

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: MIDLAND CREDIT MANAGEMENT, INC.,
TELEPHONE CONSUMER PROTECTION ACT
(TCPA) LITIGATION**

MDL No. 2286

TRANSFER ORDER

Before the Panel:* Plaintiff in the action listed on Schedule A (*Gaddis*) moves under Panel Rule 7.1 to vacate our order that conditionally transferred *Gaddis* to MDL No. 2286. Defendants Encore Capital Group, Inc., Midland Funding, LLC, and Midland Credit Management, Inc. (collectively, Midland) oppose the motion.

The actions in MDL No. 2286 involve allegations that Midland violated the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, by placing debt collection calls to debtors' cellular telephones using an automated dialer or an artificial or prerecorded voice, without the debtors' consent. *See In re Midland Credit Mgmt., Inc., Tel. Consumer Prot. Act Litig.*, 818 F. Supp. 2d 1377 (J.P.M.L. 2011). Plaintiff argues that *Gaddis* should not be transferred to MDL No. 2286 because: (1) he asserts a state law claim in addition to the TCPA claim; (2) transfer would inconvenience plaintiff; and (3) the Panel's conditional transfer order (CTO) did not comply with the requirements of 28 U.S.C. § 1407(c).

After considering the argument of counsel, we conclude that transfer of *Gaddis* 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. *Gaddis* shares a common factual core with the actions already in MDL No. 2286—the allegation that Midland sought to collect a debt by contacting plaintiffs on their cellular telephones using an automatic telephone dialing system without prior consent. Thus, *Gaddis* will involve similar factual inquiries and discovery about Midland's collection call policies and procedures, as well as its policies and procedures for obtaining and recording a consumer's consent to receive collection calls.

Plaintiff's argument that transfer is inappropriate because of his pending state law claim is not convincing. MDL No. 2286 already includes numerous actions alleging claims under other federal and state consumer protection statutes. In any event, Section 1407 does not require a complete identity or even a majority of common factual and legal issues as a prerequisite to centralization. *See In re Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010).

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

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Similarly, we are not persuaded that plaintiff's arguments concerning inconvenience justify excluding *Gaddis* from the centralized proceedings. The Panel has held repeatedly that, while it might inconvenience some parties, transfer of a particular action often is necessary to further the expeditious resolution of the litigation taken as a whole. See, e.g., *In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, MDL No. 2226, 2012 WL 7764151, at *1 (J.P.M.L. Apr. 16, 2012). The transferee judge is in the best position to structure proceedings so as to minimize inconvenience to any individual party.

We previously have rejected the argument that transfer based upon a CTO issued by the Panel is inappropriate because of non-compliance with Section 1407(c)(ii). See *In re Midland Credit Mgmt., Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, MDL No. 2286, ECF No. 450, at 2 (J.P.M.L. Dec. 11, 2014) (Transfer Order). Here, plaintiff adds a new twist by also arguing that the CTO was not issued upon the Panel's "own initiative" under 28 U.S.C. § 1407(c)(i) because it was prompted by a notice of potential tag-along filed by Midland. This argument betrays a misunderstanding of the conditional transfer order process. Panel Rule 7.1(a) requires "[a]ny party or counsel in actions previously transferred under Section 1407 [to] promptly notify the Clerk of the Panel of any potential tag-along actions in which that party is also named or in which that counsel appears." The Panel, though, does not automatically issue a CTO in response to a notice of a potential tag-along action. Instead, "[t]he Panel has several options: (i) filing a CTO under Rule 7.1, (ii) filing a show cause order under Rule 8.1, or (iii) declining to act (Rule 7.1(b)(i))." *Id.* Thus, the issuance of a CTO—and the subsequent transfer of the action listed in the CTO—is initiated by the Panel "upon its own initiative," 28 U.S.C. § 1407(c)(i), not at the behest of the party alerting the Panel to the existence of a potential tag-along action.

Finally, we deny the plaintiff's alternative request to separate and remand his state statutory claim. This state law claim challenges the same conduct as the TCPA claim and likely will involve similar, if not identical discovery. Separating and remanding the state law claim would only increase the likelihood of duplicative discovery.

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

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle
Catherine D. Perry

Charles R. Breyer
R. David Proctor

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SCHEDULE A

Northern District of Texas

GADDIS v. MIDLAND CREDIT MANAGEMENT, INC., C.A. No. 3:14-03661