

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:* Defendant Axiocore Corporation moves under Panel Rule 7.1 to vacate our order conditionally transferring the action listed on the attached Schedule A (*Lindstrom*) to the Northern District of California for inclusion in MDL No. 2913. In the alternative, Axiocore asks that the Panel separate and remand the claims against it to the transferor court. Separately, defendant Evolv, LLC, moves to vacate, in part, the order as to *Lindstrom*, and for separation and remand of the claims against defendants other than JUUL Labs, Inc. (JLI), Pax Labs, Inc., and Altria Group, Inc. JLI opposes the motions, and Pax Labs and Altria Group join in JLI's response.

After considering the argument of counsel, we find that the *Lindstrom* action involves common questions of fact with actions transferred to MDL No. 2913, and that transfer 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). The *Lindstrom* action implicates those same questions.

Axiocore’s and Evolv’s arguments against transfer (and for separation and remand of the claims against them) largely were addressed in the recent Panel order transferring the Northern District of Alabama *May* action to the MDL, over the objections of defendant Schwartz E-Liquid LLC. Similar to Axiocore and Evolv here, Schwartz was one of several non-JLI vaping entities sued in *May*. In ordering transfer of *May*, the Panel stated: “The presence of additional defendants does not bar transfer, because ‘transfer under Section 1407 does not require a complete identity of parties.’” Transfer Order at 2, *In re Juul Labs, Inc., Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No. 2913 (J.P.M.L. Feb. 4, 2020) (ECF No. 365) (quoting *In re U.S. Office of Personnel Mgmt. Data Sec. Breach Litig.*, 138 F. Supp. 3d 1379, 1380 (J.P.M.L. 2015)). The Panel noted that other e-cigarette companies already were defendants in the MDL, and that, in any event, the “seemingly indivisible nature” of the *May* plaintiff’s claims rendered a partial transfer “impracticable.” *Id.* The Panel stated that the transferee judge had “the discretion to employ

* Judge Karen K. Caldwell took no part in the decision of this matter.

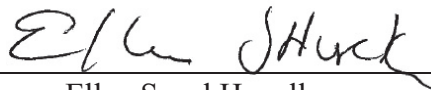
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separate tracks or other appropriate pretrial techniques to address any issues specific to the non-JLI defendants, including confidentiality concerns such as those raised by Schwartz.” *Id.*

Axiocore’s and Evolv’s attempts to distinguish the Panel’s decision in *May* fall short. For its part, Axiocore argues that the *Lindstrom* plaintiff has not alleged actual use of a JUUL product, that Axiocore’s products are not used in JUUL products, that Axiocore has no relationship with JLI, and that one of plaintiff’s alleged injuries – lipoid pneumonia – is a condition associated with use of illicit THC products. The first argument goes to the merits of plaintiff’s claims, and the others fail to recognize that, as in *May*, the *Lindstrom* plaintiff alleges seemingly indivisible injuries (including addiction, bronchitis, and possible permanent lung damage) as a result of using defendants’ products. Similarly, Evolv’s contention that plaintiff’s claims against Evolv and Axiocore are easily separated from her JUUL-related claims, because they fall into two distinct time frames, rests on an untenable reading of the *Lindstrom* complaint. Contrary to Evolv’s assertion, the complaint is not readily divisible into two time periods. *See, e.g., Lindstrom* Am. Compl. ¶ 3.3 (alleging that plaintiff is still being treated for injuries “caused by Defendants’ vape products and technology”). Evolv’s argument that it would be inconvenienced by transfer also fails, because the Panel considers the convenience of the parties and witnesses as a whole in deciding the issue of transfer. *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.”).

IT IS THEREFORE ORDERED that the *Lindstrom* action is 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



Ellen Segal Huvelle
Acting Chair

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David C. Norton

Catherine D. Perry
Matthew F. Kennelly

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

MDL No. 2913

SCHEDULE A

Western District of Texas

LINDSTROM v. JUUL LABS, INC., ET AL., C.A. No. 1:20-00057