

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

**IN RE: FRESH AND PROCESS POTATOES**  
**ANTITRUST LITIGATION**

MDL No. 2186

**TRANSFER ORDER**

**Before the Panel:** Plaintiffs Winn-Dixie Stores, Inc. and Bi-Lo Holdings, LLC, move under 28 U.S.C. 1407(c) to transfer the action listed on the attached Schedule A from the Middle District of Florida to MDL No. 2186. Defendants<sup>1</sup> oppose the motion, suggesting that it either be denied outright, “vacated” or stayed pending resolution of their Section 1404 motion to transfer the action to the District of Idaho.

After considering the argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2186, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Moreover, transfer is warranted for reasons set out in our order directing centralization, in which we held that the District of Idaho was an appropriate transferee forum for actions sharing factual allegations anticompetitive conduct in the market for fresh and process potatoes.<sup>2</sup> *See In re: Fresh and Process Potatoes Antitrust Litigation*, 744 F. Supp. 2d 1381 (J.P.M.L. 2010).

Defendants oppose plaintiffs’ motion, arguing that while transfer to the District of Idaho is appropriate, it should occur through Section 1404 transfer, as opposed to Section 1407 transfer. We

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<sup>1</sup> Blaine Larsen Farms, Inc., Cedar Farms, Inc., Cornelison Farms, Inc., Michael Cranney, Driscoll Potatoes, Inc., Lance Funk, Idahoan Foods, LLC, KCW Farms, Inc., Ronald D Offutt, Jr, Pleasant Valley Potato, Inc., Potandon Produce LLC, Pro Fresh, LLC, R.D. Offutt Co., Raybould Brothers Farms, LLC, Rigby Produce, Inc., Snake River Plains Potatoes, Inc., United II Potato Growers of Idaho, Inc., United Potato Growers of America, Inc., United Potato Growers of Idaho, Inc., Albert Wada, Wada Family, LLC, Wada Farms Marketing, Group, LLC, Wada Farms Potatoes, Inc., Wada Farms, Inc., and Kim Wahlen.

<sup>2</sup> According to plaintiffs’ arguments at the time of our initial transfer order, potato consumption can be divided into four categories: (1) “fresh potatoes” (also known as table stock), which includes numerous varieties such as round white, round red, russett, and Irish potatoes; (2) “process potatoes” intended for processing and including chips and shoestring, dehydrated, frozen (french fries and other forms such as patties), canned starches and flours; (3) other potatoes for sale for use as seed or feed for livestock; and (4) non-sale uses such as “shrink, loss and on-farm uses such as feed and seed.” Sweet potatoes and yams are a separate product not included in the definition of either fresh or process potatoes.

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previously have stated that Section 1404 transfer is typically advantageous because it “is for all purposes, including trial. For this reason, transfer under Section 1404(a)—where appropriate—can result in a more streamlined action, without the procedural necessity of remand to the transferor court that is required under Section 1407. This alone produces significant advantages. It allows for the possibility of consolidation of actions for trial, which potentially avoids the increased costs associated with multiple trials after the Panel remands actions to the various transferor courts once pretrial proceedings are concluded.” See *In re: Gerber Probiotic Prods. Mktg. & Sales Practices Litig.*, 899 F. Supp. 2d 1378, 1379 (J.P.M.L. 2012). Defendants’ Section 1404 motion was fully briefed in mid-February 2016, and plaintiffs opposed transfer.<sup>3</sup> No ruling on the motion appears imminent. Despite the advantages of Section 1404 transfer as a general matter, in these circumstances, further delaying transfer of this action under either Section 1404 or 1407 could impede both its progress and that of the MDL proceedings – where the sole remaining action<sup>4</sup> has a mid-August 2016 expert discovery deadline and a mid-December 2016 dispositive motion deadline. If this action proceeds to trial, then defendants can, of course, renew their Section 1404 motion following Section 1407 remand to the Middle District of Florida transferor court.

IT IS THEREFORE ORDERED that this action is transferred to the District of Idaho and, with the consent of that court, assigned to the Honorable B. Lynn Winmill for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION




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Sarah S. Vance  
Chair

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

Charles R. Breyer  
Ellen Segal Huvelle  
Catherine D. Perry

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<sup>3</sup> Panel Rule 2.1(d) expressly provides that the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a Section 1404 motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a Section 1404 transfer motion if it chooses to do so.

<sup>4</sup> *Associated Wholesale Grocers, Inc. v. United Potato Growers of America, Inc. et al.*, D. Idaho, C.A. No. 13-251 (transferred from D. Kansas, via Section 1407, in June 2013).

**IN RE: FRESH AND PROCESS POTATOES  
ANTITRUST LITIGATION**

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**SCHEDULE A**

Middle District of Florida

WINN-DIXIE STORES, INC., ET AL. V. UNITED POTATO GROWERS OF AMERICA,  
INC. ET AL., C.A. No. 3:15-1243