

**BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTI-DISTRICT LITIGATION**

In re:)
) MDL Docket No.
EQUIFAX, INC. DATA BREACH)
LITIGATION)
)

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR TRANSFER OF
ACTIONS TO THE NORTHERN DISTRICT OF GEORGIA AND FOR
CONSOLIDATION PURSUANT TO 28 U.S.C. § 1407**

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I. INTRODUCTION

Pursuant to 28 U.S.C. § 1407 and JPML Rule 6.2, James McGonnigal and Brian F. Spector, Plaintiffs in the case styled *McGonnigal, et al. v. Equifax, Inc.*, U.S. District Court for the Northern District of Georgia, Case No. 1:17-cv-03422, and Randolph Jefferson Cary III, William R. Porter, and Robin D. Porter, Plaintiffs in in the case styled *Cary III, et al. v. Equifax, Inc.*, U.S. District Court for the Northern District of Georgia, Temporary Case No. 1:17-mi-99999-UNA,¹ respectfully move this Judicial Panel on Multidistrict Litigation for an Order transferring the 22 currently-filed cases listed in the Schedule of Actions filed concurrently herewith (collectively, “the Actions”), as well as any tag-along cases subsequently filed involving similar facts or claims, to the U.S. District Court for the Northern District of Georgia for coordinated or consolidated proceedings.

Movants are the plaintiffs in two of the 22 cases filed to date against Equifax, Inc. (“Equifax”) relating to the massive data breach first reported by Equifax on September 7, 2017. Generally, plaintiffs in the Actions allege that Equifax, a consumer credit agency, allowed unauthorized individuals to gain access to its data network storing the private personal information of 143 million consumers. Equifax acknowledged that the stolen information included consumers’ names, Social Security numbers, birth dates, addresses and, in some cases, debit and credit card and driver’s license numbers. As alleged in the Actions, the consequences of Equifax’s data breach are severe – the stolen personal and financial information can be used against victims in a variety of ways including identity theft and fraud. All of the Actions allege

¹ The *Cary III* Action was filed on September 8, 2017 and assigned a temporary case number. Due to inclement weather, the U.S. District Court, Northern District of Georgia is closed on September 11, 2017, which has delayed the assignment of a permanent case number. The undersigned counsel believes there are multiple Actions pending in the Northern District of Georgia in this same posture, and will notify the Panel of all additional tag-along actions as they become known pursuant to Rule 6.2(d).

violations of various state and federal statutes and common law principles against Equifax relating to the breach and all seek certification of a similar class of victims.

Consistent with the Panel's course in recent data breach litigation, Plaintiffs seek the consolidation and transfer of the Actions to the United States District Court for the Northern District of Georgia, where Equifax is headquartered. All of the class actions filed against Equifax contain common allegations and common questions of fact. Moreover, because Equifax's actions have received a great deal of publicity, and the number of victims is enormous, numerous tag-along cases will be filed in the future.

II. LEGAL STANDARD

Actions containing allegations with common questions of fact may be transferred and consolidated or coordinated pursuant to Section 1407 if transfer will facilitate the convenience of the parties and witnesses, and will promote the just and efficient conduct of the transferred cases. 28 U.S.C. § 1407. The Panel typically considers four factors in deciding whether to transfer a case under Section 1407:

- a. the elimination of duplication in discovery;
- b. the avoidance of conflicting rules and schedules;
- c. the reduction of litigation cost; and
- d. the conservation of the time and effort of the parties, attorneys, witnesses and courts.

See Manual for Complex Litigation (Fourth) § 20.131 (2004) (citing *In re Plumbing Fixture Cases*, 298 F. Supp. 484 (U.S. Jud. Pan. Mult. Lit. 1968)). Each of these factors favors transfer and consolidation of the cases filed against Equifax.

III. ARGUMENT

A. The Litigation Satisfies the Requirements for Consolidation and Transfer Under 28 U.S.C. § 1407

Pretrial transfer and consolidation under section 1407 is appropriate and necessary here. The Actions involve similar allegations and legal standards and will likely be numerous. Unless these cases are consolidated, the parties will incur excessive costs due to duplicative discovery, and will face the risk of inconsistent rulings on a variety of matters.

