

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: JUUL LABS, INC., MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY LITIGATION**

MDL No. 2913

TRANSFER ORDER

Before the Panel: Plaintiffs in the four actions listed on Schedule A and certain defendants¹ in the Southern District of New York *Toth* action move under Panel Rule 7.1 to vacate our orders that conditionally transferred their actions to MDL No. 2913. Defendant JUUL Labs, Inc. (JLI or Juul) oppose the motion(s) to vacate.

After considering the arguments of counsel, we find these actions involve common questions of fact with the actions previously transferred to MDL No. 2913, 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. The actions in the MDL share factual questions arising from allegations that “JLI has marketed its JUUL nicotine delivery products in a manner designed to attract minors, that JLI’s marketing misrepresents or omits that JUUL products are more potent and addictive than cigarettes, that JUUL products are defective and unreasonably dangerous due to their attractiveness to minors, and that JLI promotes nicotine addiction.” *See In re Juul Labs, Inc., Mktg., Sales Practices & Prods. Liab. Litig.*, 396 F. Supp. 3d 1366, 1367 (J.P.M.L. 2019). These actions implicate some or all of those same questions.

In support of the motions to vacate, plaintiffs in the three Southern District of Texas actions argue that removal of their actions to federal court was improper, and the transferor court should decide their motions for remand to state court. Jurisdictional issues do not present an impediment to transfer of factually related cases, as plaintiffs can present their motions 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).

Defendants and plaintiffs in the Southern District of New York *Toth* action oppose transfer because, in addition to allegations regarding plaintiff’s use of Juul products, the action also

¹ Fontem US, Inc., LOEC, Inc., Reynolds American, Inc., and R.J. Reynolds Tobacco Company (collectively, the blu defendants) and Japan Tobacco International U.S.A., Inc., and Logic Technology Development LLC (collectively, the Logic defendants).

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.

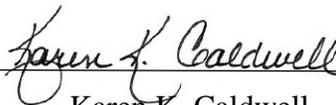
involves her use of two different electronic nicotine delivery systems made by the blu and Logic defendants. We are not persuaded by these arguments. We previously have transferred other actions involving additional e-cigarette maker defendants to the MDL. *See, e.g., In re Juul Labs, Inc., Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No. 2913, doc. 365 (J.P.M.L. Feb. 4, 2020) (transferring N.D. Alabama action brought against more than a dozen defendants).

Opponents of transfer of *Toth* further argue that they would be inconvenienced by transfer. This argument is similarly unpersuasive. In considering questions of transfer, we must consider the convenience of the parties and witnesses in the litigation as a whole. *See In re Watson Fentanyl Patch Prods Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012) (“[I]n deciding issues of transfer under Section 1407, we look to the overall convenience of the parties and witnesses, not just th[at] of a single plaintiff or defendant in isolation.”). The transferee judge has the discretion to employ separate tracks or other appropriate pretrial techniques to address any issues specific to the blu or Logic defendants. *See In re Proton-Pump Inhibitor Prods. Liab. Litig. (No. II)*, 261 F. Supp. 3d 1351, 1354 (J.P.M.L. 2017).

The blu and Logic defendants alternatively request separation and remand of the claims against them. But we do not view these claims as amenable to separation and remand under Section 1407(a), given the seemingly indivisible nature of plaintiffs’ alleged injuries that arose from plaintiff’s use of all three defendants’ devices. Moreover, we have declined to separate and remand similar claims against non-Juul manufacturer defendants in the past. *See, e.g., In re Juul Labs, Inc., Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No. 2913, doc. No. 365 at 2 (J.P.M.L. Feb. 4, 2020) (denying motion to vacate CTO, noting that that other e-cigarette companies already were defendants in the MDL, and that, in any event, the “seemingly indivisible nature” of the subject plaintiff’s claims rendered a partial transfer “impracticable”).

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 William H. Orrick III for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell
Chair

Catherine D. Perry
Matthew F. Kennelly
Roger T. Benitez

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

**IN RE: JUUL LABS, INC., MARKETING, SALES PRACTICES,
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MDL No. 2913

SCHEDULE A

Southern District of New York

TOTH, ET AL. v. JUUL LABS, INC., ET AL., C.A. No. 7:20-08517

Southern District of Texas

SCHOPPA v. JUUL LABS, INC., ET AL., C.A. No. 4:20-03535

KHERKHER v. JUUL LABS, INC., ET AL., C.A. No. 4:20-03540

WOODRUFF v. JUUL LABS, INC., ET AL., C.A. No. 4:20-03543