

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: VOLKSWAGEN “CLEAN DIESEL”  
MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2672

**TRANSFER ORDER**

**Before the Panel:**\* Plaintiffs in three actions listed on the attached Schedule A move under Panel Rule 7.1 to vacate the Panel’s orders conditionally transferring their respective actions to MDL No. 2672. Volkswagen Group of America, Inc. (VW) opposes the motions.

After considering the argument of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2672, 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. Transfer is warranted for the reasons set out in our order directing centralization. In that order, we held that the Northern District of California was an appropriate Section 1407 forum for actions sharing factual questions regarding the role of VW and related entities in equipping certain 2.0 and 3.0 liter diesel engines with software allegedly designed to engage emissions controls only when the vehicles undergo official testing, while at other times the engines emit nitrous oxide well in excess of legal limits. *See In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, 148 F. Supp. 3d 1367 (J.P.M.L. 2015). These actions involve allegations related to affected VW, Audi and/or Porsche vehicles and clearly fall within the MDL’s ambit.

Plaintiffs in the Southern District of Texas and Central District of California actions oppose transfer, in part, based on arguments that federal jurisdiction is lacking over their respective actions. Plaintiffs can present motions for remand to the transferee judge. *See, e.g., In re: Ivy*, 901 F. 2d 7, 9 (2nd Cir. 1990); *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001). These plaintiffs also stress the inconvenience that transfer may cause, given that their respective witnesses are primarily located where their actions are pending. But, in deciding issues of Section 1407 transfer, we look to the overall convenience of the parties and witnesses in the litigation as a whole.<sup>1</sup> Here, overall convenience will be served by transfer of all of these actions, given the extensive factual overlap among these actions and the more than 1,650

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\* Judges Charles R. Breyer and Lewis A. Kaplan took no part in the decision of this matter.

<sup>1</sup> *See In re: Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“While we are aware that centralization may pose some inconvenience to some parties, in deciding issues of transfer under Section 1407, we look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”).

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cases pending in MDL No. 2672. Moreover, “since Section 1407 transfer is for pretrial proceedings only, there is usually no need for the parties and witnesses to travel to the transferee district for depositions or otherwise.” See *In re: Cygnus Telecommunications Tech., LLC, Patent Litig.*, 177 F. Supp. 2d 1375, 1376 (J.P.M.L. 2001).

Plaintiffs in the Southern District of Texas and Central District of California actions also argue that transfer is inappropriate because they have opted out of the MDL settlement. Opting out of an MDL settlement is not a valid reason to vacate transfer of otherwise factually-related actions. See, e.g., Transfer Order, MDL No. 1720 – *In re: Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, doc. Doc. 204 at 2, n.4 (J.P.M.L. Oct. 16, 2013) (“The Panel has long recognized that transfer of opt-out actions to the MDL addressing the proposed class settlement is desirable because of the efficiencies from the transferee court’s management of overlapping actions, integration of existing discovery with discovery in the new actions, and the court’s expertise in the issues.”) (citing *In re: Pennsylvania Life Co. Secs. Litig.*, 436 F. Supp. 406 (J.P.M.L. 1977)). Similarly unpersuasive is the argument of the Middle District of Florida plaintiffs that they sold their car after the MDL settlement’s deadline and, as a consequence, the settlement does not apply to them. We have not conditioned transfer of actions to this MDL on the applicability of the MDL settlement. Because the Middle District of Florida action concerns an affected VW vehicle equipped with a defeat device, transfer is appropriate.

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of California and, with the consent of that court, assigned to the Honorable Charles R. Breyer for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



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Sarah S. Vance  
Chair

Marjorie O. Rendell  
Ellen Segal Huvelle

R. David Proctor  
Catherine D. Perry

**IN RE: VOLKSWAGEN “CLEAN DIESEL”  
MARKETING, SALES PRACTICES, AND  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2672

**SCHEDULE A**

Central District of California

ALLMAN, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC.,  
C.A. No. 2:17-01369

Middle District of Florida

BROOKS, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,  
C.A. No. 8:17-00314

Southern District of Texas

CANTU, ET AL. v. VOLKSWAGEN GROUP OF AMERICA, INC., ET AL.,  
C.A. No. 1:17-00012