1. The Litigation Involves Common Questions of Fact

In assessing the appropriateness of consolidation under Section 1407, the Panel looks to the pleadings to determine the extent to which common questions of fact are present. The Complaints in these cases clearly present common questions of fact. Each Complaint is based on allegations that Equifax allowed a massive security breach in violation of various statutes and the state common law. In addition, the Complaints generally seek certification of similar classes. This Panel has consistently consolidated data breach cases as they inherently involve common questions of fact. *See, e.g., In re Ashley Madison Customer Data Sec. Breach Litig.*, 148 F. Supp. 3d 1378, 1379 (U.S. Jud. Pan. Mult. Lit. 2015) (actions alleging data breach involving 37 million customers “involve common questions of fact”); *In re: Anthem, Inc., Customer Data Sec. Breach Litig.*, 109 F. Supp. 3d 1364, 1365 (U.S. Jud. Pan. Mult. Lit. 2015) (finding “actions involve common questions of fact” in context of data breach affecting 80 million); *In re: Cmty. Health Sys., Inc., Customer Sec. Data Breach Litig.*, 84 F. Supp. 3d 1362 (U.S. Jud. Pan. Mult. Lit. 2015) (“These actions—all of which are putative nationwide class actions—share factual questions arising from the electronic theft of personally identifiable information and personal health information of approximately 4.5 million customers or patients of common defendants”); *In re: Supervalu, Inc., Customer Data Sec. Breach Litig.*, 67 F. Supp. 3d 1377 (U.S. Jud. Pan.

Mult. Lit. 2014) (actions arising “from an alleged data security breach suffered in mid–2014 by Supervalu” found to “involve common questions of fact”); *In re: Home Depot, Inc. Customer Data Sec. Breach Litig.*, 65 F. Supp. 3d 1398, 1399 (U.S. Jud. Pan. Mult. Lit. 2014) (“All the actions, whether brought by consumers or by financial institutions, arise from a common factual core—namely, the Home Depot data breach”); *In re: Target Corp. Customer Data Sec. Breach Litig.*, 11 F. Supp. 3d 1338 (U.S. Jud. Pan. Mult. Lit. 2014) (“These actions share factual questions arising from a data security breach at stores owned and operated by Target”); *In re: Zappos.com, Inc., Customer Data Sec. Breach Litig.*, 867 F. Supp. 2d 1357, 1358 (U.S. Jud. Pan. Mult. Lit. 2012) (related actions “share factual questions arising from a security breach in Zappos’s computer networks”); *In re: Sony Gaming Networks & Customer Data Sec. Breach Litig.*, 802 F. Supp. 2d 1370, 1371 (U.S. Jud. Pan. Mult. Lit. 2011) (multiple actions “involve common questions of fact” relating to “Sony defendants fail[ure] to adequately safeguard the financial, personal identification, and related data affecting an estimated 77 million users”).

2. The Parties Face Duplicative Discovery Absent Transfer and Consolidation

Because the allegations of all the cases are substantially similar and derive from the same common event, the parties face duplicative discovery if the cases are not transferred and consolidated. This is an important consideration for the panel in that transfer and consolidation “ensure[s] that the actions are supervised by a single judge who, from day-to-day contact with all aspects of the litigation, will be in the best position to design a pretrial program that will prevent duplicative discovery...and substantially conserve the time and efforts of the parties, the witnesses and the federal judiciary.” *Resource Exploration Inc. Sec. Litig.*, 483 F. Supp. 817, 821 (U.S. Jud. Pan. Mult. Lit. 1980). The parties in these actions will necessarily engage in duplicative discovery. All Plaintiffs will be seeking the same documentation from Equifax and

will likely request to depose the same witnesses. Equifax will raise the same class certification objections and discovery objections, seek the same protective orders and assert the same privileges in each case. However, if the Panel transfers and consolidates the cases, the parties will coordinate their efforts and thus save all parties—and the courts—time and money.

3. Transfer and Consolidation Will Prevent Inconsistent Pretrial Rulings

The Panel considers the possibility of inconsistent rulings on pretrial issues because of the possible res judicata or collateral estoppel effects on other cases. *See In re Enron Securities Derivative & ERISA Litig.*, 196 F. Supp. 2d 1375, 1376 (U.S. Jud. Pan. Mult. Lit. 2002) (granting a transfer in part to prevent inconsistent pretrial rulings, particularly with respect to questions of class certification). Because of the similarity of the allegations in the Complaints, and the likelihood that future filed actions will contain the same, the possibility of inconsistent rulings on pretrial motions is substantially increased. Equifax is likely to present the same pretrial motions in each action and assert the same discovery objections and privileges. As an example, Plaintiffs anticipate that Equifax will file motions to dismiss and for summary judgment. Inconsistent rulings on those dispositive motions would pose a serious problem, in that the Actions seek to certify overlapping classes. In addition, because of the similarity in the allegations, Equifax will assert the same defenses in opposition to Plaintiffs' claims, creating a real risk of inconsistent pretrial rulings. In light of this risk, it would be in the best interests of all involved—the parties, the witnesses and the Courts—to transfer and centralize these actions.

