BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: Hotel Industry Sex Trafficking Litigation **MDL Docket No. 2928**

MARRIOTT INTERNATIONAL, INC.'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR TRANSFER OF ACTIONS TO THE SOUTHERN DISTRICT OF OHIO (EASTERN DIVISION) PURSUANT TO 28 U.S.C. § 1407

Defendant Marriott International, Inc. ("Marriott"),[1] submits its Opposition to Movants' Motion for Transfer and Coordination Pursuant to 28 U.S.C. § 1407 (ECF No. 1-1, hereinafter, the "Motion").

I. INTRODUCTION

Movants propose that this Panel take the extraordinary step of transferring at least fifteen different lawsuits thousands of miles from their original fora. They do so where the dispositive factual issues on liability will require a highly particularized, case-by-case analysis of individual claims of alleged human trafficking at various hotels at various times over the past fifteen years involving different plaintiffs and defendants scattered across the United States. Transfer and coordination under Section 1407 is unjustified now because the individual cases at issue lack sufficient common questions of fact and the relief requested under different state statutory and

[1] Marriott has been named as a defendant in six lawsuits that recently have been filed in six different federal courts over the past few weeks: *A.B. v. Hilton Worldwide Holdings, Inc., et al.*, No. 3:19-cv-1992 (D. Or. 2019); *A.B. v. Marriott International, Inc.*, No. 1:19-cv-5770 (E.D. Pa. 2019); *C.K. v. Wyndham Hotels and Resorts, Inc., et al.*, No. 3:19-cv-1412-J20PDB (M.D. Fla. 2019); *H.G. v. Marriott International, Inc., et al.*, No. 19-cv-13622 (E.D. Mich. 2019); *K.B. v. International Hotels Corporation, et al.*, No. 1:19-cv-1213 (D. N.H. 2019); and *K.R. v. G6 Hospitality, LLC*, No. 3:19-cv-8252 (N.D. Ca. 2019). Marriott has not even been served with each of the actions – none of which was filed in the Southern District of Ohio – and only four appear on the Schedule of Actions. ECF No. 2-3.

common law and the Trafficking Victims Protection Reauthorization Act ("TVPRA") would *undermine* rather than promote convenience, justice, and efficiency.

Although Movants have captioned the matter "In re: Hotel Industry Sex Trafficking Litigation," this is not an action against the hotel industry generally. No such claim or cause of action exists under the TVPRA and related state law. Rather, these are distinct, individual actions arising from alleged criminal incidents of human trafficking that involve at a minimum (1) *different* hotels in different states owned and operated by numerous (and different) defendants and non-parties, (2) *different* victims, (3) *different* criminal perpetrators, (4) *different* individual hotel employees who allegedly "knew" or "should have known" about sex trafficking based on the facts and circumstances surrounding the alleged activities and conduct at different respective locations, (5) *different* time periods for the alleged incidents dating as far back as fifteen years; (6) *different* franchisor-franchisee relationships (under *different* state laws) pursuant to different franchise agreements, and (7) *different* hotel managers responsible for the daily operations of the subject hotels pursuant to different management contracts with the franchisee/owners. This Panel has made clear that Section 1407 relief should not be granted lightly. Such motions should be granted only as a last resort, when necessary to substantially benefit the convenience of parties and witnesses and the just and efficient resolution of similar actions (or pretrial issues). Movants have failed to meet that heavy burden here. These cases will require individualized, case-specific inquiries, and are not amenable to a single court resolving issues on a common basis.

