

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

In re AGI Suretrack, LLC Litigation

MDL-_____

**MEMORANDUM IN SUPPORT OF DEFENDANTS'
MOTION FOR TRANSFER OF ACTION FOR CONSOLIDATED
PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. §1407**

INTRODUCTION

Defendants OPISystems, Inc., Integris USA, LLC, Adam Weiss and Seth Tackett (collectively "Defendants") submit this Memorandum in Support of their Motion for Transfer of Action for Consolidated Pretrial Proceedings, to the United States District Court for the Western District of Missouri for coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407.

These actions clearly fit the statutory prerequisites for consolidation: (1) they are substantially similar actions filed contemporaneously “involving one or more common questions of fact” alleging nearly identical facts concerning several former employees of Plaintiff and their alleged actions as they relate to their work for Defendant OPISystems, Inc. (“OPI”); (2) consolidation will further “the convenience of the parties and the witnesses”; and (3) consolidation “will promote the just and efficient conduct of [the] actions” by ensuring centralized oversight of pretrial fact development in what are complex and document-intensive actions, thereby minimizing waste and inefficiency in the conduct of discovery. 28 U.S.C. § 1407(a). Consolidation will also eliminate the possibility of inconsistent rulings.

Defendants respectfully request that the actions be consolidated for pretrial proceedings in the Western District of Missouri. The Western District of Missouri is a centrally located and easily accessible forum in a major metropolitan area, and one of the two cases, which has already been consolidated with two other related actions, is pending in that district.

The Current Litigation

Both pending actions¹ for which transfer and consolidation are sought were filed within days of one another and are in a similar procedural posture. In both, there has been document production, but with some document production and, likely, discovery disputes yet to take place. There are also a number of depositions which need to be conducted in both actions, likely with a substantial amount of overlap with respect to deponents. Both actions include individual defendants who were formally employed by the Plaintiff in both actions, AGI Suretrack, LLC (“AGI”), and are now employed by OPI (the “Individual Defendants”). The Individual Defendants, in both actions, include both sales and engineering focused employees. The Individual Defendants, in both actions, are accused of misappropriating AGI’s confidential and proprietary information and trade secrets, both with respect to customer lists and software.

In essence, the same case is currently pending in different districts. Large swaths of the allegations of the two Complaints are identical. The legal claims against the Individual Defendants in both actions are identical: breach of contract (both with respect to noncompetition, nonsolicitation, and confidential information provisions), breach of duty of good faith and fair dealing, breach of duty of loyalty, tortious interference with a contract and/or business expectancy, and defend trade secrets act and uniform trade secrets act violation (Kansas or Missouri version, depending on the action). The relief sought in both cases is identical.

¹ The pending actions are Civil Action No. 2:23-cv-02372-JWB-GEB, pending in the District of Kansas and Civil Action No. 4:23-cv-00578-RK, pending in the Western District of Missouri.

ARGUMENT

I. THESE ACTIONS ARE APPROPRIATE FOR TRANSFER AND CONSOLIDATION PURSUANT TO 28 U.S.C. §1407(a).

In relevant part, 28 U.S.C. § 1407(a) specifies that this Panel may transfer and consolidate two or more civil cases for coordinated pretrial proceedings upon a determination that (1) the cases “involv[e] one or more common questions of fact,” (2) the transfers would further “the convenience of parties and witnesses,” and (3) the transfers “will promote the just and efficient conduct of [the] actions.” The objective of consolidation under § 1407 is to “eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost, and save the time and effort of the parties, the attorneys, the witnesses, and the courts.” Manual for Complex Litigation, Fourth, § 20.131 (2007). As explained below, the pending cases clearly meet all these criteria and should be transferred and consolidated for pretrial proceedings.

A. The Actions Involve One or More Commons Questions of Fact.

As explained above, both actions are premised on nearly identical facts concerning the Individual Defendants, former AGI employees who now work for OPI, and their alleged actions with respect to AGI’s clients and software. The facts alleged in both Complaints are essentially the same, as are the legal claims and the relief sought. Thus, the first § 1407(a) requirement – that the cases “involv[e] one or more common questions of fact” – is clearly met. *See, e.g., In re AT&T Corp. Secs. Litig.*, No. 1399, 201 U.S. Dist. LEXIS 5233, *3-4 (J.P.M.L. April 19, 2001) (noting that “transfer under Section 1407 does not require a complete identity or even majority of common factual issues . . . [n]or is the presence of additional or differing legal theories significant when the underlying actions still arise from a common factual core”).

B. Consolidation Will Further the Convenience of the Parties and the Witnesses.

The proposed transfer and consolidation is necessary “for the convenience of parties and witnesses.” 28 U.S.C. § 1407(a). Plaintiff in both actions will likely require depositions of many of the same people and discovery of the same documents in both actions. While a significant amount of documents have already been produced, the expense of maintaining two databases, one for each action, could be reduced significantly by the consolidation of these actions. Without consolidation, the defendants and third parties will be subjected to numerous duplicative discovery demands, and witnesses would face multiple, redundant depositions. Consolidation will mitigate these problems by enabling a single judge to manage discovery and minimize witness inconvenience and overall expense.

