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

In re: Hotel Industry Sex Trafficking Litigation

MDL Docket No.: 2928

**BEST WESTERN INTERNATIONAL INC.'S MEMORANDUM IN OPPOSITION TO THE MOTION OF THE PLAINTIFFS FOR TRANSFER OF ACTIONS TO THE SOUTHERN DISTRICT OF OHIO (EASTERN DIVISION) PURSUANT TO 28 U.S.C. § 1407 FOR CONSOLIDATION OF PRETRIAL PROCEEDINGS**

## I. INTRODUCTION

Defendant Best Western International Inc. ("BWII") respectfully opposes Plaintiffs' Motion for Transfer of Actions to the Southern District of Ohio (Eastern Division) Pursuant to 28 U.S.C. § 1407 for Consolidation of Pretrial Proceedings ("Motion"). Plaintiffs' Motion must be denied as the actions filed or to be filed do not involve one or more common questions of fact, and transfer and consolidation will not benefit the parties or witnesses or lead to the just and efficient handling of the actions. Defendant BWII, therefore, requests that the Panel deny plaintiffs' Motion.

The cases identified by plaintiffs in their Schedule of Actions (ECF No. 1-2) contain unique facts specific to individual plaintiffs purportedly trafficked through criminal activity of non-parties throughout the United States. Similarly, the many defendants named within the actions represent a variety of different hotel brands (e.g., Marriott, Hilton, Wyndham, and Best Western) and individually owned and operated hotels. No defendant has the same ownership, staffing, or location, and the facts of each alleged trafficked victim differ. Facts related to the plaintiffs and actions of unnamed parties predominate and overshadow any commonality found within plaintiffs' allegations. Moreover, transfer and consolidation in the Southern District of Ohio will not improve efficiencies in discovery related to the individual plaintiffs, numerous

defendants and non-parties, locally owned hotels and staff, and criminal conduct and background of plaintiffs' traffickers. To the contrary, defendants will be required to engage in case-specific discovery to properly defend against each plaintiff's claims.

Likewise, centralization is improper as it would serve to delay the actions pending in the Southern District of Ohio since March of 2019. Within those actions, the parties have engaged in significant motion practice and the court has already entered detailed case management orders. Lastly, the actions that plaintiffs wish to centralize in the Southern District of Ohio are founded upon a common question of law—the scope of section 1595(a) of the Trafficking Victims Reauthorization and Protection Act (18 U.S.C. §1595(a) "TVPRA"). The interpretation of the act and Congress's intent, and the plaintiffs' attempt to extend it to entities that played no direct role in plaintiffs' alleged trafficking, will predominate the legal issues to be decided and benefit by fulsome review by multiple judicial forums. Thus, centralization under section 1407(a) is improper. For these reasons, Defendant BWII respectfully requests that the Honorable Panel deny plaintiffs' Motion for Transfer.

## II. BACKGROUND AND PROCEDURAL HISTORY

Between March 29, 2019, and December 9, 2019, twenty-one lawsuits were filed in twelve district courts including the Southern District of Ohio by various plaintiffs claiming to be victims of sex trafficking under the TVPRA. Plaintiffs in these lawsuits have named hotel owners and operators as well as various hotel brands as defendants, including BWII; Wyndham Hotels and Resorts, Inc.; Choice Hotels Corporation; InterContinental Hotels Corporation; Marriot International, Inc.; Hilton Worldwide Holdings, Inc.; G6 Hospitality LLC; Red Roof Inns, Inc.; Westmont Hospitality Group, Inc.; Hyatt Hotels Corporation; RLH Corporation; Extended Stay America; and Interstate Hotels and Resorts (collectively "hotel brand

defendants"). Plaintiffs allege that the hotel brand defendants violated §1595(a) of the TVPRA when the staff at various hotels associated those brands rented rooms to persons that they knew or should have known were engaging in sex trafficking. Notably, in the majority of the actions for which plaintiffs seek consolidation, plaintiffs do not name the actual owners of the hotels where they were trafficked or the traffickers. Instead, plaintiffs target several different hotel brands, which they claim have failed to implement policies to identify and eliminate sex trafficking at the individual hotels that are licensed to use their various brands. *See* ECF no. 1-1, Plaintiffs' Brief in Support of Motion for Transfer of Actions to the Southern District of Ohio Pursuant to 28 U.S.C. § 1407 for Pretrial Consolidation ("Motion"), p. 5.

