

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

MDL No. 2295

TRANSFER ORDER

Before the Panel: Pursuant to Panel Rule 7.1, plaintiff moves to vacate our order conditionally transferring this action (*Firreno*) to MDL No. 2295. Defendant Portfolio Recovery Associates, LLC (Portfolio), opposes the motion.

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 in *Firreno* alleges that Portfolio violated the TCPA, the Fair Debt Collection Practices Act, and Michigan state statutes by placing debt collection calls to her cellular telephone using an automated system, without her consent. Plaintiff argues that her action is not appropriate for inclusion in MDL No. 2295 because (1) plaintiff's TCPA claim is unique in that Portfolio has placed at issue both an arbitration clause and the issue of consent and she brings individual rather than class claims; (2) plaintiff asserts unique non-TCPA claims; (3) transfer would cause plaintiff to suffer prejudice and inconvenience, and (4) there are alternatives to transfer such as the informal coordination of discovery.

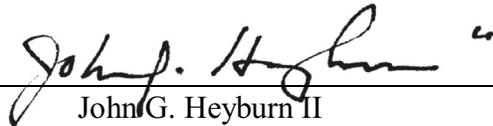
After considering all argument of counsel and plaintiff, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2295, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Whether plaintiff consented to receive calls from Portfolio is at issue in many MDL No. 2295 actions, and the Panel has held in this docket that the presence of individual issues such as whether consent was given do not negate the efficiencies gained by transfer. *See Transfer Order (McCormick)*, MDL No. 2295 (J.P.M.L. Jun. 8, 2012) (rejecting plaintiffs' argument that their action is unique because they allege revocation of consent, rather than an absence of consent). Portfolio has represented that other MDL No. 2295 actions involve whether an arbitration clause is applicable. Finally, many, if not most, of the tag-along actions transferred to MDL No. 2295 bring individual rather than class claims. We have held that Section 1407 transfer does not require a complete identity or even majority of common factual and legal issues. *See In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010).

-2-

We are sympathetic to plaintiff's concerns about inconvenience, but are unpersuaded that they justify exclusion of this action from centralized proceedings. The Panel repeatedly has held 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: Crown Life Ins. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001). The transferee judge is in the best position to structure proceedings so as to minimize inconvenience to any individual party. While efforts to coordinate *Firreno* informally with MDL No. 2295 are commendable, the Panel has determined that placing all related actions before a single judge will ensure that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is transferred to the Southern District of California and, with the consent of that court, assigned to the Honorable John A. Houston for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II
Chairman

Marjorie O. Rendell
Lewis A. Kaplan
Ellen Segal Huvelle

Charles R. Breyer
Sarah S. Vance
R. David Proctor

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SCHEDULE A

Eastern District of Michigan

FIRNENO v. CREDIT COLLECTION SERVICES, INC., ET AL., C.A. No. 2:13-14203