At bottom, the Motion is not about convenience or judicial economy. Trafficking cases involving hotels have been on-going for years in jurisdictions *other than* the Southern District of Ohio, and such cases have advanced well beyond the pleading stage. *See e.g.*, *Ricchio v.*

McLean, 1:15-cv-13519 (D. Mass.) (filed in 2015 and trial concluded December 5, 2019). Though artfully couching their request in terms of favoring a forum where a TVPRA claim "has made substantial progress" in "active litigation," Movants make no secret of the fact that they have singled out the Honorable Algenon L. Marbley shortly after Chief Judge Marbley issued a favorable decision in a TVPRA case (albeit one not involving Marriott) denying a motion to dismiss. ECF No. 1-1, Motion at 7-8. Yet Marriott was only recently (*i.e.*, since December 2019) named as a defendant in six different cases involving different alleged human trafficking incidents at Marriott-brand hotels (none of which is located in Ohio or even remotely close to it) *at the same time* Movants sought consolidation before their favored-Judge. The leading treatise on the Federal Rules of Civil Procedure has cautioned movants about this Panel's "tendency to refuse to order MDL transfer when it believes that the moving party has an ulterior motive." Wright & Miller, 15 Fed. Prac. & Proc. Juris. § 3863 (4th ed. 2019) (hereinafter, "*Wright & Miller*"). Such a motive transparently exists here, and "[w]here a Section 1407 motion appears intended to further the interests of particular counsel more than those of the statute, [the Panel] would certainly find less favor with it." *In re: CVS Caremark Corp. Wage and Hour Employment Practices Litigation*, 684 F. Supp. 2d 1377, 1379 (J.P.M.L. 2010); *see also In re: Louisiana-Pacific Corp. Trimboard Siding Marketing, Sales Practices and Products Liability Litigation*, 867 F. Supp. 2d 1346, 1347 (J.P.M.L. 2012) (noting concern that the request for centralization – made after the transferee court issued a favorable ruling – was based on considerations that are not consistent with the purpose of Section 1407). Marriott has no quarrel with Movants' description of Chief Judge Marbley as a "thoughtful, deliberate, and dedicated" jurist; however, he admittedly has no prior MDL experience and presides as the Chief Judge over one of the most congested federal dockets. *See* United States District Courts – National Judicial

Caseload Profile, Sept. 30, 2019 (showing that the median length of actions in S.D. Ohio is among the longest in the country).[2] Foisting these disparate cases upon Chief Judge Marbley would reward particular counsels' motive and only *exacerbate* precisely the inconvenience, expenditure, and judicial inefficiencies that Section 1407 was drafted to alleviate. Consolidation in the Southern District of Ohio should be denied.

II. FACTUAL AND PROCEDURAL BACKGROUND

Marriott is a worldwide operator, franchisor, and licensor of hotel properties under numerous brand names. Consistent with its focus on management, franchising, and licensing, Marriott owns very few properties. Indeed, although Marriott has approximately 7,000 hotels in its system, Marriott owns less than twenty of those hotels, none of which are identified by any of the complaints here. Of the remaining hotels in its system, Marriott manages approximately 30% and franchises the remaining approximately 70%. In turn, the franchised hotels are owned and operated by scores of different entities. Marriott does not own any of the identified subject hotels (all of which are franchised). As the franchisor, Marriott has no employees at the hotels, and has no oversight or control of the everyday operations of the hotels. Marriott condemns all forms of human trafficking and sexual exploitation and emphasizes that it has not participated in any of the alleged trafficking (nor do plaintiffs allege so).

Much like they do in their underlying complaints, Movants cite various newspaper articles and statistics about the human suffering caused by sex trafficking throughout the United States to make it appear that trafficking in the hotel industry presents a common factual issue. *See, e.g.*, ECF No. 1-1, Motion at 2-4. While sex trafficking is no doubt a deeply troubling social problem, none of the articles and statistics is germane to their Section 1407 Motion.

[2] https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0930.2019.pdf.

Rather, an examination of the allegations in each complaint subject to the Motion reveals that the individual cases—and certainly those in which Marriott is a named party—are marked by a conspicuous *lack* of common factual issues. Whether a defendant was willfully blind or should have known about the particular criminal incidents (as alleged in some of the complaints) at hotels owned and operated by numerous different third parties is necessarily based on the unique circumstances specific to where the alleged crime occurred.

