

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 two actions (*Eisenhauer* and *Lewis*) separately move under Panel Rule 7.1 to vacate our orders conditionally transferring their respective actions to the Northern District of California for inclusion in MDL No. 2913. The actions are listed on the attached Schedule A. Defendant JUUL Labs, Inc. (JLI) opposes the motions to vacate.

After considering the argument of counsel, we find that the *Eisenhauer* and *Lewis* actions involve 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 *Eisenhauer* and *Lewis* actions implicate many of those same questions.

In opposing transfer, the *Eisenhauer* plaintiff cites the pendency of his motion for remand to state court, and argues that federal subject matter jurisdiction over his action is lacking. The Panel consistently has held, however, that jurisdictional objections are not an impediment to transfer. E.g., *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347 (J.P.M.L. 2001) (noting that “remand motions can be presented to and decided by the transferee judge,” and that transferor courts wishing to rule on such motions generally “have adequate time to do so”).

The *Lewis* plaintiffs’ arguments against transfer of their action also are unpersuasive. Essentially, the *Lewis* plaintiffs argue that their action should not be transferred because it is a second-hand smoke case – *i.e.*, it is brought on behalf of a putative Illinois class of non-users of JUUL products who allegedly have been injured by the discharge from those products. But a review of the *Lewis* complaint demonstrates that the action shares multiple factual issues concerning the development, manufacture, labeling, and marketing of JUUL products, the alleged risks posed by

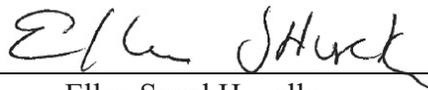
* Judge Karen K. Caldwell took no part in the decision of this matter.

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use of those products, and JLI's knowledge of those risks.¹ Section 1407 transfer does "not require a complete identity of parties." *In re: Bank of N.Y. Mellon Corp. Foreign Exch. Transactions Litig.*, 857 F. Supp. 2d 1371, 1373 (J.P.M.L. 2012). Moreover, the MDL already includes actions brought by municipalities and school districts alleging indirect harm caused by the use of JUUL products.

IT IS THEREFORE ORDERED that the *Eisenhauer* and *Lewis* actions 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



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¹ See *Lewis* Compl. ¶ 1 (alleging that the discharge from JUUL products contains "dangerous chemical compounds, including nicotine and numerous toxins"). ¶ 2 (alleging that plaintiffs have "suffered adverse health consequences" by inhaling JUUL discharges); ¶ 10 (alleging that JUUL products deliver more nicotine than traditional combustible tobacco products); ¶ 13 ("Regardless of the means of exposure, nicotine affects brain development, attention, cognition, and raises the risk of addiction to other drugs."); ¶ 29 (alleging that JUUL discharges can cause inflammatory lung diseases and other adverse health conditions); ¶ 37 (alleging that JLI "knew or reasonably should have known" that JUUL products emit medically significant amounts of nicotine and other toxins).

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MDL No. 2913

SCHEDULE A

Northern District of Illinois

LEWIS v. JUUL LABS, INC., C.A. No. 1:19-07787

Eastern District of Pennsylvania

EISENHAUER v. JUUL LABS, INC., ET AL., C.A. No. 2:20-00343