

**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:**\* Plaintiff in the *Castellucci* action pending in the Eastern District of Virginia and listed on the attached Schedule A moves under Panel Rule 7.1 to vacate the Panel’s order conditionally transferring his action to MDL No. 2672. Volkswagen Group of America, Inc. 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. 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” Mktg., Sales Pracs., and Prods. Liab. Litig.*, 148 F. Supp. 3d 1367 (J.P.M.L. 2015). This action involves allegations related to the “clean diesel” scandal and clearly falls within the MDL’s ambit.

Plaintiff argues against transfer that federal courts lack jurisdiction over his action. Plaintiff can present his motion for remand to the transferee judge.<sup>1</sup> *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).

Plaintiff also argues that he suffered unique personal injuries due to his exposure to diesel exhaust fumes and that he brings unique requests for damages and medical monitoring. Despite any potentially unique claims, transfer of the action is consistent with the initial transfer order in this

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\* Judge Charles R. Breyer took no part in the decision of this matter.

<sup>1</sup> Panel Rule 2.1(d) expressly provides that 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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docket since the action’s factual core is the diesel emissions fraud. Where, as here, “common factual issues exist, . . . the presence of different legal theories among the subject actions is not a bar to centralization.” *In re: Bank of New York Mellon Corp. Foreign Exch. Transactions Litig.*, 857 F. Supp. 2d 1371, 1372 (J.P.M.L. 2012). Should the need arise, the transferee judge can accommodate any unique discovery needs that this case presents.

Plaintiff filed this action after he voluntarily dismissed an earlier action, which was part of consolidated proceedings against VW in state court. Plaintiff asserts that his current action is significantly advanced and that many prior rulings of the Virginia state court can be applied to his current action. Plaintiff’s action was removed to federal court in July 2018, after being refiled in state court in May 2018. Plaintiff brings some different claims – for instance, a claim for violation of Florida’s civil RICO statute – than he asserted in his prior state court action, which likely will generate significant motion practice. His assertion that “most of the pretrial work,” *see* Motion to Vacate at 5, was completed in his prior state court action implicitly concedes that some pretrial work remains. If the transferee judge is of the opinion that this action or any other MDL No. 2672 action is advanced to the point that trial is appropriate, then Section 1407 remand is available with a minimum of delay. We decline to speculate whether any (and, if so, which) previous state court rulings should apply to plaintiff’s recently-filed action.

IT IS THEREFORE ORDERED that the action listed on Schedule A is 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  
R. David Proctor  
Catherine D. Perry

Lewis A. Kaplan  
Ellen Segal Huvelle

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**SCHEDULE A**

Eastern District of Virginia

CASTELLUCCI v. VOLKSWAGEN GROUP OF AMERICA, INC., C.A. No. 1:18-863