

**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:** Plaintiff moves under Panel Rule 7.1 to vacate our order conditionally transferring this action (*Makarious*) to MDL No. 2295. Defendants Portfolio Recovery Associates, LLC and PRA Group, Inc. (Portfolio) oppose the motion.

The actions in 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 (autodialer), 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 *Makarious* alleges that Portfolio violated the TCPA by placing debt collection calls to his cellular telephone using an autodialer, without his consent. Plaintiff does not dispute that his action shares questions of fact with the actions in MDL No. 2295. But he argues that *Makarious* should not be included in MDL No. 2295 because he timely opted out of the class action settlement in that litigation and, therefore, should be allowed to litigate his claim in his chosen forum.


After considering the argument of counsel, we find this action involves common questions of fact with the actions transferred to MDL No. 2295, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Several hundred plaintiffs have opted out of the class action settlement in this litigation, and a number of opt-out actions are proceeding in the transferee court. This litigation was stayed pending the Federal Communication Commission's order clarifying the definition of an autodialer, and coordinated discovery in the opt-out actions is poised to begin in 2017. Thus, the MDL No. 2295 opt-out actions, like *Makarious*, are at the beginning stages of litigation and, therefore, *Makarious* can benefit from the efficiencies to be had by joining coordinated proceedings from the start. If the transferee judge determines that remand of any claims, including opt-out actions, is appropriate, procedures are available to accomplish this with a minimum of delay. *See* Panel Rules 10.1, 10.2.

As to plaintiff's preference to litigate in his home forum, 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: IntraMTA Switched Access Charges Litig.*, 67 F. Supp. 3d 1378, 1380 (J.P.M.L. 2014). The transferee judge is in the best position to structure proceedings so as to minimize inconvenience to any individual party.

-2-

IT IS THEREFORE ORDERED that 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



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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**

District of New Jersey

MAKARIOUS v. PORTFOLIO RECOVERY ASSOCIATES, LLC, ET AL.,  
C.A. No. 2:16-06475