

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

**In re: Hotel Industry Sex Trafficking
Litigation**

MDL Docket No. 2829

**RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TRANSFER OF
ACTIONS FOR CONSOLIDATED PRETRIAL PROCEEDINGS**

Defendants Wyndham Hotels & Resorts, Inc., Wyndham Franchisor, LLC (f/k/a Wyndham Hotels and Resorts, LLC), Ramada Worldwide Inc., Microtel Inns and Suites Franchising, Inc., La Quinta Worldwide, LLC, and LQ Management, L.L.C. (collectively, the “Wyndham Defendants”), and Defendants CorePoint Lodging Inc., CPLG Properties L.L.C., and CPLG HOL L.L.C. (collectively, the “CorePoint Defendants”), respectfully submit this response in opposition to certain Plaintiffs’ Motion for Transfer of Actions to the Southern District of Ohio for Consolidated Pretrial Proceedings (the “MDL Motion”).

INTRODUCTION

Certain Plaintiffs have moved to transfer and consolidate twenty-three (23) civil cases brought against various hotel-related defendants (franchisees, franchisors, management companies, and brand owners) under various theories of liability, including the Trafficking Victims Protection Reauthorization Act (the “TVPRA”), 18 U.S.C. § 1595. MDL consolidation is not appropriate at this time because, among other reasons, the moving Plaintiffs have not demonstrated common questions of fact among all of the actions. Even if they had, the moving Plaintiffs’ request to direct the MDL to the Southern District of Ohio overlooks the relative congestion in that district, particularly given Plaintiffs’ estimation that the MDL may include more than 1,000 cases. *See* Dkt. 1-1, at 1 n.1. Accordingly, the Wyndham and CorePoint Defendants respectfully request that the Judicial Panel on Multidistrict Litigation (the “Panel”)

deny the MDL Motion or, alternatively, transfer these cases to a judicial district that is well-suited for assuming this MDL.

BACKGROUND

One of the first (if not the first) civil actions alleging sex trafficking claims against a hotel-related defendant was filed in the District of Massachusetts in October 2015 and was set for trial on December 2, 2019. *See Ricchio v. McLean*, 1:15-cv-13519 (D. Mass.). During 2019, additional cases were filed in multiple state and federal courts against various categories of defendants. Those defendants include individual hotel owners, hotel franchisees, management companies, holding companies, franchisors, and parent companies. Some defendants are named in multiple lawsuits, while others, such as individual hotel owners and franchisees, are only named in a single case. Some cases allege that certain defendants participated in alleged trafficking, whereas other cases allege that certain hotel defendants could or should have known that trafficking occurred on the premises.¹ Some cases only assert TVPRA claims, while others assert various state statutory and common law causes of action. The trafficking allegations also vary significantly from case to case by the time of the trafficking (which spans almost fifteen years), the duration of the conduct, the number of properties and locations involved, and whether the underlying activity was the subject of a criminal investigation and/or prosecution.

On December 9, 2019, the moving Plaintiffs filed the MDL Motion. The timing of this filing suggests that the moving Plaintiffs perceived favorable rulings in the Southern District of Ohio would provide an advantage in that court. Moreover, it appears that the moving Plaintiffs waited until after the *Ricchio* case went to trial to avoid consolidation in the District of Massachusetts, filed additional cases in the Southern District of Ohio, and then immediately filed

¹ Compare *H.M. v. Red Lion Hotels Corp.*, 1:19-cv-4859 (N.D. Ga.) with *Jane Doe 1 v. Red Roof Inns, Inc.*, 1:19-cv-3840 (N.D. Ga.).

this MDL Motion to take advantage of these recently filed cases and seek to have the MDL transferred there.

ARGUMENTS & AUTHORITIES

A. The Proposed MDL Consolidation Is Inappropriate.

The Panel may transfer civil actions pending in different districts to a single district court for coordinated or consolidated pretrial proceedings, provided that: (i) those actions involve “one or more common questions of fact;” and (ii) transferring such actions “will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407(a). While “complete identity of common factual issues” among cases is not necessary for consolidation, actions that are consolidated should nonetheless “arise from a common factual core.” *See, e.g., In re: Blue Cross Blue Shield Antitrust Litig.*, 908 F. Supp. 2d 1373, 1376 (J.P.M.L. 2012). Common questions of law, however, are insufficient. *See, e.g., In re Clean Water Rule: Definition of “Waters of the United States”*, 140 F. Supp. 3d 1340, 1341 (J.P.M.L. 2015) (“[T]hese cases will turn on questions of law Accordingly, centralization under Section 1407 is inappropriate.”); *In re E. Airlines, Inc. Flight Attendant Weight Program Litig.*, 391 F. Supp. 763, 764 (J.P.M.L. 1975). The party seeking consolidation must show that consolidation is proper. *See, e.g., In re: Best Buy Co., Inc., California Song-Beverly Credit Card Act Litig.*, 804 F. Supp. 2d 1376, 1379 (J.P.M.L. 2011).

