

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

In re: Parmesan Cheese Litigation

MDL-_____

**MEMORANDUM OF PLAINTIFFS
IN SUPPORT OF MOTION FOR TRANSFER TO THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF MISSOURI FOR COORDINATED
OR CONSOLIDATED PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

Plaintiff Richard Evans filed one of the first lawsuits regarding Kraft’s mislabeled “100% Grated Parmesan Cheese” Products. Now, at least 13 additional cases were filed, resulting in 14 separate actions pending in Federal court in six different states, alleging similar causes of action, all arising from mislabeled “100% Grated Parmesan Cheese” Products. Plaintiffs Richard Evans, Taniesha Harwell, Michael Greene, Jose Brown, Dallas Moreno, Debra Jackson, Andrew Mateki and Beverly Schulze submit this Memorandum in support of their motion for transfer of these actions to the United States District Court for the Eastern District of Missouri pursuant to 28 U.S.C. § 1407.

I. BACKGROUND

Recently, nationwide media outlets have reported on a systemic pattern of mislabeling of parmesan cheese products by several major manufacturers. Those reports, citing to data produced by independent laboratory analysis, show that despite manufacturers’ bold claims that their products contain “100% Grated Parmesan Cheese,” their products instead contain a significant amount of adulterants and fillers. The most prominent of the fillers was found to be cellulose, an anti-clumping agent derived from wood pulp.

Shortly thereafter, the Related Actions were filed. All Related Actions assert similar claims such as violations of various consumer protection statutes and laws, breach of warranty and unjust enrichment. All of the Related Actions purport to assert nationwide putative classes of consumers.

II. ARGUMENT

Transfer and coordination or consolidation of actions is appropriate when: (1) the cases involve one or more common questions of fact; (2) transfer would serve the convenience of the parties and witnesses; and (3) transfer will promote the just and efficient conduct of the actions. 28 U.S.C. § 1407(a). The Related Actions, pending in Federal court in six different states, clearly satisfy these requirements and are well-suited for multi-district treatment. The Related Actions allege a common factual core, assert similar causes of action, and are brought on behalf of putative nationwide classes allegedly harmed by the mislabeling. Transfer and coordination or consolidation will avoid the possibility of duplicative discovery and conflicting pre-trial rulings on matters such as class certification issues and overlapping classes, and is particularly appropriate where, as here, all actions have been recently filed and no discovery has begun.

The United States District Court for the Eastern District of Missouri is the most appropriate forum for the transfer because multiple cases in which the Defendants have already been served are located there; as the harm was nationwide, the district's geographical location offers the most convenience for the parties and the witnesses; and the district contains able jurists well-versed in the conduct of complex multidistrict litigation, specifically including multidistrict consumer action cases.

A. The Transfer of the Related Actions to a Single District Is Appropriate Because the Related Actions Involve Common Questions of Fact.

The Related Actions allege a common factual core. *In re Air West, Inc. Secs. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974) (“[W]hen two or more complaints assert comparable allegations against identical defendants based upon similar transactions and events, common factual questions are presumed.”). Here, the factual allegations in each of the Related Actions center on the allegation that manufacturers of parmesan cheese products misrepresented the true content of their

products and provided false and misleading representations on their products' labels. All of the Related Actions assert similar causes of action arising from this common factual core, making the actions ripe for transfer and consolidation to a single district. The Related Actions are substantially similar to each other, making largely identical allegations in describing the mislabeling and the various causes of action.

