

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: HERBAL SUPPLEMENTS MARKETING
AND SALES PRACTICES LITIGATION**

MDL No. 2619

TRANSFER ORDER

Before the Panel: Plaintiff in the action listed on Schedule A (*Manning*) moves under Panel Rule 7.1 to vacate our order conditionally transferring the action to MDL No. 2619, and to remand the action to state court. Defendant Walmart Stores, Inc. (Wal-Mart) opposes the motion.

After considering the argument of counsel, we find this action involves common questions of fact with the actions previously transferred to MDL No. 2619 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 the litigation. Plaintiff does not dispute that her action shares questions of fact with MDL No. 2619. Like many of the already-centralized actions, *Manning* involves factual questions arising from allegations that Wal-Mart herbal supplements sold under the Spring Valley name do not contain the herbs advertised on the label and contain unidentified contaminants, and that DNA testing conducted by the New York attorney general supports these claims. *See In re: Walgreens Herbal Supplements Mktg. and Sales Practices Litig.*, — F. Supp. 3d —, 2015 WL 3643508 (J.P.M.L. June 9, 2015).

In support of her motion to vacate, plaintiff principally argues that *Manning* was improperly removed, and the transferor court should be allowed to rule on the pending motion to remand to state court.¹ The Panel often has held that jurisdictional issues do not present an impediment to transfer, as plaintiffs can present arguments regarding those issues 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).

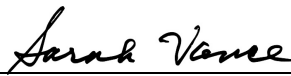
¹ Plaintiff also suggests that the Panel order remand of her action to state court. Section 1407 does not authorize such action. *See In re Ivy*, 901 F.2d 7, 9 (2d Cir. 1990) (“Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case, including issues relating to a motion to remand.”).

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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IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the Northern District of Illinois and, with the consent of that court, assigned to the Honorable John W. Darrah 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

**IN RE: HERBAL SUPPLEMENTS MARKETING
AND SALES PRACTICES LITIGATION**

MDL No. 2619

SCHEDULE A

District of District of Columbia

MANNING v. WALMART STORES, INC., C.A. No. 1:15-00439