

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:* Pursuant to Panel Rule 7.1, plaintiffs in the six actions listed on Schedule A move to vacate our orders that conditionally transferred those actions to MDL No. 2286. Defendants Encore Capital Group, Inc., Midland Funding, LLC, and Midland Credit Management, Inc. (collectively, Midland), oppose the motions.

The actions encompassing 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). Plaintiffs argue that their actions are not appropriate for inclusion in MDL No. 2286 because, *inter alia*: (1) their actions bring claims for violation of other statutes, such as the Fair Debt Collection Practices Act (FDCPA) and state consumer protection statutes; (2) their actions may involve factual differences from the actions already pending in MDL No. 2286, such as the use of different technology and equipment to contact plaintiffs or calls directed to non-debtor plaintiffs; and (3) transfer would inconvenience plaintiffs.

After considering all argument of counsel, we conclude that these actions involve common questions of fact with the actions previously transferred to MDL No. 2286, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. These actions all involve a common factual core—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, these actions will involve similar factual inquiries and discovery as to 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. Such discovery will be necessary regardless of whether Midland has employed new technology or systems since this MDL was instituted.

* Judge Ellen Segal Huvelle took no part in the decision of this matter.

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Contrary to plaintiffs' arguments, MDL No. 2286 already includes numerous actions alleging claims under the FDCPA and other consumer protection statutes. Similarly, this MDL includes actions brought by both debtors and non-debtors who allegedly received debt collection calls from Midland in violation of the TCPA. *See, e.g.*, Transfer Order, MDL No. 2286, June 4, 2014 (transferring action in which non-debtor received debt collection calls). 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).

Although we are sympathetic to plaintiffs' concerns about convenience, we are unpersuaded that they justify exclusion of these actions 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.

The plaintiffs in the action pending in the Middle District of Florida (*Moya*) raise two additional arguments that merit attention. First, plaintiffs contend that transfer is inappropriate because they intend to opt out of any class-wide settlement reached in the MDL. Their nonparticipation in a class settlement, however, is not dispositive. *See, e.g., In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, MDL No. 1720, 2013 WL 8123000, at *1 (J.P.M.L. Dec. 18, 2013) (transferring several actions brought by plaintiffs who had opted out of a class settlement). Rather, in accordance with the direction of Section 1407, we look to whether the action involves one or more common questions of fact, such that transfer for centralized proceedings will be for the convenience of the parties and witnesses and will promote the just and efficient conduct of the actions. As previously discussed, *Moya* will involve common questions of fact regarding Midland's collection call procedures. Regardless of plaintiffs' intent regarding any potential class-wide settlement, transfer of *Moya* to MDL No. 2286 is appropriate.

The *Moya* plaintiffs also argue that transfer is inappropriate because Section 1407(c)(ii) requires that, in proceedings for transfer initiated by a motion, the motion to transfer be filed in the district court in which the moving party's action is pending. The authority for the conditional transfer order procedure set out in Panel Rule 7.1, however, stems not from Section 1407(c)(ii), but from Section 1407(c)(i). *See* 28 U.S.C. § 1407(c)(i) ("Proceedings for the transfer of an action under this section may be initiated by—(i) the judicial panel on multidistrict litigation upon its own initiative."). This proceeding was not initiated by a motion to transfer, but by a conditional transfer order issued by the Clerk of the Panel. *See generally In re Gypsum Wallboard*, 303 F. Supp. 510, 510 (J.P.M.L. 1969) (discussing the genesis of the conditional transfer order procedure). Therefore, plaintiffs' argument is not well taken.

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IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A are 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

A handwritten signature in black ink, appearing to read "John G. Heyburn II", is written above a horizontal line.

John G. Heyburn II
Chairman

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Sarah S. Vance

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

MDL No. 2286

SCHEDULE A

Middle District of Florida

MOYA, ET AL. v. MIDLAND CREDIT MANAGEMENT, INC., C.A. No. 8:14-00845

Northern District of Georgia

JEAN-PIERRE (MYERS), ET AL. v. VERIZON COMMUNICATIONS, INC., ET AL.,
C.A. No. 1:14-01545

Northern District of Texas

FLOYD v. MIDLAND CREDIT MANAGEMENT, INC., C.A. No. 3:14-01843
SUTTLE v. MIDLAND CREDIT MANAGEMENT, INC., C.A. No. 4:14-00369

Southern District of Texas

ORTALE v. MIDLAND CREDIT MANAGEMENT INC., C.A. No. 4:14-01400

Western District of Texas

RIVERA v. MIDLAND CREDIT MANAGEMENT, INC., C.A. No. 5:14-00438