

**BEFORE THE  
UNITED STATES JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**

**In Re: Target Corporation Security Breach  
Of Customer's Financial Data**

**MDL-**

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR TRANSFER OF ACTIONS  
PURSUANT TO 28 U.S.C. § 1407**

**BACKGROUND**

Plaintiff, Ann Michael Lagarde, in the M.D. Louisiana action filed their complaints on December 24, 2013 against Target Corporation of Minnesota, Target Corporate Services, Inc., and Does 1-10.

Pursuant to 28 U.S.C. § and Rule 7.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Plaintiff respectfully submits this Brief in Support of Plaintiffs' Motion for Transfer of Actions Pursuant to 28 U.S.C. § 1407.

The above referenced complaint and the other related actions listed in the accompanying Schedule of Actions were filed against the Defendants based on the Defendants' failure to securely store Plaintiffs' financial data. The plaintiffs in these complaints are the general public who were customers and consumers of the Defendants' stores and products . As of today, at least 16 individuals have filed suits as their credit/debit information were compromised. The legal theories and facts asserted in all of those actions are virtually identical and arise from the common conduct of the Defendants in their failure to safeguard the financial data of the Plaintiffs.

## ARGUMENTS

Pursuant to 28 U.S.C. § 1407 (a) the above actions should be coordinated and Consolidated. 28 U.S.C. § (a) provides, in relevant part:

When civil actions involving one or more common questions for fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on the Multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.

The transfer of actions to a single forum under §1407 is appropriate where, as here, it will prevent duplication of discovery and eliminate the possibility of overlapping or inconsistent pleading determinations by courts of coordinate jurisdictions. *In re Litig. Arising from Termination of Retirement Plan for Employees of Firearm's Fund Ins. Co.*, 422 F. Supp. 287, 290 (J.P.M.L. 1976); *In re LTV Corp. Sec. Litig.*, 470 F.Supp. 859, 862 (J.P.M.L. 1979).

The litmus test of transferability and coordination under § 1407 is the presence of common questions of fact. *In re Fed. Election Campaign Act Litig.*, 511 F.Supp. 821, 823 (J.P.M.L. 1979). Common questions are presumed “where two or more complaints assert comparable assert comparable allegations against identical defendants based on similar transactions and events.” *In re Air West, Inc., Securities Litig.*, 384 F.Supp. 609, 611 (J.P.M.L. 1974); *See also In re Cuisinart Food Processor Antitrust litig.*, 506 F.Supp. 651, 654-655 (J.P.M.L. 1981). The transfer of actions to a single forum under §1407 is appropriate where, as here, it will prevent duplication of discovery and eliminate the possibility of overlapping or inconsistent pleading determinations by courts of coordinate jurisdictions. *In re Silicone Breast Implants Product Liability Litig.* 793 F.Supp. 1098, 1100 (J.P.M.L. 1992). (The Multidistrict

panel found that common questions exist as long as the difference manufacturers all designed similar defective products). *See, also In re Humana Inc. Managed Care Litig.*, 2000 WL 1952080, \* 3(J.P.M.L. August 4, 1994) (common questions of law and fact existed even when defendants included different health care insurers.); *In re Orthopedic Bone Screw Products Liability Litig.*, (MDL 1014) (J.P.M.L. August 4, 1992); and *In Re Phenylpropanolamine (PPA) Products Liability Litigation*, at p.2 (MDL 1407) (J.P.M.L. 2001).

The United States District Court for the Middle District of Louisiana is a particularly convenient forum for litigation after consolidation of these actions. In *In re Worldcom, Inc. Securities & "ERISA" Litig.*, 226 F.Supp. 2d 1352 (J.P.M.L. 2002), this panel consolidated several actions and transferred the consolidated action to the nearby Southern District of New York, noting, in particular, that "a litigation of this scope will benefit from centralization in a major metropolitan center that is well served by major airlines, provides ample hotel and office accommodations, and offers a well-developed support system for legal services." *Id.* At 1355; *See also, In re Jamster Mktg. Litig.*, 427 F.Supp. 2d 1366, 1368 (J.P.M.L. 2006) (choosing as a transfer forum an "accessible metropolitan location"). These considerations of convenience apply with full force to the United States District Court for the Southern District of Mississippi's Gulfport courthouse. Gulfport is easily accessible by plane. Accordingly, convenience weighs in favor of transferring and consolidating these actions in the United States District Court for the Middle District of Louisiana.

In the alternative, the Eastern District of Louisiana is also a convenient forum with multiple judges that have a vast experience in coordinating and handling MDL style litigation.

The experience and ability of the Honorable Chief Judge Brian Jackson is another factor which weighs in favor of transferring these actions to the United States District Court for the Middle District of Louisiana. The availability of an experienced and capable judge weighs in favor of transferring a case to that district. *See e.g., In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F.Supp. 935, 936 (J.P.M.L. 1977); *In re Sugar Indus. Antitrust Litig.*, 437 F.Supp. 1204, 1208 (J.P.M.L. 1977); *In re Ampicillin Antitrust Litig.*, 315 F.Supp. 317, 319 (J.P.M.L. 1970). The experience and knowledge of a particular judge is one of the factors that may be considered in determining the appropriate transferee forum. *See e.g., In re "Factor VIII or IX Concentrate Blood Prod. Liab. Litig.*, 853 F.Supp. 454, 455 (J.P.M.L. 1993); *In re Silicone Gel Breast Implants Prods. Liab. Litig.*, 793 F.Supp. at 1101; *In re Data General Corp. Antitrust Litig.*, 470 F.Supp. 855, 859 (J.P.M.L. 1979).

Chief Judge Jackson, is eminently qualified to preside over this litigation. Chief Judge Jackson has served in the Middle District of Louisiana as a federal Judge for three years.

The Eastern District has multiple judges such as Judge Fallon, Judge Vance, Judge \_\_\_\_\_ who are eminently qualified to preside over this litigation and have the experience from providing over previous MDL to help guide this litigation.

## **CONCLUSION**

For the foregoing reasons and in light of the similar allegations regarding the defendants' conduct, and the likelihood of overlapping discovery and the potential for conflicting pretrial rulings, Movants respectfully request that this Panel order that the related actions be centralized and transferred to the United States District Court for the Middle District of Louisiana pursuant to 28 U.S.C. §1407 before Chief Judge Jackson, and that all related individual or class actions be

transferred thereto as “tag along actions” or in the alternative to the Eastern District of Louisiana.

Date: December 24, 2013

Respectfully submitted,

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