Four sex trafficking cases were initiated in the Southern District of Ohio (Eastern Division) in March of 2019. These four cases—*H.H. v. G6 Hospitality et al*, No. 2:19-cv-0075; *M.A. v. Wyndham Hotels & Resorts, Inc.*, No. 2:19-cv-00849; *Jane Doe S.W. v. Lorain-Elyria Motel Inc. d/b/a Best Western Inn*, No. 2:19-cv-01194; and *T.S. v. Intercontinental Hotels Group*, No. 2:19-cv-02970—have already undergone significant motion practice, including the filing of fully briefed Rule 12 motions. *See* ECF no. 1-7—1-10, Plaintiffs' Brief in Support of Motion, Exhibits 4-7. The parties in these four cases also attended Initial Status Conferences, and the Court entered Case Management Orders for the actions. *See id.* Relative to Rule 12 motions, one court in the Southern District of Ohio has issued a decision regarding whether the claims set forth in one of the plaintiffs' Complaints under §1595(a) of the TVPRA are sufficient to withstand dismissal under Rule 12(b). That is the M.A. case, where the court issued and entered an order denying defendants' Motions to Dismiss, allowing plaintiffs' claims under the TVPRA to proceed against certain hotel brand defendants (Wyndham Hotels & Resorts, Inc., Inter-Continental Hotels Corp., and Choice Hotels International, Inc.) as well as the owners of the

individual hotels where plaintiff M.A. was allegedly trafficked. *See id.* Exhibit 4. Having found a court, which they perceive as sympathetic to these types of claims and theories, plaintiffs now wish to forum shop and transfer every action into the Southern District of Ohio following that court's order. Still undecided, however are several Rule 12(b) motions pending in the case of *Jane Doe S.W.* for failure to state a claim and for lack of personal jurisdiction over BWII. *See id.* Exhibit 6. The court has not issued an order on BWII's motion in *Jane Doe S.W.* However, if the Southern District Court of Ohio was inclined to grant BWII's motion, the court where plaintiffs seek transfer and consolidation would have no jurisdiction over BWII, a defendant named in three of the other identified actions that plaintiffs seek to consolidate. *See Id.* Exhibits 6, 19, 23.

Clearly, plaintiffs are attempting to quickly transfer and consolidate cases in a favorable venue before other hotel brand defendants raise similar defenses to plaintiffs' Complaints that could prohibit the actions from going forward. Therefore, for the reasons set forth more fully below, defendant BWII respectfully requests that the Honorable Panel deny Plaintiffs' Motion.

## III. ARGUMENT

Pursuant to 28 U.S.C. §1407, transfer of actions to one district for consolidation or pretrial proceedings is appropriate where the actions pending in different districts involve one or more common questions of fact and transfer will promote convenience for the parties and just and efficient conduct of such actions. 28 U.S.C. § 1407(a). Upon a close review of the cases listed in the Schedule of Action, it is clear the requirements of section 1407 have not been satisfied. Unique questions of fact will exist in each action requiring case specific discovery. Thus, centralization of cases in the Southern District of Ohio will not simplify discovery or eliminate duplicative discovery. The facts of each case are different. For example, who were the traffickers; who were the buyers; how did the traffickers operate their enterprise at hotels; were

the hotels exterior corridor; did the traffickers call in or call out buyers; have the traffickers been arrested? The facts of how each brand operates are different. Who employs the hotel staff; what (if anything) did hotel staff observe; are any of the hotels where these women were allegedly trafficked owned by the brand defendants? Best Western, for example, and several other brands, do not own or operate any hotels or employ any staff at any hotels. Additionally, all of the actions are founded upon the primary legal issue regarding statutory interpretation of the TVPRA and its scope of liability toward entities such as the hotel brand defendants. This weighs against consolidation as described below. See, e.g., Multidistrict Litig. Manual §5.4. *See also In re Medi-Cal Reimbursement Rate Reduction Litig.*, 652 F. Supp. 2d 1378, 1378 (J.P.M.L. 2009) (denying transfer when the cases raise strictly legal issues). Transfer of all of the actions to one court would deny the originally filed federal district courts an opportunity to engage in an analysis of this issue. Thus, transfer under § 1407 is inappropriate and defendant BWII requests that the Panel deny plaintiffs' Motion.