The current application currently involves twenty-three cases, dozens of different defendants (both in name and type), and a variety of legal claims and theories. The defendants include individual hotel owners, hotel franchisees, management companies, holding companies, hotel brand franchisors, and parent companies, as well as at least one tech company (Craigslist). The factual allegations vary widely, and, even when the individual plaintiffs assert a common

cause of action, they often are based on different theories under the statute. All of the “common questions” identified by the moving Plaintiffs are specific to particular cases and defendants and thus are not common.² For instance, the moving Plaintiffs identify no questions of fact that are common to the alleged trafficking of Plaintiff A.B. at a hotel in Oregon in 2012 and the alleged trafficking of Plaintiff C.D. at a different branded hotel in Massachusetts in 2017.

The Panel decisions on which the moving Plaintiffs rely actually undermine their MDL Motion. In *In re UnumProvident Corp. Sec., Derivative & “ERISA” Litig.*, the Panel found that common questions of fact existed only because all of the actions arose from “allegations of improper claims denial[s] by UnumProvident” and affiliated entities. 280 F. Supp. 2d 1377, 1379 (J.P.M.L. 2003). Similarly, in *In re Tylenol*, the Panel recognized that all of the cases shared a common question of fact (whether over-the-counter acetaminophen can cause liver injury), and on that basis ordered MDL consolidation notwithstanding other plaintiff-specific causation issues. *In re Tylenol (Acetaminophen) Mktg., Sales Practices & Products Liab. Litig.*, 936 F. Supp. 2d 1379 (J.P.M.L. 2013). In *In re Immunex*, the Panel also noted that all of the cases turned in part on whether the defendants, either by themselves “or as part of a conspiracy,” engaged in fraudulent business practices relating to the sale of prescription drugs. *In re Immunex Corp. Average Wholesale Price Litig.*, 201 F. Supp. 2d 1378, 1380 (J.P.M.L. 2002). In this application, by contrast, the cases involve numerous, unrelated defendants without any allegation of concerted action among them. The moving Plaintiffs have not identified any common

² The Plaintiffs identify six “common questions” as follows: (i) “the nature and extent of sex trafficking within at [sic] Defendants’ properties”; (ii) “whether Defendants violated regulations related to the human trafficking including the TVPRA”; (iii) “the facts giving rise to Defendants knowledge or constructive knowledge [sic] of sex trafficking venture”; (iv) “whether Defendants knew the sex trafficking involved minors”; (v) “what if any steps Defendants took to prevent human trafficking ventures that they knew or should have known occurred on their premises”; and (vi) “whether Defendants concealed negative information from consumers and or government [sic].” See Dkt. 1-1, at 9.

questions of fact among the actions at issue, and whatever common legal questions may exist are insufficient to justify consolidation.

Even if there were common questions of fact, MDL consolidation is premature at this time. The Panel's 2017 decision in *In re: Proton-Pump Inhibitor* is instructive. *In re Proton-Pump Inhibitor Products Liab. Litig.*, 273 F. Supp. 3d 1360, 1361 (J.P.M.L. 2017). In that decision, the Panel recognized that each of the plaintiffs' cases stemmed from allegations that taking pump inhibitors could "result in various types of kidney injury," but the Panel nonetheless denied MDL consolidation. *Id.* The Panel noted that "the named defendants var[ie]d from action to action," meaning that consolidation was "unlikely to serve the convenience of most, if not all defendants and their witnesses." *Id.* at 1361-62; accord *In re Ambulatory Pain Pump-Chondrolysis Products Liab. Litig.*, 709 F. Supp. 2d 1375, 1377 (J.P.M.L. 2010) (denying consolidation of 102 actions in part because most of the defendants were named "in only a minority of actions"); *In re: Table Saw Products Liab. Litig.*, 641 F. Supp. 2d 1384 (J.P.M.L. 2009) (denying consolidation of 42 actions where no defendant was sued in all of the actions, and many defendants were named in only a few).

