

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: CONVERGENT TELEPHONE CONSUMER
PROTECTION ACT (TCPA) LITIGATION**

MDL No. 2478

ORDER VACATING CONDITIONAL TRANSFER ORDER

Before the Panel: Plaintiff in the action listed on Schedule A (*Mei Ma*) moves under Panel Rule 7.1 to vacate our order that conditionally transferred *Mei Ma* to the District of Connecticut for inclusion in MDL No. 2478. Defendant Convergent Outsourcing, Inc. (Convergent) opposes the motion to vacate.

After considering the argument of counsel, we find that this action shares questions of fact with the actions previously transferred to MDL No. 2478, but that transfer under 28 U.S.C. § 1407 will not serve the convenience of the parties and witnesses or promote the just and efficient conduct of the litigation. This MDL involves factual questions arising from allegations that Convergent violated the federal Telephone Consumer Protection Act (TCPA) when it, or its agents, contacted plaintiffs on their cellular telephones, without prior consent, using an automatic telephone dialing system or an artificial or prerecorded voice. *See In re Convergent Tel. Consumer Prot. Act Litig.*, 981 F. Supp. 2d 1385 (J.P.M.L. 2013). Like the actions pending in the MDL, plaintiff in *Mei Ma* alleges that Convergent repeatedly called her cellular telephone in violation of the TCPA.

Multidistrict litigation, though, “is not static.” *In re Bridgestone/Firestone, Inc., Tires Prods. Liab. Litig.*, 659 F. Supp. 2d 1371, 1372 (J.P.M.L. 2009). The relative merits of transferring new tag-along actions to an MDL can change over time as the transferee court completes its primary tasks, and at a certain point the “benefits of transfer should not be assumed to continue.” *Id.* Based upon our review of the progress of this litigation and our consultation with the transferee judge, we find that transfer of *Mei Ma* to MDL No. 2478 is no longer warranted. On November 10, 2016, the transferee court granted final approval of a class action settlement that resolves most of the pending TCPA claims in the MDL. This settlement contains an injunctive component that requires Convergent to “admit that it used an [automatic telephone dialing system] for purported violations of the TCPA that occurred during the Rule 23(b)(2) Class time period so long as the claim is made on an individual basis.”¹ Final Approval Order at 5, ¶ 13, *In re Convergent Outsourcing, Inc., Tel. Consumer Prot. Act Litig.*, C.A. No. 3:13-md-2478 (D. Conn. Nov. 10, 2016), ECF No. 268. Thus,

¹ Plaintiff in *Mei Ma* appears to be a member of the Rule 23(b)(2) class.

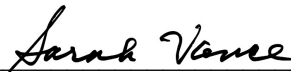
-2-

one of the most significant factual disputes between Convergent and plaintiff has been resolved,² as well as much of the potential for common discovery and motion practice.

Accordingly, transfer of *Mei Ma* to MDL No. 2428 is no longer appropriate. We see no reason why, subject to the same conditions imposed on the parties to MDL No. 2478, the parties in *Mei Ma* should not be able to avail themselves of the documents and depositions accumulated in this MDL, and the court may find useful guidance in the Honorable Alvin W. Thompson's pretrial rulings. Thus, even absent transfer, most of the benefits of the MDL are available to expedite resolution of *Mei Ma*.

IT IS THEREFORE ORDERED that the Panel's conditional transfer order designated as "CTO-22" is vacated with respect to the action listed on Schedule A.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

² We note also that, in its answer to plaintiff's complaint, Convergent admits plaintiff's allegation that "[a]ll calls made by Defendants were made through the use of an 'automatic telephone dialing system' as defined by [the TCPA]." See Answer, ¶ 31, *Mei Ma v. Convergent Outsourcing, Inc.*, C.A. No. 2:16-04558 (C.D. Cal. July 21, 2016), ECF No. 8; Compl., ¶ 31, *id.*, ECF No. 1.

**IN RE: CONVERGENT TELEPHONE CONSUMER
PROTECTION ACT (TCPA) LITIGATION**

MDL No. 2478

SCHEDULE A

Central District of California

MEI MA v. CONVERGENT OUTSOURCING, INC., ET AL., C.A. No. 2:16-04558