

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

**IN RE: POM WONDERFUL LLC MARKETING  
AND SALES PRACTICES LITIGATION**

MDL No. 2199

**ORDER DENYING REMAND**

**Before the Panel:**\* Plaintiffs in the ten actions listed in Schedule A, which previously were transferred to the Central District of California for inclusion in MDL No. 2199, move under Panel Rule 10.3 for an order remanding the actions to their respective transferor courts. Defendant POM Wonderful LLC (POM) opposes the motion.

After considering all argument of counsel, we conclude that remand is not appropriate at this time, and therefore we deny plaintiffs' motion. In considering the question of Section 1407 remand, we accord great weight to the transferee judge's determination that remand of a particular action at a particular time is appropriate, given that he or she has supervised the day-to-day pretrial proceedings in the MDL. *See In re Columbia/HCA Healthcare Corp. Qui Tam Litig. (No. II)*, 560 F. Supp. 2d 1349, 1350 (J.P.M.L. 2008) (quoting *In re Holiday Magic Sec. & Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977)). A transferee judge's suggestion of remand to the Panel, *see* Rule 10.1(b), indicates that the judge perceives his or her role under Section 1407 to have ended. Here, Judge Dean D. Pregerson of the Central District of California has denied plaintiffs' request for such a suggestion. *See* Order Denying Mot. to Reopen Discovery, *In re POM Wonderful LLC Mktg. & Sales Practices Litig.*, C.A. No. 2:10-ml-02199 (C.D. Cal. Feb. 14, 2017), ECF No. 312. Without a suggestion of remand, a party advocating Section 1407 remand "bears a strong burden of persuasion." *In re Holiday Magic*, 433 F. Supp. at 1126.

In requesting remand, plaintiffs argue that pretrial proceedings in MDL No. 2199 are complete and that these ten actions should be remanded to their transferor courts to allow plaintiffs to pursue certification of single-state classes. As the transferee court concluded in denying plaintiffs' suggestion for remand, however, "it is within the very nature of coordinated or consolidated pretrial proceedings in multidistrict litigation for the transferee judge to be called upon to apply the law of more than one state." Order Denying Mot. to Reopen Discovery at 6 (quoting *In re CVS Caremark Corp. Wage & Hour Emp't Practices Litig.*, 684 F. Supp. 2d 1377, 1378 (J.P.M.L. 2010)). In fact, after the transferee court denied plaintiffs' request for a suggestion of remand, it issued a scheduling order providing for the resolution of issues regarding certification of statewide classes and related *Daubert* motions. *See* Pretrial Order No. 7, *In re Pom Wonderful LLC Mktg. & Sales Practices*

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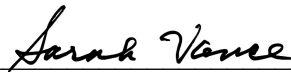
\* Judge Lewis A. Kaplan took no part in the decision of this matter.

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*Litig.*, C.A. No. 2:10-m1-02199 (C.D. Cal. Feb. 27, 2017), ECF No. 316.<sup>1</sup> Accordingly, plaintiffs have not met their burden to show that pretrial proceedings are complete, or that continued centralization would not serve the convenience of the parties and witnesses or promote the just and efficient conduct of the litigation.

IT IS THEREFORE ORDERED that the motion for Section 1407 remand of these actions is denied.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Marjorie O. Rendell  
Ellen Segal Huvelle  
Catherine D. Perry

Charles R. Breyer  
R. David Proctor

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<sup>1</sup> Most of the deadlines provided by this scheduling order were vacated pending our decision of the Section 1407 remand motion.

**IN RE: POM WONDERFUL LLC MARKETING  
AND SALES PRACTICES LITIGATION**

MDL No. 2199

**SCHEDULE A**

Western District of Arkansas

PIROLOZZI, ET AL. v. POM WONDERFUL, LLC, ET AL., C.A. No. 6:10-06082

Northern District of California

HOLTER v. POMWONDERFUL LLC, C.A. No. 3:10-05583

Southern District of Florida

GILES v. POM WONDERFUL LLC, C.A. No. 0:10-61684

Southern District of Georgia

TEMPLETON v. POM WONDERFUL, LLC, ET AL., C.A. No. 4:12-00053

Northern District of Illinois

FLAHERTY v. POM WONDERFUL, LLC, ET AL., C.A. No. 1:10-07349

District of Kansas

HAYNES v. POM WONDERFUL, LLC, ET AL., C.A. No. 2:10-02663

Western District of Missouri

WILKINSON v. POM WONDERFUL, ET AL., C.A. No. 2:10-01266

Southern District of New York

SEARLS v. POM WONDERFUL, LLC, ET AL., C.A. No. 1:10-08678

Northern District of Ohio

POGREBINSKY v. POM WONDERFUL, LLC, C.A. No. 1:10-01455  
CHAPMAN v. POM WONDERFUL, LLC, ET AL., C.A. No. 1:10-02599