The Panel also acknowledged that "the various defendants were competitors," and that the Panel historically has been hesitant to consolidate such cases because of the case management difficulties associated with protecting trade secret, confidential, and proprietary materials. *See, e.g., In re Proton-Pump Inhibitor*, 273 F. Supp. 3d at 1362; accord *In re: Yellow Brass Plumbing Component Products Liab. Litig.*, 844 F. Supp. 2d 1377, 1378 (J.P.M.L. 2012) ("[W]e are typically hesitant to centralize litigation against multiple, competing defendants"). Moreover, multi-defendant MDLs are known to prolong pretrial proceedings because of the need for separate discovery and motion tracks. *See, e.g., In re Proton-Pump Inhibitor*, 273 F.

Supp. 3d at 1362; *In re Invokana (Canagliflozin) Products Liab. Litig.*, 223 F. Supp. 3d 1345, 1348 (J.P.M.L. 2016). The Panel also recognized that a significant amount of discovery was “almost certain to be defendant-specific” and that the prospect of future cases (even “by the hundreds” or “thousands”) does not affect the initial calculus as to whether MDL consolidation is appropriate. *In re Proton-Pump Inhibitor*, 273 F. Supp. 3d at 1362.

The Panel’s considerations in *In re Proton-Pump Inhibitor* apply equally here. The named defendants and the types of defendants vary from case to case, include competitors, and include defendants in single cases along with defendants in several. Moreover, because all of the questions of fact are particular to a given case and/or defendant, consolidation is unlikely to achieve efficiencies at this point in time. The prospect of additional cases should not weigh in favor MDL consolidation. *See, e.g., In re: Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Products Liab. Litig.*, 959 F. Supp. 2d 1375, 1376 (J.P.M.L. 2013) (“[W]e are disinclined to take into account the mere possibility of future filings in our centralization calculus.”). The MDL Motion should be denied.

B. The Factors Used To Determine A Judicial District Do Not Favor The Southern District Of Ohio.

In the event the Panel were to favor transfer and find that consolidation is appropriate, the pertinent factors for determining an appropriate judicial district include:

- (i) the congestion and bandwidth of the potential transferee districts, *see, e.g., In re: Horizon Organic Milk Plus DHA Omega-3 Mktg. & Sales Practices Litig.*, 844 F. Supp. 2d 1380, 1381 (J.P.M.L. 2012);
- (ii) the ease of access to the potential transferee districts, *see, e.g., In re: A-Power Energy Generation Sys., Ltd. Sec. Litig.*, 829 F. Supp. 2d 1382, 1383 (J.P.M.L. 2011); and
- (iii) the experience of potential transferee districts in handling multidistrict litigation, *see e.g., In re Merscorp Inc., Real Estate Settlement Procedures Act (RESPA) Litig.*, 473 F. Supp. 2d 1379, 1380 (J.P.M.L. 2007).

These factors and others weigh against the moving Plaintiffs' request that the actions be transferred to the Southern District of Ohio.

First, a potential transferee district's relative congestion is a significant consideration when determining where to transfer cases for multidistrict litigation. *See, e.g., In re Career Acad. Antitrust Litig.*, 342 F. Supp. 753, 754 (J.P.M.L. 1972) (“[C]ourt congestion is often considered by the Panel in selecting a transferee district”); *In re Air Crash Disaster at John F. Kennedy Intern. Airport on June 24, 1975*, 407 F. Supp. 244, 246 (J.P.M.L. 1976). The Panel has been particularly hesitant to consolidate cases in districts that already are burdened with onerous multidistrict litigation. *See, e.g., In re Trasyol Products Liab. Litig.*, 545 F. Supp. 2d 1357, 1358 (J.P.M.L. 2008); *Horizon Organic Milk*, 844 F. Supp. 2d at 1381. Whatever the moving Plaintiffs' motivation for seeking to transfer it there, the Southern District of Ohio is one of the most congested judicial districts. The median amount of time from the filing of a civil action to its disposition is 41.6 months, ranking 93rd out of 94 judicial districts in the country.³ The Southern District of Ohio also has two pending MDLs, which had 3,622 individual actions pending between them as of December 16, 2019.⁴ The current docket in the Southern District of Ohio is not conducive to the efficient disposition of these cases relative to other districts, nor has the moving Plaintiffs' preferred judge previously presided over multidistrict litigation. *See, e.g., In re Merscorp Inc., Real Estate Settlement Procedures Act (RESPA) Litig.*, 473 F. Supp. 2d 1379, 1380 (J.P.M.L. 2007).