By framing their claims at a 50,000-foot-high level of abstraction, Movants' supposedly "common" issues are overly general, insufficient, and do not support consolidation:

- the nature and extent of sex trafficking within at [*sic*] Defendants' properties and *in the hotel industry as a whole*;
- whether Defendants violated regulations related to the human trafficking including the TVPRA, 18 U.S.C. § 1595(a);
- the facts giving rise to Defendants' knowledge or constructive knowledge of sex trafficking ventures;
- whether Defendants knew the sex trafficking involved minors;
- what if any steps Defendants took to prevent human trafficking ventures that they knew or should have known occurred on their premises;
- whether Defendants concealed negative information from consumers and or [sic] government;

ECF No. 1-1, Motion at 9 (emphasis added). In contrast, Movants conveniently gloss over, among others, the following concrete questions – *which* Defendant, if any, allegedly knew or should have known about sex trafficking at a hotel? *How*? At *which* locations did this occur? *How* did the perpetrator carry out the crime? *Which* facts gave rise to *what* actual or constructive knowledge, by *whom*, and *when*? – the answers to which are particular to each defendant, each hotel and each plaintiff.

When properly framed, the supposed "commonality" of any *factual* issues is exposed as superficial, if not illusory. Rather, as the summary of allegations below shows, liability will turn on the distinct facts of each case. For instance, even where Marriott is a defendant, there are not common questions of fact between the alleged trafficking:

- *A.B. v. Marriott International, Inc.*, No. 1:19-cv-5770 (E.D. Pa. 2019). This case involves A.B., a victim who was trafficked and subjected to violence by certain unnamed perpetrators at hotels located in *Philadelphia, Pennsylvania*. ¶¶ 4-7, 52. The subject hotels and their staff allegedly failed to stop her abuse despite the presence of various "red flags" at those hotels. ¶¶ 58-71. In largely conclusory fashion, Marriott is alleged to have controlled these franchised hotels by virtue of lending its brand name to the hotels as franchisor. ¶¶ 40-46.

- *C.K. v. Wyndham Hotels and Resorts, Inc., et al.*, No. 3:19-cv-1412-J20PDB (M.D. Fla. 2019). Notably, Movants do not list this on their Schedule of Actions (ECF N. 2-3). This case involves C.K., a victim who was trafficked, imprisoned, raped, and assaulted in various defendant-branded hotels located in *Jacksonville, Florida*. ¶¶ 4, 10, 61-83. Apparently unlike the criminal involved in A.B.'s victimization, above, the FBI fortunately apprehended this trafficker, who was eventually sentenced to 24 years in federal prison. ¶ 81. The hotels in this case are alleged to have generalized knowledge regarding the prevalence of sex trafficking crimes that occurred in areas that were totally unrelated to C.K.'s specific case. ¶¶ 55-56. By insinuation, this knowledge is further imputed to Marriott based on its alleged "control" as a franchisor of a Four Points Sheraton brand hotel. ¶ 57.

As illustrated above with *A.B.* and *C.K.*, each of the remaining cases with other defendants subject to this Motion similarly involved (1) a different victim; (2) a different perpetrator; (3) different hotels; (4) a different geographical location; (5) different time periods; (6) a different combination of "red flags" alleged in support of a theory of willful blindness or that a defendant "should have known"; (7) different franchise relationships under the laws of different states; ***and so on***. That each of the complaints against Marriott includes a claim under Section 1595 of the TVPRA is not relevant, because common questions of law do not satisfy the "commonality" element of Section 1407. Furthermore, even the legal theories are not common: some of the actions also allege different state statutory and common law claims seeking different

forms of relief requiring the application of various different laws. *See, e.g., K.B. v. International Hotels Corporation, et al.*, No. 1:19-cv-1213 (D.N.H. 2019) (claiming negligence, negligent supervision, unjust enrighment and TVPRA violation).