The Panel has routinely granted motions to transfer in analogous matters involving consumer product liability claims. *See In re: Blue Buffalo Co., Ltd., Mktg. & Sales Practices Litig.*, 53 F. Supp. 3d 1385, 1386 (J.P.M.L. 2014); *In re: Yamaha Motor Corp. Rhino ATV Products Liab. Litig.*, 597 F. Supp. 2d 1377, 1379 (J.P.M.L. 2009); *In re: Toshiba Am. HD DVD Mktg. & Sales Practices Litig.*, 572 F. Supp. 2d 1376, 1377 (J.P.M.L. 2008); *In re Vioxx Products Liab. Litig.*, 360 F. Supp. 2d 1352, 1355 (J.P.M.L. 2005); *In re Ford Motor Co. Crown Victoria Police Interceptor Products Liab. Litig.*, 229 F. Supp. 2d 1377, 1378 (J.P.M.L. 2002); *In re StarLink Corn Products Liab. Litig.*, 152 F. Supp. 2d 1378, 1381 (J.P.M.L. 2001); *In re Multi-Piece Rim Products Liab. Litig.*, 464 F. Supp. 969, 973 (J.P.M.L. 1979). A similar conclusion regarding common factual questions is warranted here.

B. Transfer and Consolidation Will Ensure the Just and Efficient Conduct of the Actions.

Transfer and consolidation is appropriate when it will “promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407. The objective is to “eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost, and . . . save time and effort on the part of the parties, the attorneys, the witnesses, and the courts.” MANUAL FOR COMPLEX LITIGATION § 20.131 (4th ed. 2004). Transferring and consolidating the Related Actions in the Eastern District of Missouri would prevent duplicative discovery and eliminate the potential for inconsistent pre-trial determinations involving discovery and class certification, thereby promoting

the just and efficient conduct of the Related Actions. By eliminating the need for discovery and class certification litigation in multiple venues, transfer of the Related Actions to a single district will also conserve the parties' resources and reduce the time needed to litigate these actions. *See In re Prempro Prods. Liab. Litig.*, 254 F. Supp. 2d 1366, 1367 (J.P.M.L. 2003) ("Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to the question of class certification), and conserve the resources of the parties, their counsel and the judiciary.").

The Panel has recognized previously that transfer and consolidation is particularly appropriate where, as here, there are competing actions and overlapping class certification issues. *See, e.g., In re Plumbing Fixtures*, 308 F. Supp. 242, 244 (J.P.M.L. 1970) (noting that the "potential for conflicting or overlapping class actions presents one of the strongest reasons for transferring such related actions to a single district for coordinated or consolidated pretrial proceedings which will include an early resolution of such potential conflicts."). Here, all of the actions assert putative consumer classes, each apparently nationwide in scope and alleging injury from the same underlying circumstances. Separate proceedings create the possibility of inconsistent determinations regarding whether a class is certified, the scope and duration of the class, and other class action related issues. Without oversight by a single judge, the potential remains for inconsistent determinations which threaten to impede the orderly resolution of the Related Actions.

Finally, the appropriateness of a transfer and consolidation is heightened in this matter because no discovery has yet been conducted and the Related Actions remain in their infancy. *See In re Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 653 (J.P.M.L. 1981) (granting motion pursuant to 28 U.S.C. § 1407 in part because "[l]ittle or no discovery ha[d] occurred" in pending actions). None of the Defendants have responded to any of the complaints, no discovery

requests have been served, and none of the courts have made any rulings on any legal or factual issues. No one has expended significant resources litigating in any jurisdiction and no one will be prejudiced by transfer of their cases at this time.

C. Transfer to the Eastern District of Missouri Serves the Convenience of the Parties and Witnesses.

Given the national scope of (and national attention to) Defendants' mislabeled parmesan cheese products and the speed with which events transpired, several of the factors which the Panel may typically consider in selecting a transferee court are not significant in this case: Where discovery has occurred, where cases have progressed the furthest and the site of the occurrence (nationwide) are all neutral or non-issues in this litigation.

Defendants' wrongdoing has affected consumers nationwide. As a result, the Related Actions are spread throughout the United States, with additional claims nationwide sure to follow. In light of the need for a centrally located judicial district with favorable docket conditions, the Eastern District of Missouri is well suited to handle coordinated or consolidated pretrial proceedings for the Related Actions. *See In re: Blue Buffalo Co., Ltd., Mktg. & Sales Practices Litig.*, 53 F. Supp. 3d 1385 (J.P.M.L. 2014); *In re Serzone Prods. Liab. Litig.*, 217 F. Supp. 2d 1372, 1374 (J.P.M.L. 2002) (MDL 1477) (concluding that where "no district stands out as the focal point of . . . wide-ranging litigation," the Panel should consider geographic centralization).