³ *See* United States District Courts – National Judicial Caseload Profile, Sept. 30, 2019, available at https://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile0930.2019.pdf.

⁴ *See* MDL Statistics Report – Distribution of Pending MDL Dockets by District, Dec. 16, 2019, available at https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDLS_by_District-December-16-2019.pdf.

Second, the Panel has historically given preference to potential transferee districts that are “appreciably easier” for travel. *A-Power Energy Generation*, 829 F. Supp. 2d at 1383; accord *In re Air Crash Disaster Near Chicago, Ill., on May 25, 1979*, 476 F. Supp. 445, 449 (J.P.M.L. 1979). For actions that are geographically dispersed across the country, a centrally-located district is also preferred. See, e.g., *In re Samsung Top-Load Washing Mach. Mktg., Sales Practices & Products Liab. Litig.*, 278 F. Supp. 3d 1376, 1378 (J.P.M.L. 2017). The cases at issue are dispersed from coast to coast, with cases pending in Oregon, New Mexico, New Hampshire, Virginia, Ohio, New York, Michigan, Pennsylvania, Georgia, Washington, Florida, and Texas. The parties are also geographically dispersed, with the large defendants being headquartered in New Jersey, Arizona, Maryland, California, Georgia, Ohio, Florida, and Texas. Relative to cities in other districts, Columbus, Ohio is not as accessible by direct flights, making the Southern District of Ohio less suitable as a transferee district. For example, Houston has two international airports (including a hub) through which seven times more flights are routed as compared to Columbus.⁵ Winter weather further complicates nationwide travel to Columbus as compared to the Southern District of Texas and other districts. Convenience has heightened importance in cases like these, given the number of discrete parties and witnesses at issue, including the number of parties and witnesses whose involvement is limited to a single case.

Third, statistics concerning the prosecution of trafficking crimes at the federal level suggest that there is no statistical reason to favor the Southern District of Ohio over other districts, given that sex trafficking prosecutions in the Southern District of Ohio are

⁵ See FAA Commercial Service Airport (Rank Order) based on Calendar Year 2018, dated Nov. 8, 2019, available at https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy18-commercial-service-enplanements.pdf.

comparatively few in number. Indeed, federal prosecutions of sex-trafficking crimes are more common in the Southern District of Texas,⁶ and there are at least three civil cases presently pending in that district.⁷ *See, e.g., In re The Honest Co., Inc., Sodium Lauryl Sulfate (SLS) Mktg. & Sales Practices Litig.*, 222 F. Supp. 3d 1349, 1350 (J.P.M.L. 2016) (recognizing preference for potential transferee districts where related cases are pending). As of the filing this Response, the Texas Multi-District Litigation Panel is administering sex trafficking-related cases naming hotel defendants. Plaintiffs in the Texas state court cases have requested consolidation in Harris, County (i.e., Houston), where counsel for those Plaintiffs anticipate filing an additional 1,800 to 2,000 cases.⁸ Many of the defendants in the Schedule of Actions at issue in this application are defendants in that proposed state MDL.

Finally, MDL transfer motions motivated by ulterior, tactical considerations such as forum shopping are disfavored. *See, e.g., In re Concrete Pipe*, 302 F. Supp. 244, 255 (J.P.M.L. 1969) (“The basic question before the Panel in each proceeding looking to coordinated or consolidated pretrial is [] whether the objectives of the statute are sufficiently served to justify

⁶ A 2018 report identified Texas as having “the greatest number of active human trafficking defendants at the federal level” *See* 2018 Federal Human Trafficking Report, The Human Trafficking Institute, at 42, available at <https://www.traffickingmatters.com/wp-content/uploads/2019/04/2018-Federal-Human-Trafficking-Report-Low-Res.pdf>. That same report identified the Southern District of Texas as having the second highest number of criminal defendants charged with sex trafficking crimes in 2018, with 29 criminal cases initiated against 82 defendants. *Id.* at 43. The Southern District of Ohio, by contrast, saw just five criminal cases initiated against eight defendants.

⁷ *See L.W. v. Hilton Worldwide Holdings, Inc.*, 4:19-cv-4172 (S.D. Tex.) (assigned to Senior District Judge Nancy Atlas); *Doe #6 v. Choice Hotels Int’l, Inc.*, 4:19-cv-4993 (S.D. Tex.) (assigned to District Judge Lynn N. Hughes); *Doe #9 v. Wyndham Hotels and Resorts, Inc.*, 4:19-cv-5016 (S.D. Tex.) (assigned to District Judge Alfred Bennett).