Notably, *none* of the cases in which Marriott was named as a co-Defendant was filed in the Southern District of Ohio; several such cases lump Marriott together with unrelated defendant franchisors by asserting vague group allegations; and there is no uniform overlap of any Defendants among these cases or any of the other cases (which include various different hotel managers, hotel owners, franchisors, and even a website).

III. LEGAL STANDARD

Title 28 U.S.C. § 1407 sets forth the standard under which this Panel may transfer civil actions to a single district for coordinated or consolidated pretrial proceedings. The actions for which such relief is requested must involve "one or more common questions of fact …" 28 U.S.C. § 1407(a). If this threshold requirement is met, the Panel may transfer the actions for coordinated pretrial proceedings where such a transfer would be for the "convenience of parties and witnesses" and would "promote the just and efficient conduct of such actions." *Id.*

The Panel has explained that Section 1407 centralization should be a last resort, after all other options are exhausted. *In re: Best Buy Co., Inc.,* 804 F. Supp. 2d 1376, 1378 (J.P.M.L. 2011). Thus, it is not sufficient merely to show some commonality; Movants must justify the extraordinary relief sought by showing significant improvements of efficiency and convenience. *See In re: Eli Lilly and Company (Cephalexin Monohydrate) Patent Litigation,* 446 F. Supp. 242, 244 (J.P.M.L. 1978) (holding that movants had failed to justify Section 1407 centralization). Where the number of civil actions at issue are few, moreover, the burden on Movants for Section 1407 coordination or consolidation increases, such that Movants are required to show that the

common factual questions are unusually complex and/or numerous. Specifically, the Panel has instructed:

> to demonstrate that the just and efficient conduct of the litigation would be promoted by transfer where only a minimal number of actions are involved, the moving party bears a *strong burden* to show that the common questions of fact are *so complex* and the accompanying discovery so time-consuming as to overcome the inconvenience of the party whose action is being transferred and its witnesses.

In re: Interstate Medicaid Patients at Good Samaritan Nursing Center, 415 F. Supp. 389, 391 (J.P.M.L. 1976) (citation omitted, emphases added); *see also, In re: Boeing Co. Employment Practices Litigation*, 293 F. Supp. 2d 1382, 1383 (J.P.M.L. 2003) (holding that the party seeking transfer and coordination could not satisfy its burden "[g]iven the minimal number of actions involved in th[e] docket").

Here, because there are relatively few cases on this docket (and only six in which Marriott is named as a co-Defendant), Movants bear a heavy burden which requires them to make a strong showing that common questions of fact are so complex as to justify the inconvenience of transfer. But there is no such overlapping factual complexity; each separate underlying crime is discrete. That the crimes allegedly took place at a hotel is an overly general and superficial fact. It is not a complex common fact.

Even if Movants were not under this more stringent standard, however, they would nevertheless be required to show that resolution of common issues through consolidated pretrial efforts would be possible and would increase efficiency and convenience as no other options would. In any event, neither showing can be made here.

IV. ARGUMENT

A. The Lack of Common Questions of Fact Militates Heavily Against Section 1407 Relief.

The *sine qua non* of Section 1407 relief—common questions of *fact*—seldom is sufficient, by itself, to justify granting a 1407 Motion. By contrast, a *lack* of sufficient common questions of fact is enough for this Panel to deny transfer. *See Wright & Miller* § 3863 n. 6-7 and accompanying text (citing authorities). Here, the lack of sufficient common questions of fact is evident from the existence of multiple layers of factual issues requiring highly individualized, defendant-specific and fact-specific inquiries. *See In re: Florida, Puerto Rico, and U.S. Virgin Islands 2016 and 2017 Hurricane Seasons Flood Claims Litigation*, 325 F. Supp. 3d 1367, 1368 (J.P.M.L. 2018) (denying consolidation where the alleged common facts – *i.e.*, property damage resulting from a storm and the alleged underpayment of claims – were facially superficial because each complaint involved a different property, different insureds, different witnesses, different proofs of loss and different damages); *In re: Tyson Foods, Inc., Meat Processing Facilities Fair Labor Standards Act (FLSA) Litigation*, 581 F. Supp. 2d 1374 (J.P.M.L. 2008) (denying consolidation where alleged violation of federal law by a single defendant was based upon specific acts or omissions at different plants).

