

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: ASHLEY MADISON CUSTOMER
DATA SECURITY BREACH LITIGATION**

MDL No. 2669

REMAND ORDER

Before the Panel: Defendants Avid Life Media, Inc., and Avid Dating Life, Inc. (collectively, Avid)¹ move under Panel Rule 10.2 to vacate our order that conditionally remanded the action (*Doe*) listed on Schedule A to the Southern District of Mississippi. The Panel placed *Doe* on a conditional remand order after receiving the transferee judge’s suggestion of remand. Plaintiffs in *Doe* oppose the motion.

After considering the argument of counsel, the Panel finds that remand of this action under 28 U.S.C. § 1407 is warranted. In considering the question of remand, the Panel consistently gives great weight to the transferee judge’s determination that remand of a particular action at a particular time is appropriate because the transferee judge, after all, supervises the litigation’s pretrial proceedings. *See, e.g., In re Columbia/HCA Healthcare Corp. Qui Tam Litig. (No. II)*, 560 F. Supp. 2d 1349, 1350 (J.P.M.L. 2008). The transferee judge’s suggestion of remand indicates that “he perceives his role under Section 1407 to have ended.” *Id.* at 1350 (quoting *In re Holiday Magic Sec. & Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977)). Here, the transferee judge explained why Section 1407 remand is appropriate, noting that a class settlement has resolved all actions in the MDL, with the exception of *Doe*, and that no multi-jurisdictional issues remain in the litigation. His determination that remand of *Doe* is now appropriate was based on the totality of circumstances involved in the docket. *See In re Brand-Name Prescription Drugs Antitrust Litig.*, 170 F. Supp. 2d 1350, 1352 (J.P.M.L. 2001) (“Whether Section 1407 remand is appropriate for actions or claims in any particular multidistrict docket is based upon the totality of circumstances involved in that docket.”).

Avid argues that judicial economy would be best served if the transferee court decides Avid’s pending motion to compel arbitration in *Doe* because of the court’s familiarity with the facts and legal issues in this litigation. Certainly, transferee courts can and do rule on such motions. Section 1407(a), though, expressly authorizes remand “at or before” the conclusion of pretrial proceedings. *See, e.g., In re CVS Caremark Corp. Wage & Hour Emp’t Practices Litig.*, 684 F. Supp. 2d 1377, 1378 n.1 (J.P.M.L. 2010) (“A transferee judge is always free to suggest early remand of state law claims, especially where he or she believes that such claims would be more appropriately resolved

¹ Defendants state that Avid Life Media, Inc., was renamed Ruby Corp. on July 12, 2016, and Avid Dating Life, Inc., was renamed Ruby Life Inc. The parties continue to refer to defendants as Avid, and we shall do the same.

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by the transferor court or courts.”). Moreover, the pendency of dispositive motions, such as motions to compel arbitration, poses no obstacle to remand under Section 1407. *See In re Baseball Bat Antitrust Litig.*, 112 F. Supp. 2d 1175, 1177 (J.P.M.L. 2000) (ordering remand in accordance with suggestion of remand issued by transferee judge, despite remaining pretrial discovery and pending motions to dismiss). Here, the transferee court specifically considered and rejected Avid’s argument that the court should “retain jurisdiction over this case to decide its contemplated amended motion to dismiss and/or stay and compel arbitration.” *See Order & Suggestion of Remand at 2, Doe v. Avid Life Media, Inc.* (filed with J.P.M.L. Feb. 21, 2019), ECF No. 86. The transferee court is in the best position to make this discretionary decision. We see no reason to accord anything other than great weight to the transferee court’s conclusion.

IT IS THEREFORE ORDERED that this action is remanded to the Southern District of Mississippi.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Lewis A. Kaplan
R. David Proctor
Karen K. Caldwell

Ellen Segal Huvelle
Catherine D. Perry
Nathaniel M. Gorton

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SCHEDULE A

Eastern District of Missouri

DOE v. AVID LIFE MEDIA, INC., ET AL., C.A. No. 4:15-01920 (S.D. Mississippi,
C.A. No. 3:15-00658)