

**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:** Plaintiffs in the action listed on Schedule A (*Eaton*) move under Panel Rule 7.1 to vacate our order that conditionally transferred *Eaton* 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). Plaintiffs argue that *Eaton* should not be transferred to MDL No. 2286 because: (1) plaintiffs' claims are not covered by a class settlement that recently was approved by the transferee court; (2) pretrial proceedings in the transferee court are nearing completion; (3) plaintiffs assert state law claims in addition to claims under the TCPA; and (4) transfer would cause plaintiffs, who reside in Alabama, inconvenience.

After considering the parties' arguments, we conclude that transfer of *Eaton* 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. *Eaton* 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 telephone<sup>1</sup> using an automatic telephone dialing system without their 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. Plaintiffs' assertion that pretrial proceedings are complete in the transferee court is unfounded. As plaintiffs themselves admit, the class settlement does not cover all claims against Midland. Rather, some 235 actions pending in the MDL are not affected by the settlement, as plaintiffs in those actions either opted out of the settlement or bring claims that fall outside the class period. *See Am. Order Granting Final Approval of Class Action Settlement at 24-25, In re Midland Credit Mgmt., Inc., Tel. Consumer Prot. Act Litig.*, C.A. No. 3:11-md-02286 (S.D. Cal. Dec. 2, 2016), ECF No. 434. Pretrial proceedings in those actions remain to be completed.

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<sup>1</sup> Specifically, plaintiffs allege that Midland contacted them on a residential telephone and that the calls were forwarded to a cellular telephone.

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Thus, transfer of *Eaton* likely will result in significant efficiency gains for the parties, witnesses, and the courts.

Plaintiffs' other objections to transfer are no more convincing. Although *Eaton* includes non-TCPA claims, these claims are not easily separable from the TCPA claims as they all arise from the same factual circumstances. In any event, the MDL already includes numerous actions alleging claims under the Fair Debt Collection Practices Act and other consumer protection statutes, and 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 plaintiffs' arguments concerning inconvenience justify excluding *Eaton* from the centralized proceedings. 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.

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



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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

**IN RE: MIDLAND CREDIT MANAGEMENT, INC.,  
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**SCHEDULE A**

Northern District of Alabama

EATON, ET AL. v. MIDLAND CREDIT MANAGEMENT, INC., C.A. No. 7:16-01353