

UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION

IN RE: AT&T INC. CUSTOMER DATA  
SECURITY BREACH LITIGATION

MDL No. 3114

ORDER DENYING REMAND

**Before the Panel:**\* In October 2024, we transferred the action listed on Schedule A (*Phillips*) from the Southern District of Florida to the Northern District of Texas for inclusion in MDL No. 3114.<sup>1</sup> *Pro se* plaintiffs Elroy and Sixtoria Phillips move for remand of the action to its transferor court under Section 1407(a) and Panel Rule 10.3. Defendants AT&T Inc. and AT&T Mobility LLC oppose the motion.

After considering the arguments of the parties, we conclude that remand is not appropriate at this time, and therefore deny plaintiffs' motion. In considering the question of Section 1407 remand, we accord great weight to the transferee judge's determination that remand of a particular action at a particular time is appropriate, as that judge has supervised the day-to-day pretrial proceedings in the MDL. *See In re Holiday Magic Sec. & Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977). The transferee judge's suggestion of remand to the Panel, *see* Rule 10.1(b), is an indication that the judge perceives her role under Section 1407 to have ended. *See In re Columbia/HCA Healthcare Corp. Qui Tam Litig. (No. II)*, 560 F. Supp. 2d 1349, 1350 (J.P.M.L. 2008). Here, the transferee judge has not issued a suggestion of remand. Without a suggestion of remand, a party advocating Section 1407 remand "bears a strong burden of persuasion." *See In re Holiday Magic*, 433 F. Supp. at 1126. We conclude that plaintiffs have not met that burden here.

In support of remand, plaintiffs argue that (1) we lacked jurisdiction to transfer *Phillips* to the MDL because, before transfer, the transferor court had entered defendants in default and administratively closed the action; (2) plaintiffs filed a motion for default judgment after transfer which raises case-specific issues; (3) plaintiffs' leadership in the MDL will not represent their interests; and (4) inclusion in the MDL is inconvenient and impedes plaintiffs' ability to present their case in violation of due process. These arguments are unpersuasive.

First, the *Phillips* action was in active litigation at the time the transfer order issued, and thus "pending" within the meaning of Section 1407(a). On September 26 and October 3, 2024, the transferor court entered defaults against AT&T Mobility LLC and AT&T Mobility Inc.,

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\* Judge David C. Norton did not participate in the decision of this matter.

<sup>1</sup> *See In re AT&T Inc. Customer Data Sec. Breach Litig.*, MDL No. 3114, Transfer Order (J.P.M.L. Oct. 4, 2024).

following plaintiffs' filing of proof of service and defendants' alleged failure to respond to the complaint. The court also ordered plaintiffs to file a motion for default judgment and ordered the Clerk to administratively close the case "in light of the procedural posture."<sup>2</sup> But the claims were still pending despite the administrative closure, as the motion for default judgment was yet to be filed or heard. *See Papotto v. Hartford Life & Acc. Ins. Co.*, 731 F.3d 265, 275 (3d Cir. 2013) ("[A]dministrative closings do not end the proceeding. Rather, they are a practical tool used by courts to prune ... overgrown dockets ... [W]e must focus on the substance of the order, not the label."); *Lehman v. Revolution Portfolio, LLC*, 166 F.3d 389, 392 (1st Cir. 1999) ("Administrative closings comprise a familiar, albeit essentially ad hoc, way in which courts remove cases from their active files without making any final adjudication."). We regularly order transfer of administratively closed cases – for example, when a transferor court administratively closes a case that has been stayed pending our ruling on transfer. The "administrative closing" designation will not yield a different result based on the entry of default here. The administrative closing in *Phillips* only removed the action from the court's active docket while the action was still pending and the court awaited the filing of a motion for default judgment. Moreover, defendants AT&T Inc. and AT&T Mobility LLC represent in their brief opposing remand that they will challenge the entry of default in the MDL proceedings.<sup>3</sup>

The allegedly unique issues in plaintiffs' motion for default judgment do not support remand. Defendants have stated their intent to challenge the entry of default, as discussed above. Additionally, AT&T Inc. and AT&T Mobility LLC are the common defendants in this MDL, and the transferee court is in the process of settling the operative pleadings. The schedule for responding to the master complaint – and any individual complaints not covered by the master complaint – is well within the discretion of the transferee court. That discretion encompasses the schedule for considering default issues, like those raised by plaintiffs in *Phillips*.