**A. Unique Facts Related to Plaintiffs, Defendants, and Unnamed Parties Predominate Over Any Common Question of Fact Concerning Plaintiffs' Allegations.**

The Panel has held that when all actions focus on a significant number of common events, defendants, or witnesses, centralization is warranted because it would eliminate the need for duplicative discovery. *In re Federal Nat. Mortg. Ass'n. Securities Derivatives & ERISA Litig.*, 370 F. Supp. 2d 1359, 1359 (J.P.M.L. 2005) (emphasis added). However, when common questions of fact do not predominate over individual questions of fact existing in each action, the Panel has held that transfer is not warranted. *In re Eli Lilly & Co. Oraflex Prod. Liab. Litig.*, 578 F. Supp. 422, 422 (J.P.M.L. 1984). In these situations, transfer and consolidation would not serve the convenience of the parties by eliminating duplicative discovery because the actions will require case specific discovery. *Id.*

For example, the Panel has denied transfer of actions when unique questions related to each plaintiff's injury predominate over any common question of fact relating to the allegations of the defendant's wrongdoing. *In re the Boeing Co. Empl't Practices Litig. (No. II)*, 293 F. Supp. 2d 1382, 1383 (J.P.M.L. 2003). In *Boeing*, the Panel denied centralization in a race-based employment discrimination claim because the record showed that, although plaintiffs alleged that defendants discriminated against them due to a common factor—race, the record also identified unique questions of fact relating to each plaintiff, such as terms and condition of employment. *Id.* at 1383. The Panel held that individual questions surrounding each plaintiff's employment were so central to each case that they predominated over the common allegations against the employers. The transfer request was denied. *Id.*

Likewise, in a case brought by members of a pharmacy benefit plan against pharmacy benefit managers claiming violations of ERISA, the Panel denied centralization finding that the actions lacked sufficient common facts. *In re Pharmacy Benefit Plan Adm'r Pricing Litig.*, 206 F. Supp. 2d 1362, 1362 (J.P.M.L. 2003). The Panel reasoned that the plaintiffs were all members of different pharmacy plan benefits, and the defendants all served under different pharmacy contracts. *Id.* at 1362. Therefore, the plaintiffs' common allegations that defendants violated ERISA did not predominate over the specific facts related to each plaintiff that each defendant would need to address later in discovery. *Id.*

Additionally, the Panel denied transfer of lawsuits brought by plaintiffs who were injured by a defect in a table saw sold by various defendants. *In re Table Saw Prods. Liab. Litig.*, 641 F. Supp. 2d 1384, 1384 (J.P.M.L. 2009). The Panel found that the common fact related to the defect in the table saws was insufficient to warrant transfer and consolidation. *Id.* It reasoned that the individual accidents had "necessarily unique circumstances" that

contributed to the injury. *Id.* Further, the various facts surrounding each injury were related to a table saw manufactured by various defendants, who were not named in all of the same cases. *Id.* Because each case had differing circumstances surrounding the injury, the Panel denied transfer under § 1407. *Id.*

Here, case-specific questions predominate over plaintiffs' allegations that all defendants violated the TVPRA. For example, each action will require an examination of "necessarily unique" questions of fact regarding the circumstances of the plaintiffs' trafficking and their injuries that will differ among all plaintiffs. These differences include, but are not limited to, the ages of the plaintiffs at the time they were trafficked. Some allege they were minors, while others were adults. Additionally, the amount of time the plaintiffs were trafficked varies as some plaintiffs were trafficked in a span of months and others over a span of years. Beyond the unique facts unique to each plaintiff, all cases contain facts specific to the actions of various third parties that are not named as defendants. These parties include individuals who trafficked the plaintiffs in different hotels, cities, and states outside of Ohio where witnesses and parties remain. The cases will require an examination of each trafficker's identity, the identity of buyers, the various methods of each trafficker to perpetuate and conceal their crimes, the methods relied upon by buyers and traffickers to navigate the layout of each hotel without detection, and whether the traffickers were convicted for their crimes. The cases also will require an examination of individual hotels where plaintiffs were trafficked, the layout of the premises, awareness staff, whether police were notified and, if so, by whom, and whether arrests were made. These hotels are individually owned and/or managed by different entities and employ separate sets of staff and are subject to different policies and procedures as part of their employment.

