

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOHN DOES 1-21,)	
)	
Plaintiffs,)	
)	
v.)	No. 4:15-cv-01920 JAR
)	
)	
AVID LIFE MEDIA, INC., et al.,)	
)	
Defendants.)	

ORDER AND SUGGESTION OF REMAND

This matter is before the Court on Plaintiffs’ request for remand to the transferor court, the United States District Court for the Southern District of Mississippi. The Court has considered Plaintiffs’ request and Defendants’ response as well as the pertinent portions of the record, and being now fully advised, **GRANTS** Plaintiffs’ request.

I. Background

In July 2015, Defendants Avid Life Media, Inc. and Avid Dating Life, Inc. d/b/a Ashley Madison (“Avid”) announced that its computer network had been accessed by an unauthorized person or persons who released personal and account information of Avid customers. The announcement led to multiple putative class action lawsuits filed against Avid in addition to several individual and multi-plaintiff lawsuits, all of which were transferred to the United States District Court for the Eastern District of Missouri in December 2015 for coordinated or consolidated pretrial proceedings. See In re Ashley Madison Customer Data Security Breach Litigation, MDL No. 2669 (E.D. Mo.). Plaintiffs filed a Consolidated Class Action Complaint on June 3, 2016, which was amended on June 24, 2016. Class counsel subsequently reached a settlement and on July 21, 2017, the Court entered an order preliminarily approving the class.

Pursuant to the terms of the preliminary approval order, sixteen class members from two of the consolidated cases, Plaisance v. Avid Life Media, Inc., et al., Case No. 4:16CV01940 (E.D. Mo.), and John Does 1-21 v. Avid Life Media, Inc., et al., No. 4:15CV01920 (E.D. Mo.), opted out of the settlement.

On November 20, 2017, the Court granted final approval of the settlement, cy pres distribution and award of attorneys' fees and service awards to the class representatives and dismissed this action with prejudice. The Court retained jurisdiction over the settlement and the settlement fund pending the parties' final accounting and then ordered the MDL closed on July 18, 2018. Closing the MDL may have been premature in light of the plaintiffs who properly opted out of the class action settlement. In order to address those plaintiffs, the Court modified its July 18 Order for the limited purpose of retaining jurisdiction over the two individual cases. In all other respects, however, the MDL proceedings, including all proceedings related to the class action settlement, remained closed.

In Plaisance, by agreement of the parties, the Court ordered the parties to arbitration in Louisiana (the state from which the case was initially transferred). The named plaintiff voluntarily dismissed his case with prejudice on November 13, 2018. In John Does 1-21, the Court granted a joint motion to stay this action to allow the parties an opportunity to attempt to reach a settlement. On January 11, 2019, the parties submitted a joint status report advising the Court they were unsuccessful in their efforts to resolve the case. The Court lifted the stay and ordered the parties to submit proposals on how the case should proceed. The Court is in receipt of those proposals and held a telephone conference with counsel on February 11, 2019.

Avid urges the Court to retain jurisdiction over this case to decide its contemplated amended motion to dismiss and/or stay and compel arbitration. Avid asserts that judicial

economy would be served if this Court retains jurisdiction over the case because of this Court's familiarity with the facts and issues. Plaintiffs maintain that remanding this case back to the District Court of Mississippi would be in the best interests of judicial economy because the arbitration motion will necessarily involve issues of Mississippi law and because the parties and their witnesses are in Mississippi.

II. Remand standard

The JPML has the exclusive authority to remand a transferred case back to a transferor court. 28 U.S.C. § 1407(a); see Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 28 (1998). The Panel typically relies on the transferee court to suggest when it should order remand. JPML Rule 10.1(b)(i); In re Managed Care Litig., 416 F.Supp.2d 1347, 1348 (J.P.M.L. 2006). Indeed, the Panel “is reluctant to order a remand absent the suggestion of the transferee judge[.]” JPML Rule 10.3(a); see In re Bard IVC Filters Prod. Liab. Litig., No. MDL 15-02641-PHX-DGC, 2018 WL 4279834, at *2 (D. Ariz. Sept. 7, 2018) (quoting In re Regions Morgan Keegan Sec., Derivative & ERISA Litig., No. 2:09-md-2009-SHM, 2013 WL 5614285, at *2 (W.D. Tenn. Feb. 28, 2013)). A transferee court may suggest remand “when the judge perceives his or her role in the case has ended,” when a case “will not benefit from further coordinated proceedings as part of the MDL,” and “when everything that remains to be done is case-specific.” In re Amazon.com, Inc., No. 1:13-CV-153-DJH, 2015 WL 4624162, at *2 (W.D. Ky. Aug. 3, 2015) (quoting In re Commercial Money Ctr., Inc. Equip. Lease Litig., No. 1:02CV16000, 2008 WL 3200279, at *2 (N.D. Ohio Aug. 5, 2008)); see also In re Bard IVC Filters Prod. Liab. Litig., 2018 WL 4279834, at *2.

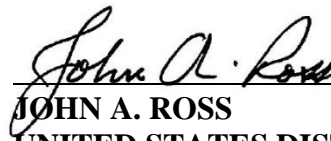
III. Suggestion of remand

Pursuant to 28 U.S.C. § 1407 and the Rules for Multidistrict Litigation promulgated thereunder, specifically Rule 10.1(b), the Court suggests that this action be remanded to its transferor court, the United States District Court for the Southern District of Mississippi. There are no multi-jurisdictional issues remaining and thus no purpose in continued centralization. See In re Amazon.com, Inc., 2015 WL 4624162, at *2 (“[E]verything that remains to be done is case-specific.”). Furthermore, if there is a trial, the court that will ultimately try the case is the District Court for the Southern District of Mississippi.

IV. Conclusion

For the reasons stated above, the Court suggests that the Panel remand John Does 1-21 v. Avid Life Media, Inc., et al., No. 4:15CV01920 (E.D. Mo.) to the United States District Court for the Southern District of Mississippi.

Dated this 15th day of February, 2019.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE