

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

IN RE: GOOGLE INC. COOKIE PLACEMENT  
CONSUMER PRIVACY LITIGATION

Brian Mount, et al. v. PulsePoint, Inc., S.D. New York, )  
C.A. No. 1:13-06592 )

MDL No. 2358

ORDER DENYING TRANSFER

**Before the Panel:**\* Pursuant to 28 U.S.C. § 1407(c), defendant PulsePoint, Inc. (PulsePoint) in a Southern District of New York action seeks transfer of this action (*Mount*) for inclusion in MDL No. 2358. MDL defendants<sup>1</sup> support the motion to transfer, while the plaintiffs oppose it.

We previously centralized this litigation, observing at the time that “All actions are putative nationwide class actions against Google that center around Google’s allegedly improper placement of cookies on web browsers. Specifically, the actions share factual allegations that Google (and, in the Northern District of California action, defendant PointRoll) surreptitiously circumvented the privacy settings on the Safari or Internet Explorer browsers of plaintiffs to place tracking cookies on the users’ computing devices.” *In re: Google Inc. Cookie Placement Cons. Priv. Litig.*, 867 F.Supp. 2d 1356 (J.P.M.L. 2012). MDL plaintiffs alleged that the MDL defendants tricked plaintiffs’ Apple Safari and/or Internet Explorer browsers into accepting cookies, which then allowed defendants to display targeted advertising.

No party disputes that PulsePoint engaged in conduct similar to that which the MDL defendants were accused—namely, that PulsePoint overcame certain users’ Safari internet browser privacy protections to set third-party tracking cookies. However, background facts regarding the operation of the Safari browser are the only facts *Mount* and the actions in the MDL have in common. PulsePoint—the sole defendant in *Mount*—was not a defendant in the MDL, is not accused of acting in concert with any of the MDL defendants and, in fact, is not even mentioned in the consolidated complaint in the MDL. Similarly, the *Mount* plaintiffs were not involved in the MDL (though their counsel was).

The MDL has effectively concluded with Judge Robinson’s October 2013 dismissal of the consolidated amended complaint. Also, a fairness hearing regarding a settlement with defendant PointRoll is scheduled for mid-February 2014. Transferring *Mount* to the MDL at this late stage will prejudice severely plaintiffs’ claims against a defendant that was not part of the MDL proceeding, which

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\* Judges Paul J. Barbadoro and Lewis A. Kaplan did not participate in the decision of this matter.

<sup>1</sup> Google Inc., Media Innovation Group, LLC; WPP PLC; and Vibrant Media Inc. (collectively, MDL defendants).

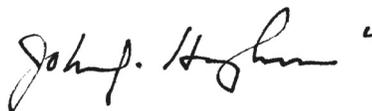
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is nearly concluded. Defendants argue that transfer is appropriate to avoid rulings inconsistent with either Judge Robinson's dismissal order or the Third Circuit's ruling on MDL plaintiffs' pending appeal. The Panel's concern, however, is with the just and efficient conduct of factually-related MDL No. 2358 actions, not with whether an inconsistent result may occur in a case involving parallel conduct by a defendant not already involved in the MDL proceedings.

Should the need arise, we encourage the parties to employ alternatives to transfer to minimize the possibility of duplicative discovery and inconsistent pretrial rulings. *See, e.g., In re: Eli Lilly and Co. (Cephalexin Monohydrate) Pat. Litig.*, 446 F.Supp. 242, 244 (J.P.M.L. 1978); *see also Manual for Complex Litig., Fourth*, § 20.14 (2004).

IT IS THEREFORE ORDERED that defendant's motion for transfer, pursuant to Section 1407(c), is DENIED.

PANEL ON MULTIDISTRICT LITIGATION



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John G. Heyburn II  
Chairman

Marjorie O. Rendell  
Sarah S. Vance

Charles R. Breyer  
Ellen Segal Huvelle