

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: WHOLE FOODS MARKET, INC., GREEK YOGURT
MARKETING AND SALES PRACTICES LITIGATION**

MDL No. 2588

TRANSFER ORDER

Before the Panel: Plaintiff in the Southern District of Florida action (*Frydman*) listed on the attached Schedule A moves under Panel Rule 7.1 to vacate our order conditionally transferring her action to the Western District of Texas for inclusion in MDL No. 2588. Responding defendants Whole Foods Market Group, Inc., and WFM Private Label, L.P., oppose the motion.

In support of her motion to vacate, the *Frydman* plaintiff argues that the Southern District of Florida court should be allowed to rule on her pending motion for remand to state court. The Panel often has held that the pendency of such a motion does not present an impediment to transfer, as the plaintiff can present her jurisdictional arguments to the transferee judge.¹ 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).

After considering the argument of counsel, we find that *Frydman* involves common questions of fact with actions previously transferred to MDL No. 2588, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. Plaintiff does not dispute that her action shares factual issues with the actions previously centralized in the MDL – in particular, issues arising from “allegations that Whole Foods 365 Greek Yogurt contains much more sugar than stated on the label, that defendants’ marketing of the Yogurt was false and deceptive, and that defendants were negligent in testing the Yogurt, and in ensuring that the label was accurate.” See *In re: Whole Foods Mkt., Inc., Greek Yogurt Mktg. & Sales Practices Litig.*, — F. Supp. 3d —, 2014 WL 7006973, at *1 (J.P.M.L. Dec. 10, 2014).

¹ 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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IT IS THEREFORE ORDERED that the *Frydman* action is transferred to the Western District of Texas and, with the consent of that court, assigned to the Honorable Sam Sparks for inclusion in the coordinated or consolidated pretrial proceedings.

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

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MARKETING AND SALES PRACTICES LITIGATION**

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SCHEDULE A

Southern District of Florida

FRYDMAN v. WHOLE FOODS MARKET GROUP, INC., ET AL.,
C.A. No. 9:15-80007