1. Whether the predicate wrongful act occurred will require an individualized, fact-specific inquiry.

First, Movants must establish in each case the existence of a predicate wrongful act under the TVPRA (*see* 18 U.S.C. § 1595) and any other state law claims plead. This involves a pure question of fact: did trafficking occur? Each of the complaints involves allegations of trafficking related to different hotels, different locations, different alleged victims, and different alleged criminal perpetrators. In some cases, the predicate wrongful act will be established by the

trafficker's conviction (or plea) and prison sentence. *See, e.g., C.K.* Complaint at ¶ 81. In others, however, there appears no mention of any conviction or sentence, but rather the plaintiff advances a litany of allegations regarding an unnamed (and possibly unknown) trafficker. *See, e.g., K.B.* Complaint at ¶¶ 55-70. Regardless, whether alleged sex trafficking took place in each case will require an individualized, fact-specific inquiry.

2. Assuming (*arguendo*) that the predicate wrongful act occurred, determining a violation of any statutory or common law duty by each separate defendant will require an individualized, fact-specific inquiry.

As with the first point, the question of each individual defendant's culpability will turn on the facts of that specific case. For example, each of the six cases in which Marriott is a named party centers around a particular set of hotels in or near a specific geographical location. Whether the hotels and their staff in those locations knew about, should have known about, or were willfully blind to, any conduct or acts of trafficking that transpired at their respective locations will depend on such facts as what the victim and trafficker did at each hotel. The evidence is not uniform and will vary in each case.

In this respect, Movants' extensive citation to products liability cases is inapposite. ECF No. 1-1, Motion at 9-10. Those matters all involved consolidating cases in which harm to many individuals could potentially be traced to a single act or omission, *i.e.*, a manufacturing defect. This common issue of fact provided a compelling justification for consolidation. *See In re: Farxiga (Dapagliflozin) Products Liability Litigation*, 273 F. Supp. 3d 1380, 1382 (J.P.M.L. 2017) (involving multiple claims alleging that two prescription drugs caused kidney damage); *In re: Ethicon Physiomesh Flexible Composite Hernia Mesh Products Liability Litigation*, 254 F. Supp. 3d 1381, 1382 (J.P.M.L. 2017) (involving multiple claims alleging that defects in a medical product led to complications when implanted in patients); *In re: Atrium Medical Corp.*

C-Qur Mesh Products Liability Litigation, 223 F. Supp. 3d 1355, 1356 (J.P.M.L. 2016) (involving multiple claims alleging that medical product incited allergic or inflammatory responses causing severe complications). In stark contrast, liability in the cases subject to this Motion do not – and cannot – arise from a single act or omission, but rather must be determined individually based on the particular acts or omissions that transpired at each different hotel.

Similarly, the question of whether a defendant *directly* knew or should have known about alleged sex trafficking at a hotel (as opposed to imputing knowledge vicariously) will turn, among other things, on acts or omissions (if any) of that defendant in connection with the incident of trafficking that allegedly occurred at each particular location. The current legal conclusions couched as facts are not sufficient. General knowledge that human trafficking occurs does not give rise to an independent legal duty and is not sufficient for a TVPRA claim. A defendant's liability for alleged trafficking will require direct proof for each of the hotels involving each plaintiff and each criminal trafficker. For these reasons, Movants' concerns about "the potential for conflicting, disorderly, chaotic" decisions (ECF No. 1-1, Motion at 8) are wholly unfounded.

3. Assuming (*arguendo*) that the predicate wrongful act occurred and that there was some violation of a legal duty, determining whether a defendant-franchisor is vicariously liable will require an individualized, fact-specific inquiry based on the laws of different states.

