

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

In Re: Wine Product Liability Litigation

MDL-

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

BACKGROUND

Plaintiff, Laura Marvin, in the M.D. Louisiana action filed her complaints on March 23, 2015, against The Wine Group Inc.; The Wine Group LLC; Sutter Home Winery, Inc, d/b/a Trinchero Family Estates; Folie A Deux Winery; California Natural Products; Rebel Wine Co., LLC; Golden State Vintners; Varni Brothers, Corp.; Treasury Wines Estate Holding, Inc.; Beringer Vineyards; Seaglass Wine Co.; Constellation Wines, US; Smith & Hook Winery Corporation, a/k/a Smith and Hook, d/b/a Hahn Family Wines; Raymond Vineyard and Cellar, Inc; Jean-Claude Boisset Wines, USA, Inc.; Fetzer Vineyards; F. Korbel & Bros., Inc.; Megan Mason & Randy Mason, d/b/a Mason Cellars; Oakville Winery Management Corp. GP; Woodbridge Winery, Inc.; Simply Naked Winery; Winery Exchange, Inc; Sonoma Wine Co., LLC; Don Sebastiani & Sons International Wine Negotiants, Corp; Don Sebastiani & Sons International Negotiants; Bronco Wine Company; Trader Joe's Company and Does 1-200.

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' wine products

containing high levels of arsenic. The plaintiffs in these complaints are the general public who were customers and consumers of the Defendants' products. Three separate testing laboratories skilled in arsenic testing have now independently confirmed that several California wineries (including those named as Defendants in this action) produce and market wines that contain dangerously high levels of inorganic arsenic, in some cases up to 500% or more than what is considered the maximum acceptable safe daily limit. Put differently, just a glass or two of these arsenic-contaminated wines a day over time could result in dangerous arsenic toxicity to the consumer.

According to the Wine Institute, in 2013, California wine shipments within the United States alone were 215 million cases – 2,580,000,000 bottles of wine with an estimated retail value of \$23.1 billion.

California wineries typically do not disclose the ingredients or chemicals (beyond alcohol content and sulfites) that are present in the wine they are selling. Moreover, no government regulatory agency is regularly monitoring or testing these wines to ensure they are free from toxic poisons that could sicken or kill consumers over time. Specifically, no government agency is regularly testing wine for toxic ingredients such as inorganic arsenic, leaving the wineries to police their own wines, and wine consumers to fend for themselves, without regulatory protection or the necessary warnings to make an informed decision.

Wine may contain both organic and inorganic arsenic. Of these, inorganic arsenic is substantially more toxic and dangerous to humans. Based upon independent sample testing on the wines at issue in this complaint, inorganic arsenic makes up the overwhelming majority of the arsenic in these wines. Inorganic arsenic is: (1) acutely toxic when introduced into the human body; (2) proven to cause cancer; (3) known to cause and contribute to a host of debilitating

illness, and (4) when consumed over time, increases the likelihood of early death. The World Health Organization classifies inorganic arsenic as a “MAJOR PUBLIC HEALTH CONCERN.” Ingestion of arsenic can cause nausea, vomiting, abdominal pain, severe diarrhea, disturbances of the cardiovascular and nervous systems, and eventual death. Chronic arsenic toxicity results in multi-system disease and has been linked to a variety of dermal symptoms (exfoliate dermatitis, keratosis, vitiligo, skin cancer), peripheral neuropathy, encephalopathy, bronchitis, pulmonary fibrosis, portal hypertension, peripheral vascular disease/”black foot disease,” atherosclerosis, various cancers (including skin, bladder, lung, liver, kidney, nasal, passage, prostate and colon cancer) as well as diabetes mellitus.

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 production and selling of wines that contain dangerously high levels of arsenic.

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 Middle District of Louisiana’s courthouse. Baton Rouge 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.

The experience and ability of the Honorable Judge James J. Brady 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 weights 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).

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

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 Judge James J. Brady, and that all related individual or class actions be transferred thereto as "tag along actions".

Date: March 27, 2015

Respectfully submitted,

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