

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

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

Kerry Skarbakka, et al. v. Portfolio Recovery Associates,)
LLC, D. Arizona, C.A. No. 3:12-8187)

MDL No. 2295

TRANSFER ORDER

Before the Panel:* Pursuant to Panel Rule 7.1, plaintiffs move to vacate our order conditionally transferring this action (*Skarbakka*) 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). Plaintiffs argue that their action is not appropriate for inclusion in MDL No. 2295 because, *inter alia*, (1) their action brings claims for violation of the Fair Debt Collection Practices Act (FDCPA); and (2) transfer would inconvenience plaintiffs. Plaintiffs also argue that Portfolio's goal in notifying the Panel of this action as a potential tag-along is to inconvenience plaintiffs and increase their litigation costs. Specifically, plaintiffs argue that Portfolio refused to agree to not oppose plaintiffs' request to appear by telephone for any "Early Neutral Evaluation" or mediation outside of Arizona that is ordered by the transferee court and served a Rule 68 partial offer of judgment on plaintiffs in an attempt to moot plaintiffs' FDCPA claims.

After considering all argument of counsel, 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. Contrary to plaintiffs' arguments, MDL No. 2295 already includes several actions alleging claims under the FDCPA. *See* Transfer Order, MDL No. 2295, Aug. 3, 2012; Transfer Order, MDL No. 2295, Jun. 8, 2012. Moreover, the Panel has long held that the presence of unique claims is not a bar to transfer. *See In re: Satyam Computer Servs., Ltd., Sec. Litig.*, 712 F. Supp. 2d 1381, 1382 (J.P.M.L. 2010). Like the MDL No. 2295 actions, *Skarbakka* involves allegations that defendant Portfolio called plaintiffs' cellular telephone without their permission using an automatic dialing system in violation of the TCPA. If the transferee judge determines after close scrutiny that remand

* Judge John G. Heyburn II did not participate in the disposition of this matter.

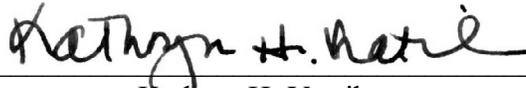
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of any claims is appropriate, procedures are available whereby this may be accomplished with a minimum of delay. *See* Panel Rule 10.1.

We are sympathetic to plaintiffs' concerns about inconvenience, but are unpersuaded that they justify exclusion of this action from centralized proceedings. The Panel has repeatedly 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 and can address plaintiffs' concerns about appearing telephonically for court-ordered mediation. Plaintiffs do not explain the relevance of defendant's unaccepted partial offer of judgment, particularly given that cases alleging such claims are already pending in MDL No. 2295. Moreover, defendant's motivation in notifying the Panel that *Skarbakka* is a potential tag-along action is not relevant to the Panel's consideration, as Portfolio is required to provide the Panel with such notification under Panel Rule 7.1(a).

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



Kathryn H. Vratil
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W. Royal Furgeson, Jr.
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Lewis A. Kaplan

Paul J. Barbadoro
Charles R. Breyer