Additionally, the complaints in which Marriott is a named Defendant were filed in six different states: Oregon, Pennsylvania, Florida, Michigan, New Hampshire, and California, involving distinct franchisees and hotel managers with distinct duties and liabilities. Variances in each state's substantive laws with respect to the issues of (i) actual and apparent agency generally and (ii) more specifically, when a franchisor such as Marriott will be deemed vicariously responsible for the acts or omissions of a franchisee and/or a hotel manager

demonstrate that consolidation is not appropriate. These determinations also will require individualized analyses of the different factors each state law applies for determining vicarious liability. *Compare, e.g.*, *Cain v. Shell Oil Co.*, 994 F. Supp. 2d 1251 (N.D. Fla. 2014) (under Florida law, convenience store's franchise agreement with franchisor *did not* create an agency relationship as required to support store patron's premises liability action stemming from injuries sustained by patron when gunfight broke out in store's parking lot because, even though the agreement set standards and benchmarks for the store's operation that store was responsible for satisfying, the agreement did not give franchisor a right to control the store's operations) *with* *Kosters v. Seven-Up Co.*, 595 F.2d 347 (6th Cir. 1979) (under Michigan law, convenience store's franchise agreement with franchisor *did* establish franchisor's vicarious liability stemming from an exploding soda bottle because the franchisor could set standards for the "type, style, size, and design" of the soda carton). This individualized issue of vicariously liability is further compounded when factoring in the remaining non-Marriott cases subject to this Motion. The determination of different state laws as applied to different hotel-specific facts weighs against consolidation.

4. Common questions of law are not sufficient to justify Section 1407 relief.

For Section 1407 purposes, questions of fact (as here) which are framed at a high level of abstraction are not truly questions of fact at all. Thus, a broad, generalized concern regarding human sex trafficking that occurs in the hospitality industry cannot justify consolidation. *Cf. In re: The Great West Casualty Company Insurance Litigation*, 176 F. Supp. 3d 1371 (J.P.M.L 2016) (rejecting consolidation where the broad "common" fact was that the defendants denied insurance coverage generally).

That leaves the substantive legal determinations under 18 U.S.C. § 1595, which are likewise insufficient to justify consolidation. It is well-settled that common questions of law do not satisfy the "commonality" element of Section 1407. *See, e.g., In re: American Home Products Corp "Released Value" Claims Litigation*, 448 F. Supp. 276, 278 (J.P.M.L. 1978) ("since these actions involve a common question of *law* and share few, if any, questions of *fact*, transfer under Section 1407 is inappropriate.") (per curium, emphases added, internal citations omitted).

B. Granting The Motion Would Not Be Convenient For The Parties Or The Witnesses.

While the Marriott cases subject to the Motion are at the service of process stage, others are past the pleading stage with the defendants varying action to action. Consolidation would not serve the convenience of the parties and witnesses, who are dispersed throughout the country. *See In re: Provident Securities Litigation*, 715 F. Supp. 2d 1356 (J.P.M.L. 2010) (rejecting consolidation where there was no common overlap of defendants and discovery of the core issue was not centralized). Moreover, this Panel generally is "reluctant to transfer to a district in which no constituent action is pending" (*Wright & Miller* § 3864), and Marriott has *no* cases subject to this Motion pending in the State of Ohio.

Indeed, even where a single wrongful act causes harm to numerous plaintiffs, this Panel has declined to consolidate cases where the convenience of the parties and witnesses would not be served. *In re: Route 91 Harvest Festival Shootings in Las Vegas, Nevada, on October 1, 2017*, 347 F. Supp. 3d 1355 (J.P.M.L. 2018) is illustrative. There, this Panel declined to centralize nine actions, pending in multi-district litigation, arising out of a mass shooting that resulted in the killing or wounding of hundreds of people attending a country music festival. Notably, the fact that different federal courts may well have reached inconsistent outcomes

regarding a single shooting which killed or wounded hundreds was not sufficient to justify Section 1407 consolidation. *Id.* at 1357. *A fortiori* consolidation is not justified here, where the courts will be analyzing not a single act, but rather separate and distinct acts (or omissions) regarding sex traffickers and hotel franchisees, and thus will be far less likely to reach inconsistent outcomes. Moreover, as this Panel emphasized in *In re: Route*, where a relatively small number of actions in multi-district litigation are involved (such as the current circumstances here), the proponent of consolidation bears a heavier burden to demonstrate that consolidation is appropriate.

