

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: PORTFOLIO RECOVERY ASSOCIATES, LLC**  
**TELEPHONE CONSUMER PROTECTION ACT**  
**LITIGATION**

Edilberto I. Cavero v. Portfolio Recovery Associates LLC, )  
et al., S.D. Florida, C.A. No. 1:13-22252 )

MDL No. 2295

**ORDER VACATING CONDITIONAL TRANSFER ORDER**

**Before the Panel:**\* Pursuant to Panel Rule 7.1, plaintiff and defendant Wells Fargo Bank, N.A. (Wells Fargo) each move to vacate our order conditionally transferring this action (*Cavero*) to MDL No. 2295. Defendant Portfolio Recovery Associates, LLC (Portfolio), opposes the motions.

The actions encompassing MDL No. 2295 involve allegations that Portfolio violated the federal Telephone Consumer Protection Act (TCPA) by placing debt collection calls to debtors' cellular telephones using an automated system, without the debtors' consent. *See In re: Portfolio Recovery Assoc., LLC, Tel. Consumer Prot. Act. Litig.*, 846 F. Supp. 2d 1380, 1381 (J.P.M.L. 2011). Plaintiff and Wells Fargo variously argue that this action is not appropriate for inclusion in MDL No. 2295 because, *inter alia*, (1) it is an individual action brought by a *pro se* plaintiff, rather than a class action involving plaintiffs' counsel; (2) this action involves Florida state law claims, which should be heard by a court in Florida; (3) plaintiff's claims against Wells Fargo do not involve common questions of fact with the actions in MDL No. 2295; and (4) transfer would inconvenience plaintiff and Wells Fargo. In the alternative, Wells Fargo requests that the Panel sever and remand plaintiff's claims against Wells Fargo to the Southern District of Florida.

After considering all argument of counsel and plaintiff, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2295, but the procedural posture of this action leads us to decline to transfer it at this time. Like the actions in MDL No. 2295, plaintiff alleges that defendant Portfolio called plaintiff's cellular telephone without his permission using an automatic dialing system in violation of the TCPA. This Panel has transferred several actions to MDL No. 2295 that involved individual claimants, unique state law claims, similar protestations of inconvenience, and at least one *pro se* plaintiff. *See, e.g.*, Transfer Order (*Momient*), MDL No. 2295 (J.P.M.L. Oct. 17, 2013).

On October 8, 2013, plaintiff moved to voluntarily dismiss his claims against Portfolio in the transferor court. The motion was denied as moot because the case had been stayed pending transfer

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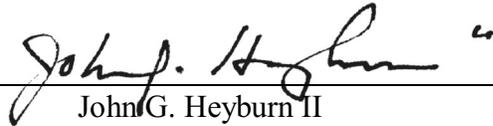
\* Judge Marjorie O. Rendell and Judge Lewis A. Kaplan did not participate in the disposition of this matter.

-2-

to MDL No. 2295. Dismissing the claims against Portfolio would eliminate any common questions of fact with the actions in MDL No. 2295. It would not be efficient to transfer *Cavero* if plaintiff does not wish to pursue claims that would be common to those in the MDL. Consequently, we conclude that inclusion of this action in MDL No. 2295 would not necessarily serve the convenience of the parties and witnesses or promote the just and efficient conduct of the litigation at this time.

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-18" is vacated insofar as it relates to this action. If the transferor court denies plaintiff's motion to voluntarily dismiss claims against Portfolio, the parties are directed to notify the Panel.

PANEL ON MULTIDISTRICT LITIGATION



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John G. Heyburn II  
Chairman

Paul J. Barbadoro  
Sarah S. Vance

Charles R. Breyer  
Ellen Segal Huvelle