDL No. 2153 because *Tucker* alleges that TUPSS retail employees overcharged walk-in customers, misquoted available shipping options, and overmeasured and overweighted packages. The consolidated complaint in the MDL, on the other hand, alleges that *business* customers contracted directly with UPS (not TUPSS) and were overcharged by it. Plaintiff also argues that it would be more efficient to allow *Tucker* to proceed in the Southern District of New York, where it has been related to an action (*Hagan*)¹ brought by UPS and TUPSS against terminated TUPSS franchisees. *Hagan* involves a counterclaim against UPS and TUPSS under the New York Consumer Protection Law, N.Y. Gen. Bus. Law § 349, a claim also asserted in the *Tucker* complaint. Plaintiff asserts that discovery is underway in *Hagan* that will be relevant to claims in *Tucker*.

After considering the argument of counsel, we conclude that transfer of *Tucker* under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. Notwithstanding plaintiff’s attempt to distinguish *Tucker* from the actions pending in MDL No. 2153, *Tucker* shares a common factual core with those actions—the allegation that UPS improperly charged for air shipping services and fuel surcharges on shipments that were transported by ground modes of transport. The putative nationwide class asserted in the *Tucker* complaint is similar to that asserted in the operative consolidated complaint in MDL No. 2153. These actions thus will involve similar factual inquiries and discovery about UPS’s shipping practices and procedures. That TUPSS is not a party in the actions pending in MDL No. 2153 is not

¹ *The UPS Store, Inc. v. Hagan*, C.A. No. 1:14-01210 (S.D.N.Y.).

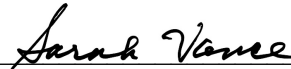
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a dispositive factor in our analysis, as Section 1407 does not require a complete identity of parties or claims. See *In re Glaceau VitaminWater Mktg. & Sales Practices Litig. (No. II)*, 764 F. Supp. 2d 1349, 1351 (J.P.M.L. 2011).

We are not persuaded that the recent decision deeming *Tucker* to be related to the *Hagan* action pending in the Southern District of New York supports excluding *Tucker* from the MDL. *Hagan*, which has been pending for over a year, primarily involves claims against terminated franchisees. The counterclaim that is the focus of plaintiff's arguments involves other allegedly fraudulent practices not at issue in the MDL—namely, overstating the dimensions and weights of packages to increase their billable weight, and misleading customers into unnecessarily selecting more expensive shipment options by misrepresenting which services were “guaranteed.” On balance, we are satisfied that transfer of *Tucker* to MDL No. 2153 is likely to eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary.

IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Central District of California and, with the consent of that court, assigned to the Honorable George H. Wu for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

**IN RE: UNITED PARCEL SERVICE “AIR-IN-GROUND”
MARKETING AND SALES PRACTICES LITIGATION**

MDL No. 2153

SCHEDULE A

Southern District of New York

TUCKER v. UNITED PARCEL SERVICE, INC., ET AL., C.A. No. 1:15-03576