Moreover, plaintiffs' common assertion that all hotel brand defendants violated the TVPRA ignores the differences among the defendants. The named hotel brand defendants differ from cases to case, as not all hotel brand defendants were named in the same actions. Further, the policies that exist among the hotel brand defendants will differ. Likewise, any policies or practices the brand defendants may have had will vary. Importantly, discovery related to each hotel owner, operator, and safety personnel will be necessary and likely extensive. Finally, the hotel brand defendants themselves are subject to different state common laws throughout the country. For these reasons, the cases on the Schedule of Actions will share very few, if any common facts, making centralization under section 1407 improper.

In support of their claims plaintiffs cite to pharmaceutical product multidistrict litigation. However, the sex trafficking actions are distinguishable from the pharmaceutical product liability litigation referenced by plaintiffs in their Brief in Support of Motion. *See eg. In re Farxiga (Dapagliflozin) Prods. Liab. Litig.*, 273 F. Supp. 3d 1380 (J.P.M.L. 2017); *In re Ethicon Physiomesh Flexible Composite Hernia Mesh Prods. Liab. Litig.*, 254 F. Supp. 3d 1381 (J.P.M.L. 2010); *In re Tylenol (Acetaminophen) Marketing, Sales Practices & Prods. Lab. Litig.*, 936 F. Supp. 2d 1379 (J.P.M.L. 2013). In these pharmaceutical product cases, the nature of the claims leaves little room for deviations in facts. The cases all share common facts including: a drug or product; the drug or product was defective in the same way; a group of plaintiffs suffering from a particular ailment caused by their use the product for a defined period of time; and, the plaintiffs' injuries. Unlike the sex trafficking litigation, the cited product liability cases do not require an examination of how a set of case specific actors, other than plaintiffs and defendants, caused or contributed to plaintiffs' injuries. Rather, the issues focused

on the manufacturing of the drug or product and the drug's relationship to the plaintiffs' injuries or harm.

Claims regarding the insufficiencies of hotel brand defendants' sex trafficking policies will not be the only issues examined in current cases. In all twenty-one actions, hotel brand defendants will conduct discovery on the circumstances surrounding each plaintiffs' trafficking to defend against the claims. An examination of individual facts concerning the conduct of the plaintiffs, the plaintiffs' traffickers, law enforcement, the individual hotel owners, and hotel staff will be at the forefront and differ from case to case. Likewise, an evaluation of how the establishments and staff responded to hotel brand defendants' policies regarding sex trafficking will be critical as these cases proceed forward. Due to these case-specific facts, transfer and consolidation in the Southern District of Ohio will not eliminate the extensive fact discovery that the parties will undertake. As a result, the listed actions are not proper for transfer and consolidation, and defendant BWII respectfully requests that the Panel deny plaintiffs' Motion.

**B. Centralization of Actions Will Not Result in Efficiency in Litigation.**

Plaintiffs argue that transferring all actions to the Southern District of Ohio for pre-trial proceedings will result in efficiency by eliminating duplicative discovery in litigation. *See* ECF no. 1-1, Plaintiffs' Brief in Support of Motion, p. 13. However, as noted centralization will only eliminate duplicative discovery for the plaintiffs. The defendants, on the other hand, will, as noted above, need to engage in case-specific discovery even if the actions are transferred and consolidated rendering centralization under section 1407 improper.

The Panel has denied centralization in actions where it was apparent that discovery would vary among the plaintiffs. *In re Rite Aid Corp. Wage and Hour Emp't Practices Litig.*, 655 F. Supp. 2d 1376, 1376 (J.P.M.L. 2009) (holding that "[d]iscovery is likely to require an

individualized, factual inquiry into the job duties performed by each employee, and the plaintiffs asserted violations of the various state wage laws, which have differing provisions"). Besides denying transfer and consolidation when discovery appears to be plaintiff-specific, the Panel has also denied centralization when discovery appears to be defendant-specific. *In re Proton-Pump Inhibitor Prods. Liab. Action*, 273 F. Supp. 3d 1630, 1630 (J.P.M.L. 2017) (reasoning that "a significant amount of the discovery in these actions appear almost certain to be defendant-specific. Although all the subject drugs are PPI [Proton-Pump Inhibitors], they are not identical. Some are available by prescription only, whereas others are sold over-the counter. Each has a unique development, testing and marketing history, and each was approved by the FDA at different times").