⁸ *See* Salesforce’s Motion for Transfer and Request for Stay, at 1, attached hereto as **Exhibit A** (“[T]he same firms [i.e., Annie McAdams PC, The Gallagher Law Firm, and Sico Hoelscher Harris LLP] have stated their intent to file 1800 to 2000 more such cases in the near future”).

the necessary inconveniences of transfer and remand. . . . Many factors are relevant to the answer[,] [including] . . . [whether] transfer [will] serve any ulterior motive of any party or parties, such as forum shopping.”); *In re CVS Caremark Corp. Wage & Hour Employment Practices Litig.*, 684 F. Supp. 2d 1377, 1379 (J.P.M.L. 2010); *accord In re: Brandywine Communications Techs., LLC, Patent Litig.*, 959 F. Supp. 2d 1377, 1379 (J.P.M.L. 2013); *In re Truck Acc. Near Alamagordo, New Mexico, on June 18, 1969*, 387 F. Supp. 732, 734 (J.P.M.L. 1975) (“[I]t appears that in this particular litigation plaintiff[s] ulterior motive for seeking transfer amounts to an attempted misuse of the statute.”).

The Panel is skeptical of transfer motions where a law firm supporting consolidation files additional cases in its preferred district just before filing an MDL transfer motion. *See, e.g., CVS Caremark Corp.*, 684 F. Supp. 2d at 1379 (“Although movants are plaintiffs in three of the seven actions, they are all represented by the same law firm, which filed the first action in early 2009 but then commenced the two others immediately prior to filing this Section 1407 motion. . . . [These circumstances] suggest[] the possibility of other considerations at play. Admittedly, the Panel’s primary purpose is not to divine the motives and strategies of the various litigants. . . . Nevertheless, where a Section 1407 motion appears intended to further the interests of particular counsel more than those of the statute, we would certainly find less favor with it.”).

In this instance, the moving Plaintiffs appear to have manufactured an argument for consolidation in the Southern District of Ohio. The moving Plaintiffs waited several months to file their MDL Motion until their now-preferred judge in the Southern District of Ohio issued rulings they perceive as favorable. *See M.A. v. Wyndham Hotels & Resorts, Inc.*, 2:19-CV-849, 2019 WL 4929297 (S.D. Ohio Oct. 7, 2019); *H.H. v. G6 Hosp., LLC*, 2:19-CV-755, 2019 WL 6682152 (S.D. Ohio Dec. 6, 2019). They also waited until the *Ricchio* case went to trial in an

apparent effort to avoid consolidation in the District of Massachusetts. Finally, counsel for the moving Plaintiffs also filed multiple cases in the Southern District of Ohio just before filing the MDL Motion. If the Panel ultimately determines that MDL consolidation is proper, districts such as the Southern District of Texas would be more natural and more convenient selections than the Southern District of Ohio.

CONCLUSION

For the foregoing reasons, the Wyndham Defendants and CorePoint Defendants respectfully request that the Panel deny the MDL Motion or, alternatively, assign the MDL to a district that is better positioned to handle the MDL than the Southern District of Ohio, such as the Southern District of Texas.

Dated: January 2, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 4.1(a) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, I hereby certify that on **January 2, 2020**, I filed the foregoing RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TRANSFER OF ACTIONS FOR CONSOLIDATED PRETRIAL PROCEEDINGS through the CM/ECF system, constituting electronic service upon all parties listed in the attached service list, or as indicated thereof.

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H.H. v. G6 Hospitality, LLC et al.
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Jane Doe 2 v. Red Roof Inns, Inc. et al.
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District of Oregon (Portland), Civil Action No.: 3:19-cv-01992

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Jane Doe v. Rickey Patel, LLC d/b/a Vacation Inn, et al.
Middle District of Florida, Civil Action No.: 6:19-cv-2414

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Jane Doe #17 v. G6 Hospitality Property, et al.
District of New Mexico, Civil Action No.: 1:19-cv-00963

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Jane Doe #6 v. Choice Hotels International, Inc. d/b/a Comfort Inn
Southern District of Texas, Civil Action No.: 4:19-cv-04993

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Jane Doe #6 v. Choice Hotels International, Inc. d/b/a Comfort Inn
Southern District of Texas, Civil Action No.: 4:19-cv-04993

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Jane Doe #9 v. Wyndham Hotels and Resorts, Inc., et al.
Southern District of Texas, Civil Action No.: 4:19-cv-05016

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