The primary questions here are: Where cost and inconvenience will be minimized, and the experience, skill, and caseloads of available judges. On all of these factors, the Panel should choose the United States District Court for the Eastern District of Missouri as the transferee court. The convenience of the parties and of the witnesses demands that no party or witness be forced to travel extraordinary distances or to incur extraordinary expense in order to participate in this litigation. The Eastern District's location, being virtually in the middle of the continental United States,

assures that cost and inconvenience will be minimized to the greatest extent possible for all concerned, whether they hail from the East Coast, the West Coast, or any point in between. The Panel can also rest assured that, being located in the St. Louis, the Eastern District offers world-class access and amenities, such as Lambert-St. Louis International Airport, which provides regular and reliable service to major air carriers such as AirTran, American Airlines, Delta, Frontier, Southwest, United, and U.S. Airways. Other amenities in the St. Louis area, such as lodging if need be, are equally sophisticated yet cost-conservative. *See, e.g., In re: Blue Buffalo Co., Ltd., Marketing and Sales Practices Litig.*, 53 F.Supp.3d 1385, 1386 (J.P.M.L. 2014) (“St. Louis also provides a geographically central location for this nationwide litigation.”); *In re Aurora Dairy Corp. Organic Mild Marketing and Sales Practices Litig.*, 536 F.Supp.2d 1369, 1370-71 (J.P.M.L. 2008); (“Given the geographic dispersal of the constituent actions and the potential tag-along actions, the Eastern District of Missouri offers a relatively convenient forum for this litigation.”); *In re Celexa and Lexapro Prod. Liab. Litig.*, 416 F.Supp.2d 1361, 1363 (J.P.M.L. 2006) (“By centralizing this litigation in the Eastern District of Missouri, we are assigning this docket to a jurist experienced in complex multidistrict litigation and sitting in a centrally located district with the capacity to handle this matter.”).

Similarly, as discussed in the *In re: Celexa* transfer order, the experience, ability, willingness and caseloads of the jurists in the Eastern District of Missouri all commend this venue as choice for the transferee district. The Panel has already recognized the skill and ability of select jurists in the district, particularly with respect to consumer product matters, as by selecting the Honorable Rodney W. Sippel to adjudicate the Blue Buffalo consumer litigation. *In re: Blue Buffalo Co., Ltd., Marketing and Sales Practices Litig.*, 53 F.Supp.3d 1385, 1386 (J.P.M.L. 2014). Other jurists in the district are equally able and willing to effectively and expeditiously direct this

litigation, and certainly the Panel has seen fit to assign other large and complex consolidations to the district in the past.

Finally, the district certainly has the capacity to handle this matter. *See generally United States District Court Eastern District of Missouri 2014 Annual Report* (“Report”)¹. The district is in prime position to entertain another complex MDL at this juncture.

III. CONCLUSION

For the foregoing reasons, Plaintiffs Richard Evans, Taniesha Harwell, Michael Greene, Jose Brown, Dallas Moreno, Debra Jackson, Andrew Mateki and Beverly Schulze respectfully request the Panel grant their Motion and enter an order, pursuant to 28 U.S.C. §1407, transferring, coordinating, and consolidating all Related Actions in the United States District Court for the Eastern District of Missouri.

Respectfully submitted,

THE DRISCOLL FIRM, P.C.

By: /s/John J. Driscoll

John J. Driscoll, #54729

Philip Sholtz, #57375

211 N. Broadway, 40th Floor

St. Louis, Missouri 63102

314-932-3232 telephone

314-932-3233 facsimile

john@thedriscollfirm.com

phil@thedriscollfirm.com

Counsel for Plaintiffs Richard Evans, Taniesha Harwell, Michael Greene, Jose Brown, Dallas Moreno, Debra Jackson, Andrew Mateki and Beverly Schulze

¹ Located at http://www.moed.uscourts.gov/sites/default/files/2014_Annual_Report.pdf.