

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 (*Basham*) moves under Panel Rule 7.1 to vacate our order that conditionally transferred *Basham* to the Southern District of California for inclusion in 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 automatic telephone dialing system 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, who is proceeding *pro se*, argues that *Basham* should not be transferred to MDL No. 2286 because: (1) she asserts claims against a non-Midland defendant, Gamache and Myers, PC; (2) transfer would inconvenience plaintiff; and (3) transfer is inappropriate given the progress of *Basham*. In the alternative, plaintiff requests separation and remand of both her claims against the non-Midland defendant and her non-TCPA claims.

After considering the argument of counsel and plaintiff, we conclude that transfer of *Basham* 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. *Basham* shares a common factual core with the actions already in MDL No. 2286—the allegation that Midland sought to collect a debt by contacting plaintiff on her cellular telephone using an automatic telephone dialing system without her consent. This action thus 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.

Although *Basham* includes non-TCPA claims and claims against a non-Midland defendant, these claims are not easily separable from the TCPA claims against Midland. For this reason, plaintiff's alternative request for separation and remand is not feasible. Furthermore, the MDL already includes numerous actions alleging claims under the Fair Debt Collection Practices Act and other consumer protection statutes, as well as actions alleging claims against non-Midland

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defendants. 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).

We are similarly unpersuaded that plaintiff's arguments concerning inconvenience justify excluding *Basham* from the centralized proceedings. Although we are sympathetic to her concerns, we have 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.

Finally, the procedural posture of *Basham* in the transferor court does not significantly affect our transfer decision. Pleadings only recently closed in *Basham*, and discovery has not yet commenced. Transfer therefore is likely to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties and the judiciary.

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

Lewis A. Kaplan

R. David Proctor

Charles R. Breyer

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

MDL No. 2286

SCHEDULE A

Eastern District of Missouri

BASHAM v. MIDLAND FUNDING, LLC, ET AL., C.A. No. 4:15-00030