Plaintiffs also err in asserting that their motion for default judgment raises only case-specific issues. Plaintiffs seek damages based on the alleged sale of their personal information on the dark web, emotional distress, and the costs of protecting themselves from harm due to the data breach. These are the same kinds of damages alleged by plaintiffs in the MDL. Moreover, our initial transfer order recognized that one of the common factual questions in the MDL would be damages. *See In re AT&T Inc. Customer Data Sec. Breach Litig.*, 737 F. Supp. 3d 1350, 1351-52 (J.P.M.L. 2024) ("The common factual questions include ... the nature of any alleged damages.").

Plaintiffs' other arguments in support of remand fare no better. They assert that plaintiffs' leadership in the MDL has refused to represent them because they are *pro se* plaintiffs and they allegedly do not fall within the proposed class. We previously have held that actions are appropriate for inclusion in an MDL even where plaintiffs believe lead counsel cannot represent them, noting that arguments as to any deficiencies in MDL leadership are properly directed to the

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<sup>2</sup> *See Phillips v. AT&T Mobility LLC*, No. 24-80700, ECF No. 13, at 1 (S.D. Fla. Sept. 26, 2024).

<sup>3</sup> *See* Defs.' Opp'n to Pls.' Mot. for Remand at 2 n.2 (J.P.M.L. Jan. 3, 2025) ("AT&T will challenge the entry of default and oppose the Phillips' request for default judgment on the timeline Judge Brown establishes.").

transferee court.<sup>4</sup>

Plaintiffs' inclusion in the MDL is appropriate regardless of whether they are covered by the proposed class definition. Individual actions and putative class actions are routinely centralized in a single MDL where the actions share a common factual core. Here, the pretrial proceedings in all actions concerning the AT&T data breach, including *Phillips*, will overlap, regardless of whether the claims are styled as individual or class claims.

Plaintiffs also request remand based on the inconvenience of a distant transferee court which allegedly impedes their ability to present their case in violation of due process. Centralization is based on "the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation." *See, e.g., In re Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d 1350, 1351-52 (J.P.M.L. 2012). Plaintiffs' attempt to cast inconvenience as a due process violation is meritless. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal quotation marks and citation omitted). Inclusion in the MDL does not deny plaintiffs the opportunity to meaningfully participate in pretrial proceedings before the transferee court, and we have rejected similar arguments in the past.<sup>5</sup>

IT IS THEREFORE ORDERED that the motion for Section 1407 remand of this action is denied.

PANEL ON MULTIDISTRICT LITIGATION




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Karen K. Caldwell

Chair

Nathaniel M. Gorton  
 Roger T. Benitez  
 Madeline Cox Arleo

Matthew F. Kennelly  
 Dale A. Kimball

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<sup>4</sup> *See, e.g., In re Valsartan, Losartan, and Irbesartan Prods. Liab. Litig.*, MDL No. 2875, Transfer Order at 2 (J.P.M.L. Mar. 27, 2020) (transferring action over plaintiffs' objections concerning inadequate representation by court-appointed leadership in the MDL; "arguments as to any alleged deficiencies in the MDL leadership are properly directed to the transferee court").

<sup>5</sup> *See, e.g., In re Equifax, Inc., Customer Data Sec. Breach Litig.*, 2018 WL 3770539 (J.P.M.L. Aug. 8, 2018) (transferring *pro se* action over due process objections; "we find that transfer does not deny plaintiff the opportunity to meaningfully participate in pretrial proceedings before the transferee court").

**IN RE: AT&T INC. CUSTOMER DATA  
SECURITY BREACH LITIGATION**

MDL No. 3114

**SCHEDULE A**

Northern District of Texas

PHILLIPS, ET AL. v. AT&T MOBILITY LLC, ET AL., C.A. No. 3:24-02523  
(S.D. Florida, C.A. No. 9:24-80700)