The Panel also has denied centralization in cases in which the plaintiff cannot identify specific discovery shared by all cases beyond commonalities in alleged wrongdoings by the defendants. *In re Great West Cas. Co. Ins. Litig.*, 176 F. Supp. 3d 1371, 1371 (J.P.M.L. 2016) (denying claims in which the only commonality that plaintiff alleged is that a particular insurer denied all actions involving Medicare claims). In these cases, the Panel reasoned that broad categories of discovery alone are insufficient to warrant transfer and consolidation if plaintiffs cannot specifically identify discovery that will be shared amongst the cases. *Id.* at 1372.

The Panel further has denied centralization when transferring and consolidating the actions would complicate case management by grouping competing defendants in the same litigation when these defendants were not named in the same actions initially, as is currently the case. *In re Ambulatory Pain Pump-Chondrolysis Prods. Liab. Litig,* 709 F. Supp. 2d 1375 (J.P.M.L 2010) (denying centralization in part because most defendants were only named in a small amount of the one hundred and two actions filed overall); *In re Table Saw Prods.*,

641 F. Supp. 2d at 1385 (denying centralization when no defendant was sued in all actions); *In re Yellow Brass Plumbing Component Prod. Liab. Litig.*, 844 F. Supp. 2d 1377, 1378 (J.P.M.L. 2012) (upholding that the Panel is typically "hesitant" to consolidate cases containing multiple competing defendants); *In re Watson Fentanyl Patch Prods. Liab. Litig.*, 883 F. Supp. 2d. 1350, 1351 (J.P.M.L. 2012) (denying centralization against competing defendants due to likely complications in case management because competing defendants will need to protect trade secret and confidential information).

Here, centralization will only complicate the discovery process and case management procedures. Plaintiffs argue that transfer and consolidation will eliminate plaintiffs needing to serve multiple sets of interrogatories, seek depositions of the same corporate witnesses, request product of the same or similar documents, and engage in expert discovery on the same issues. ECF no. 1-1.Plaintiffs' Brief in Support of Motion, p. 13. However, this argument ignores the defendants' need for plaintiff-specific discovery critical to each case whether or not the cases are consolidated. Centralization will not eliminate the hotel brand defendants' need to investigate the actions of plaintiffs, plaintiffs' traffickers, the individual hotels where plaintiffs were trafficked, and the actions of the hotel staff. None of these issues will be common among the cases transferred to the Southern District of Ohio. As a result, transfer and consolidation will burden the court as it will be left to handle and oversee discovery that is unique to the twenty-one actions and involves witnesses and evidence located outside of Ohio. Further, plaintiffs have predicted that 1,500 additional plaintiffs will eventually be added. These 1,500 additional plaintiffs will have their own set of specific discovery that will vary from case to case, complicating discovery even further. Indeed, transfer and consolidation of these actions will make case management and discovery untenable.

Additionally, the differences in named hotel brand defendants among the actions will complicate case management procedures. Some, such as defendant BWII, are only named in a few cases. *See* ECF no. 1-2, Plaintiffs' Brief in Support, Schedule of Actions. If the actions were consolidated, competing hotel brand defendants will be grouped together for discovery and pre-trial proceedings. As a result, BWII could be forced to share confidential and proprietary information with other competing hotel brand defendants despite having no relationship to the cases where others are named as defendants. To limit the amount of confidential information that will be shared with direct competitors, BWII, and other hotel brand defendants certainly will seek protective orders. These protective orders will govern discovery that will vary from action to action, further delaying and complicating case management procedures.

Finally, centralization will result in further delay to the cases that have been pending in the Southern District of Ohio since March 2019. Significant motions practice has already occurred in these cases, and in the case of BWII, a Motion to Dismiss is pending that includes an argument for lack of personal jurisdiction. Many hotel brand defendants have not had the opportunity to challenge jurisdiction or engage in motions practice as eight of the twenty-one cases listed on the Schedule of Actions were filed in December of 2019. Motions practice among the transferred cases would delay the matters that have already progressed through case management within the Southern District of Ohio. For these reasons and for those addressed above, the requirements of §1407 have not been met to permit the transfer and consolidation of the actions as proposed by plaintiff. As a result, defendant BWII respectfully requests that the Panel deny plaintiffs' Motion.

