

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: WESSON OIL MARKETING AND
SALES PRACTICES LITIGATION**

MDL No. 2291

ORDER DENYING MOTION FOR REASSIGNMENT

Before the Panel:* Before the Panel is a motion by defendant Conagra Brands, Inc., to reassign (*i.e.*, retransfer) MDL No. 2291, which comprises the actions listed in Schedule A, from the Central District of California to the Northern District of Illinois. This motion was spurred by the conclusion of Conagra’s appeal of a class certification order by the transferee court. During the pendency of that appeal, the litigation was stayed, and the assigned transferee judge, the Honorable Margaret M. Morrow, retired. This necessitated reassignment when the litigation returned to the Central District of California for further proceedings in late 2017. Plaintiffs oppose reassignment of this litigation outside the Central District of California.¹

After considering the argument of counsel, we deny Conagra’s motion. The Panel is “extremely reluctant” to order retransfer of an MDL to another transferee district. *In re Air Crash Disaster in the Ionian Sea on Sept. 8, 1974*, 438 F. Supp. 932, 934 (J.P.M.L. 1977). “[T]he coalescence of new circumstances and development[s] sufficient to warrant retransfer of litigations will . . . occur only in the most extraordinary instances.” *In re Helicopter Crash in Germany on Sept. 26, 1975*, 443 F. Supp. 447, 450 (J.P.M.L. 1978). Conagra argues that retransfer is appropriate because California is no longer the geographic focus of the litigation, as only three of the fourteen remaining plaintiffs are California residents, and the transferee court certified damages classes of consumers in eleven different states. This argument is not persuasive. Four of the certified class claims in the MDL are brought under California law, all but one of the actions in the MDL were filed in the Central District of California, and the parties agreed to consolidate all claims for trial there. *Cf. In re Western States Wholesale Natural Gas Antitrust Litig.*, MDL No. 1566, 2015 WL 9973207, at *2 (J.P.M.L. Aug. 5, 2015) (denying request for retransfer where none of the actions remaining in the MDL was commenced in the transferee district).

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

¹ After Conagra filed this motion, the Panel consulted with Chief Judge Virginia A. Phillips of the Central District of California as to an appropriate transferee judge for this litigation. On February 1, 2018, we reassigned MDL No. 2291 to the Honorable Cormac J. Carney. In a supplemental filing, Conagra indicates that, notwithstanding this reassignment within the Central District of California, it continues to seek retransfer of the MDL to the Northern District of Illinois.

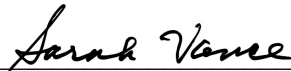
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Conagra also argues that the Northern District of Illinois is a more appropriate transferee district for this litigation because its headquarters are located there. This, however, does not reflect a changed circumstance. Conagra's headquarters and principal place of business were never located in the Central District of California (they were located in Nebraska at the time of centralization). In fact, none of the changed circumstances upon which Conagra relies is new – all existed more than five years ago. This motion thus lacks merit.

In their opposition papers, plaintiffs complain that Conagra failed to notice a related action in the District of Massachusetts—*Lee v. Conagra Brands, Inc.*, C.A. No. 1:17-11042—as a potential tag-along action as required by Panel Rule 7.1(a). Conagra argues that notice was not required because the dockets in both the Central District of California and the MDL were closed, albeit administratively, when *Lee* was removed to and litigated in the District of Massachusetts. This dispute is moot because *Lee* is no longer a pending civil action. It was dismissed and currently is on appeal. Conagra is directed to notice *Lee* as a potential tag-along action in MDL No. 2291 should the First Circuit overturn the dismissal of that action or otherwise remand it for further proceedings in the district court, in accordance with the Panel Rules.

IT IS THEREFORE ORDERED that the motion for reassignment of this litigation is denied.

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

Central District of California

BRISENO v. CONAGRA FOODS, INC., C.A. No. 2:11-05379
TOOMER v. CONAGRA FOODS, INC., C.A. No. 2:11-06127
MCFADDEN v. CONAGRA FOODS, INC., C.A. No. 2:11-06402
RUIZ v. CONAGRA FOODS, INC., C.A. No. 2:11-06480
KREIN v. CONAGRA FOODS, INC., C.A. No. 2:11-07097
VIRR v. CONAGRA FOODS, INC., C.A. No. 2:11-08421
SCARPELLI, ET AL. v. CONAGRA FOODS, INC., C.A. No. 2:11-08513
(D. New Jersey, C.A. No. 2:11-04038)
ANDRADE v. CONAGRA FOODS, INC., C.A. No. 2:11-09308