

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 2286

**TRANSFER ORDER WITH SIMULTANEOUS
SEPARATION AND REMAND**

Before the Panel: Plaintiff in the action listed on Schedule A (*Reitano*) moves under Panel Rule 7.1 to vacate our order that conditionally transferred *Reitano* 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 argues that *Reitano* should not be transferred to MDL No. 2286 because: (1) he alleges a state-specific class action that is premised on defendants' alleged violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692, *et seq.*; (2) transfer would inconvenience plaintiff and the putative class members, all of whom are residents of New York; and (3) discovery has commenced in *Reitano*.

After considering the argument of counsel, we conclude that transfer of *Reitano* 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. *Reitano* 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 his cellular telephone using an automatic telephone dialing system without his 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.

We are not persuaded that plaintiff's arguments concerning inconvenience justify excluding *Reitano* from the centralized proceedings. 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,

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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.

Nor are we convinced that the procedural posture of *Reitano* presents an impediment to transfer. As plaintiff himself acknowledges, discovery is in its initial stages. Transfer of plaintiff's TCPA claim therefore is likely to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties and the judiciary.

Although plaintiff's TCPA claim should proceed in MDL No. 2286, we conclude that his non-TCPA claims should be separated and remanded to the Eastern District of New York under 28 U.S.C. § 1407(a). Ordinarily, the presence of non-TCPA claims does not require such measures. *See, e.g.*, Transfer Order at 1-2, MDL No. 2286 (J.P.M.L. Oct. 9, 2014), ECF No. 392 (explaining that MDL No. 2286 "already includes numerous actions alleging claims under the FDCPA and other consumer protection statutes"). Here, though, plaintiff does not assert an individual FDCPA claim, but seeks relief on behalf of a putative class of New York residents. There are no such non-TCPA class action claims in the MDL, and introduction of such unrelated class claims at this late date may complicate unnecessarily the progress of the litigation, rather than enhance convenience and efficiency. Furthermore, both plaintiff's FDCPA class claim and his individual claim under New York General Business Law § 349 involve factual and legal issues distinct from those presented by the TCPA claims that have been centralized in MDL No. 2286.

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.

IT IS FURTHER ORDERED that the non-TCPA claims (Counts I and II) in the action listed on Schedule A are separated and remanded to the Eastern District of New York.

PANEL ON MULTIDISTRICT LITIGATION



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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SCHEDULE A

Eastern District of New York

REITANO v. MIDLAND FUNDING LLC, ET AL., C.A. No. 1:15-02275