**C. The Actions are Founded Upon a Legal Issue of Statutory Interpretation Regarding the Scope of § 1595(a) Rendering Transfer Pursuant to §1407 Improper.**

Alternatively, the Panel should deny the motion because of the unique legal question at the heart of plaintiffs' Complaints. Plaintiffs' Motion spends a significant amount of time arguing that transfer is appropriate because of alleged common factual issues shared among the cases in the Schedule of Actions as they relate to hotel brand defendants' policies concerning sex trafficking. However, all of the cases on the Schedule of Actions are founded upon one primary legal question—does section 1595(a) of the TVPRA extend to entities like hotel brand defendants who did not directly participate in plaintiffs' trafficking. Despite plaintiffs' contention that these cases are grounded in the conduct of hotel brands and establishments, the success of plaintiffs' cases will be determined by the court's statutory interpretation of section 1595(a), making them primarily legal in nature.

It is well founded that "[w]here issues in a case are primarily legal in nature even though some fact issues may exist, the Panel is nearly certain to conclude that transfer is not appropriate." Multidistrict Litig. Manual §5.4. *See also In re Medi-Cal Reimbursement Rate Reduction Litig.*, 652 F. Supp. 2d 1378, 1378 (J.P.M.L. 2009) (denying transfer when the cases raise strictly legal issues); *In re Env't Prot. Agency Pesticide Listing Confidentiality Litig.*, 434 F. Supp. 1235, 1236 (J.P.M.L. 1977) (denying centralization when the primary issue involved alleged violations of various EPA statutes regarding the registration and supplemental registration requirements for pesticides because the predominant common question among the cases was founded on the issue of statutory interpretation); *In re Real Estate Transfer Tax Litig.*, 895 F. Supp. 2d 1350, 1351 ( J.P.M.L. 2012) (denying centralization because plaintiffs' claims were founded upon a legal questions regarding whether the parties were statutorily exempt from liability for real estate transfer taxes); *In re ABA Law School Accreditation Litig.*,

325 F. Supp. 3d 1377, 1378-79 (J.P.M.L. 2018) (denying centralization when action as founded upon legal questions such as whether the ABA can be considered a state actor and whether its accreditation standards are "unenforceably" vague); *In re SFPP, LP., R.R. Prop. Rights Litig.*, 121 F. Supp. 3d 1360, 1361 (J.P.M.L. 2015) (denying transfer when the common legal issue existing amongst the cases centered on a legal question examining the scope of the Railroad's rights in the subsurface under the applicable Congressional land grants); *In re Healthextras Ins. Marketing and Sales Litig.*, 24 F. Supp.3d 1376, 1376-77 (J.P.M.L. 2014) (denying transfer when actions shared a primarily common legal issue regarding whether an insurance policy was issued to eligible participants). Additionally, the Panel has held that a party's attempt to transfer and consolidate cases merely to avoid two federal courts having to rule upon the same issue should not be a factor when considering if consolidation is appropriate. *In re Real Estate Transfer Tax Litig.*, 895 F. Supp. 2d at 1351*; In re Medi-Cal Reimbursement Rate Reduction Litig.*, 652 F. Supp. at 1387; *In Re ABA Law School Accreditation Litig.*, 325 F. Supp. 3d at 1379; *In re SFPP, LP., R.R. Prop. Rights Litig.*, 121 F. Supp. 3d at 1361.

Here, all of the cases will turn on a legal issue–the scope of section 1595(a) of the TVPRA extending to entities who played no direct role in plaintiffs' sex trafficking, such as a hotel brand with no ownership in the hotel and which does not employ any staff at the hotel. The only true commonality connecting the actions is plaintiffs' claim that hotel brand defendants violated section 1595(a) by failing to enact and enforce policies that would have prevented sex trafficking at individual hotels within their brand. However, section 1595(a) does not list the scope of entities that may face civil liability under the act. It only states that a victim may pursue a civil claim against the perpetrator or "whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known

has engaged in an act in violation of this chapter." 18 U.S.C. §1595(a). In the Motions to Dismiss filed to date, named hotel brand defendants argue that section 1595(a) does not apply to businesses or entities that did not participate in the sex trafficking and had no knowledge of the trafficking. Following, hotel brand defendants argue that Congress did not intend for section 1595(a) to extend liability onto parent corporations, membership associations, and franchisors based solely on some association with separately owned establishments. *H.H. v. G6 Hospitality et al* 2:19-cv-0075; *M.A. v. Wyndham Hotels & Resorts, Inc.* 2:19-cv-00849; *Jane Doe S.W. v. Lorain-Elyria Motel Inc. d/b/a Best Western Inn* 2:19-cv-01194. Thus, the courts must address this issue if plaintiffs' cases are to proceed. Additionally, the issue regarding the scope of section 1595(a) of the TVPRA is likely to remain at the center of the recently filed cases because only hotel brand defendants were named, leaving out the traffickers and establishments where traffickers committed their crimes. Because this common legal issue will predominate over any factual similarities between the claims, transfer and consolidation under §1407 is improper.

