

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: MONITRONICS INTERNATIONAL, INC.,
TELEPHONE CONSUMER PROTECTION ACT (TCPA)
LITIGATION**

MDL No. 2493

TRANSFER ORDER

Before the Panel:* Plaintiff moves under Panel Rule 7.1 to vacate the Panel's order conditionally transferring the action listed on the attached Schedule A (*Worsham II*) to MDL No. 2493. Defendant Monitronics International, Inc. (Monitronics) opposes the motion and supports transfer.

This is plaintiff's second action against Monitronics alleging that Monitronics, Alliance Security, Inc. (Alliance), or agents acting on their behalf have placed one or more unauthorized telemarketing calls to plaintiff using an automatic telephone dialing system or artificial or prerecorded voice and acting in disregard of his listing on the national Do Not Call Registry. We transferred his first action (*Worsham I*) to MDL No. 2493 on December 8, 2015, after receiving full briefing from plaintiff, Monitronics, and Alliance. *See* Transfer Order (*Worsham I*) at 1-2 (J.P.M.L. Dec. 8, 2015)

In support of the motion to vacate, plaintiff principally argues that his action was improperly removed to federal court and his motion for remand to state court is pending.¹ The Panel often has held that jurisdictional issues do not present an impediment to transfer, as the parties can present such arguments to the transferee judge.² *See, e.g., In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001). Additionally, his suggestion that the Panel itself must decide the existence of subject matter jurisdiction prior to transfer is incorrect. It is well-

* Judge Lewis A. Kaplan and Judge Catherine D. Perry took no part in the decision of this matter.

¹ Plaintiff also requests an extension of time to file an additional brief in support of his motion to vacate until after the transferor court rules on his motion for remand. Plaintiff has had an adequate opportunity to oppose transfer and, in fact, has filed two briefs in opposition to transfer. His request for an extension of time to submit further briefing is denied.

² Moreover, under Panel Rule 2.1(d), the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

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established that “Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case, including issues relating to a motion to remand.” *See In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990).

Plaintiff’s further arguments against transfer are largely the same as those we rejected in transferring *Worsham I* to MDL No. 2493.³ The few new arguments he raises against transfer of *Worsham II* also are unconvincing. First, he argues that *Worsham II* asserts solely state law claims – that is, under the Maryland Telephone Consumer Protection Act – and thus is materially different from the federal TCPA actions in the MDL. But “the presence of additional facts or differing legal theories” does not prevent the transfer of an action that shares significant factual issues with those in the MDL. *See, e.g., In re: Auto Body Shop Antitrust Litig.*, 37 F. Supp. 3d 1388, 1390 (J.P.M.L. 2014). Here, *Worsham II* indisputably presents common factual issues as to Monitronics’ policies and procedures for calling consumers which overlap with the MDL. Indeed, the *Worsham II* complaint alleges that the actions pending in MDL No. 2493 are evidence of Monitronics’ allegedly knowing violations of the law, which further underscores the significant overlap presented by *Worsham II*.

Plaintiff also argues that transfer of *Worsham II* will result in undue burden and a delay of his case, as shown by an alleged lack of progress in *Worsham I* over the last six months. We have held repeatedly that, while transfer of a particular action might inconvenience some parties to that action, transfer 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).

After considering the argument of counsel, we conclude that this action shares questions of fact with the actions previously transferred to MDL No. 2493, 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 this litigation. Like many of the already-centralized actions, *Worsham II* involves factual questions concerning “Monitronics’ policies and procedures for calling consumers, directly or through agents, for the purpose of selling home security products or services, as well as its procedures for obtaining and recording a consumer’s consent to receive such calls.” *See In re: Monitronics Int’l, Inc., TCPA Litig.*, 988 F. Supp. 2d at 1366. Thus, the action will benefit from common discovery and pretrial proceedings.

³ *See* Transfer Order (*Worsham I*) at 1-2 (J.P.M.L. Dec. 8, 2015) (rejecting plaintiff’s arguments concerning lack of due process, alleged factual and legal differences, procedural disparity, and inconvenience, and finding that *Worsham I* “shares questions of the fact with the actions previously transferred to MDL No. 2493”).

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IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Northern District of West Virginia and, with the consent of that court, assigned to the Honorable Irene M. Keeley for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "Sarah S. Vance", is positioned above a horizontal line.

Sarah S. Vance
Chair

Marjorie O. Rendell
Ellen Segal Huvelle

Charles A. Breyer
R. David Proctor

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SCHEDULE A

District of Maryland

WORSHAM v. MONITRONICS INTERNATIONAL, INC., ET AL.,
C.A. No. 1:16-00600