4. There is a Sufficient Number of Actions to Support Transfer and Centralization

As stated above, there are currently 22 cases pending and Plaintiffs believe that many more will follow. The data breach underlying the Actions has received a great deal of publicity, and numerous tag-along actions will likely be filed against Equifax in federal courts around the

country. The Panel has routinely ordered centralization of three or fewer cases. *See In re Wireless Telephone Replacement Protection Programs Litig.*, 180 F. Supp. 2d 1381, 1382 (U.S. Jud. Pan. Mult. Lit. 2002) (granting transfer and centralization of three consumer protection cases and determining that pending motions can be presented to and decided by the transferee judge); *In re Philadelphia Life Ins. Co. Sales Practices Litig.*, 149 F. Supp. 2d 937, 938 (U.S. Jud. Pan. Mult. Lit. 2001) (granting transfer of two deceptive insurance sales cases and finding that such transfer would promote the just and efficient conduct of the litigation); *In re Amoxicillin Patent & Antitrust Litig.*, 449 F. Supp. 601, 603 (U.S. Jud. Pan. Mult. Lit. 1978) (granting transfer of three cases involving patent and antitrust issues); *In re Alodex Corp.*, 380 F. Supp. 790, 791 (U.S. Jud. Pan. Mult. Lit. 1974) (granting transfer of three securities actions).

Given the substantial number of current and likely tag-along actions related to this data breach, transfer and centralization is appropriate.

B. The Northern District of Georgia is the Appropriate Transferee Forum

An analysis of the applicable facts indicates that the Northern District of Georgia is the preferable court for consolidation of pretrial proceedings in this litigation. Defendant Equifax maintains its headquarters in Atlanta, Georgia within the Northern District, and regularly conducts business in Georgia. As a result, many of the witnesses would likely be present in the Northern District of Georgia. Atlanta, Georgia is easily accessible as it is served by the Hartsfield–Jackson Atlanta International Airport, which offers the most incoming flights in the United States.

Moreover, it is common practice for cases to be consolidated in the home district of the defendant, particularly in the context of data breach litigation. *See, e.g., In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, 223 F. Supp. 3d 1353, 1354-55 (U.S. Jud. Pan. Mult. Lit. 2016) (“We conclude that the Northern District of California is an appropriate transferee district

for this litigation. Defendant Yahoo’s corporate headquarters is located within the district, and therefore relevant documents and witnesses are likely to be located there.”); *In re 21st Century Oncology Customer Data Sec. Breach Litig.*, 214 F. Supp. 3d 1357, 1358 (U.S. Jud. Pan. Mult. Lit. 2016) (“The Middle District of Florida is an appropriate transferee forum for this litigation. 21st Century is headquartered in this district, and the witnesses and documents relevant to the facts of this litigation are located there.”); *In re: U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, 138 F. Supp. 3d 1379, 1381 (U.S. Jud. Pan. Mult. Lit. 2015) (“We select the District of District of Columbia as the transferee district for this litigation. The federal government defendants are located in that district”); *In re: Home Depot, Inc. Customer Data Sec. Breach Litig.*, 65 F. Supp. 3d at 1400 (“We are persuaded that the Northern District of Georgia is the most appropriate transferee district for pretrial proceedings in this litigation. Home Depot is headquartered in the Northern District of Georgia. Thus, relevant documents and witnesses are likely located within the district.”). These same principles apply to Equifax’s data breach. Consolidation of these proceedings in the Northern District of Georgia is convenient for all parties and witnesses and is the most appropriate transferee forum.

The first-filed case in the Northern District of Georgia is assigned to the Honorable William S. Duffey. Judge Duffey is an experienced judge who has overseen complex and multi-district litigation and would serve the interests of justice as the transferee judge in this case. Likewise, the Northern District of Georgia has many other qualified judges that could oversee this litigation, including the Honorable Thomas W. Thrash. Judge Thrash, who efficiently oversaw *In re: Home Depot, Inc. Customer Data Sec. Breach Litig.*, MDL No. 2583, which involved many of the same issues that will be presented by the Equifax data breach. The Honorable Amy M. Totenberg is currently presiding over data breach litigation involving

Arby's, *Weiss et al. v. Arby's Restaurant Group, Inc.*, Case No. 1:17-cv-01035 (N.D. Ga.), which, like *Home Depot*, involves related issues that will be addressed in this case. Additionally, the Honorable Richard W. Story has prior MDL experience and is well-suited to oversee this litigation. See *In re Ethicon Physiomesh Flexible Composite Hernia Mesh Products Liability Litig.*, MDL No. 2782.

IV. CONCLUSION

Based upon the foregoing, Plaintiffs' Motion for Transfer and Consolidation Under Section 1407 should be granted and these related actions, as well as any subsequently filed actions containing similar allegations, should be transferred to the United States District Court for the Northern District of Georgia.

Dated: September 11, 2017

Respectfully submitted,

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