Moreover, transferring all of the cases to one court will deny the eleven other district courts, where the actions currently are filed, the opportunity to engage in statutory interpretation of section 1595(a) of the TVPRA. Denying plaintiffs' motion for transfer will give numerous district courts the opportunity to examine the scope of section 1595(a) and analyze whether hotel brand defendants' actions constitute 1) participation in a sex trafficking venture and 2) a benefit from a sex trafficking venture. *See* 18 U.S.C. §1595(a). Multiple district courts analyzing this issue will ensure that the scope of section 1595(a) and its application to entities like hotel brand defendants is robustly debated to arrive at the correct interpretation of the statute. *See United States v. Mendoza*, 646 154, 160 (1984) (holding that allowing multiple courts to analyze questions of law promotes a "thorough development of the legal doctrine by allowing litigation

in multiple forums). Therefore, to allow thorough judicial debate of the critical legal issue regarding the scope of section 1595(a), defendant BWII respectfully requests that the Honorable Panel deny plaintiffs' Motion.

**D. Alternatives to Transfer Under §1407 Exist, but Have not been Proposed by Plaintiffs.**

In its order setting forth a briefing schedule in response to plaintiffs' Motion, the Panel requested that the parties should address what steps they have taken to pursue alternatives to centralization including, but not limited to, engaging in informal coordination of discovery and scheduling. Unfortunately, plaintiffs have not addressed any other options to coordinate discovery and scheduling. Plaintiffs strategically filed their Motion the day after five other additional sex trafficking cases were filed, giving parties in those cases no time to discuss alternatives to centralization. In the cases pending in the Southern District of Ohio since March, 2019, plaintiffs did not attempt to discuss alternatives to centralization. Instead, plaintiffs' actions demonstrate that their only goal is to create a multi-district litigation in the Southern District of Ohio.

However alternatives to transfer exist that should be considered by the Panel. When denying transfer under § 1407, the Panel often cites to *In re Eli Lilly and Co. (Cephalexin Monohydrate) Patent Litig.*, 446 F. Supp. 242, 244 (J.P.M.L. 1978). In *Eli Lilly*, the Panel denied transfer citing to numerous suitable alternatives to section 1407 transfer to minimize the possibility of duplicative discovery. *Id.* In *Eli Lilly*, the Panel recognized that notices for depositions could be filed in all actions, thereby making the depositions applicable in each action. *Id.* The Panel also noted that the parties could agree and stipulate that any discovery relevant to more than one action may be used by all actions. *Id.* The same alternatives exist currently, rendering transfer and consolidation unnecessary.

Like the Panel suggests in *Eli Lilly*, parties can work together to produce corporate representatives of hotel brand defendants for use in all sex trafficking cases in which the particular hotel brand is named as a defendant. Additionally, parties could enter a stipulation that provides for the sharing of relevant policies from hotel brand defendants for use in the actions in which a defendant is named as a party. While defendants will still seek a protective order to provide for the confidentiality of these documents, these types of arrangements would alleviate plaintiffs' concern for having to conduct duplicative discovery among the hotel brand defendants. These alternatives would also allow the defendants to engage in case specific discovery in the district court where the plaintiffs, the hotels, and hotel staff reside. Thus, the alternatives to transfer as set forth by the Panel in *Eli Lilly* would alleviate plaintiffs' concern for duplicative discovery and accommodate the defendants' need to conduct case-specific discovery, to the benefit of all parties. As a result, defendant BWII respectfully requests that the Panel deny transfer under §1407 so that parties can employ alternatives as set forth in *Eli Lilly,* 446 F.Supp. at 244.

## IV. CONCLUSION

For the reasons described in greater detail above, defendant Best Western International Inc. respectfully requests that the Panel deny Plaintiffs' Motion for Transfer of Actions to the

Southern District of Ohio (Eastern Division) Pursuant to 28 U.S.C. § 1407 For Consolidated Pretrial Proceedings.

Respectfully submitted,

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