Lastly, this Panel categorically rejected MGM's contention in *In re: Route* that the litigation was expected to "expand significantly." MGM emphasized that it received letters from 63 attorneys on behalf of 2,462 individuals, and that just one attorney claimed that **22,000 lawsuits** were expected. But this Panel explained that it "*does not take into account the mere possibility of future filings when considering centralization.*" *Id.* at 1358 (emphasis added). Movants' suggestion that 1,500 lawsuits might be filed should be given no weight here. Even if this suggestion is considered, however, it weighs heavily in favor of *denying consolidation in the Southern District of Ohio* because of the burden of adding over 1,500 individual cases to an already congested docket.

C. Centralization Undermines Rather Than Promotes "Just And Efficient Conduct."

As explained above, each identified case subject to this Motion will involve highly individualized discovery and there is no uniformity among the named Defendants in these lawsuits. Collective discovery would be cumbersome, confusing, and provide little to no representative value or efficiency to each party under inquiry. *See In re: Provident Securities Litigation*, 715 F. Supp. 2d at 1357 (denying consolidation where the discovery of the conduct by

each different broker-dealer defendant "will tend to be individualized, and thus the risk of duplicative discovery less consequential."). Additionally, the different hotel brand franchisor defendants are competitors, each with its own proprietary brand standards and procedures. Each franchisor must be treated separately with sensitivity for the contractual relationships with their respective franchisees that are confidential. This concern likewise exists for the relationships between the different hotel owners and hotel operators. These obstacles alone demonstrate the complications with collective discovery among competitors involving defendant-specific confidential information. *In re: Proton–Pump Inhibitor Products Liability Litigation*, 273 F. Supp. 3d 1360, 1362 (J.P.M.L. 2017).

Moreover, even if there were to be Section 1407 consolidation, Ohio is not the proper forum and consolidation may need to be fractured for the purposes of individualized inquiry regarding each case, each plaintiff, and each Defendant in order to fairly adjudicate the issues of each action on its merits. This conclusion is reinforced by common-sense considerations. For example, the Panel has pointed to the situs of evidence as an important factor, yet there is no allegation that any evidence pertaining to Marriott is situated in Ohio. *See Wright & Miller* § 3864 n.19 and accompanying text. Similarly, the Panel has cited parallel litigation in federal and state courts as a consideration in selecting a district in a state where a significant number of state actions are pending, to enable federal and state judges to cooperate in managing discovery. *Id.* at n.22 and accompanying text. None of the claims involving Marriott have been filed in any state *or federal* court in Ohio, let alone overlapping claims.

In summary, the Panel should deny the Motion because not only have the Movants failed to carry their heavy burden of justifying consolidation under Section 1407, but consolidation at

this time would *undermine* rather than promote the interests of convenience, justice, and efficiency that that statute was designed to serve.

CONCLUSION

For the foregoing reasons, this Court should deny the Movants' Motion for Transfer of Actions to the Southern District of Ohio (Eastern Division) pursuant to 28 U.S.C. § 1407.

Dated: January 2, 2020

Respectfully submitted,

/s/ Michael P. O'Day

Michael P. O'Day (Bar No. 27075)
DLA Piper LLP (US)
The Marbury Building
6225 Smith Avenue
Baltimore, Maryland 21209-3600
Telephone: +1.410.580.4293
Facsimile: +1.410.580.3293
Email: michael.oday@us.dlapiper.com

ATTORNEY FOR DEFENDANT
MARRIOTT INTERNATIONAL, INC.