The savings in time and expense will benefit both the litigants and affected third parties. *See, e.g., In re Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 655 (J.P.M.L. 1981) (centralization would “effectuate a significant overall savings of cost and a minimum of inconvenience to all concerned with the pretrial activities”); *In re Uranium Indus. Antitrust Litig.*, 458 F. Supp. 1223, 1230 (J.P.M.L. 1978) (“[Plaintiffs] will have to depose many of the same witnesses, examine many of the same documents, and make many similar pretrial motions in order to prove their . . . allegations. The benefits of having a single judge supervise this pretrial activity are obvious.”); *In re Stirling Homex Corp. Sec. Litig.*, 405 F. Supp. 314, 315 (J.P.M.L. 1975) (“[W]e are confident that Section 1407 treatment will allow the . . . plaintiffs to experience a net savings of time, effort and expenses through pooling their resources with other plaintiffs . . .”). Given the similarity of the core issues of fact in the complaints, it will be decidedly more convenient for the parties and the witnesses to have the cases consolidated in one forum.

C. Consolidation Will Promote the Just and Efficient Conduct of These Actions.

For the same reasons discussed in Section B, *supra*, the proposed transfer and consolidation will also “promote the just and efficient conduct” of these actions in two respects. 28 U.S.C. § 1407(a). Namely, consolidation will prevent duplicative discovery and conflicting pretrial rulings.

As discussed above, the Complaints contain largely identical factual allegations. Where “analysis of the record before us reveals a commonality of factual questions,” consolidation “is necessary in order to prevent duplication of discovery, eliminate the possibility of conflicting pretrial rulings, and conserve the time and effort of the parties, the witnesses and the judiciary.” *In re Food Fair Sec. Litig.*, 465 F. Supp. 1301, 1304 (J.P.M.L. 1979); *see also In re TMJ Implants Litig.*, 844 F. Supp. 1553, 1554 (J.P.M.L. 1994) (centralization “necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to class certifications and summary judgments), and conserve the resources of the parties, their counsel and the judiciary”).

In light of the unavoidable duplication of depositions and other discovery without consolidation, many of the same pretrial disputes are likely to arise in each case (for example, issues concerning the nature and scope of discovery and issues of privilege). Consolidation will thus ensure that the parties to these actions are not subject to inconsistent pretrial rulings regarding these pivotal issues, a critical consideration in determining whether cases should be consolidated pursuant to Section 1407. *See In re Multi-Piece Rim Prods. Liab. Litig.*, 464 F. Supp. 969, 974 (J.P.M.L. 1979) (centralization necessary “to prevent duplication of discovery and eliminate the possibility of conflicting pretrial rulings concerning these common factual issues”).

These Actions are Sufficiently Numerous and Complex to Warrant Consolidation.

The Panel has stated that it will not require large numbers of pending cases to grant

consolidation under 28 U.S.C. § 1407. The two cases at issue here are sufficiently numerous and complex to warrant consolidation. On prior occasions, where, as here, the issues involved are sufficiently complex and consolidation would prevent the duplication of discovery and pretrial rulings, the Panel has ordered transfer and consolidation of two cases. *See, e.g., In re First Nat'l Bank, Heavener, Okla. (First Mortgage Revenue Bonds) Sec. Litig.*, 451 F. Supp. 995, 997 (J.P.M.L. 1978) (centralization was “necessary, even though only two actions are involved, in order to prevent duplicative pretrial proceedings and eliminate the possibility of inconsistent pretrial rulings.”); *see also In re Okun*, No. 2028, 2009 U.S. Dist. LEXIS 48018 (J.P.M.L. Apr. 15, 2009) (centralizing two actions); *In re Payless ShoeSource, Inc.*, 609 F. Supp. 2d 1372 (J.P.M.L. 2009) (same); *In re Aetna, Inc.*, 609 F. Supp. 2d 1370 (J.P.M.L. 2009) (same).

II. THE WESTERN DISTRICT OF MISSOURI IS A PROPER VENUE TO CONSOLIDATE THE CASES.

One of the pending actions was filed and is pending in the Western District of Missouri and is assigned to District Judge Roseann A. Ketchmark of the Kansas City, Missouri division of the Western District of Missouri. *See* Schedule of Actions. The Western District of Missouri is the best forum for pretrial proceedings for several reasons.

First, multiple witnesses and named Defendants are located in and around the Kansas City area. Both AGI and Defendant Integris USA, LLC have offices in the Kansas City Metropolitan Area. Additionally, the case pending in the Western District of Missouri is already a consolidated action which consolidated three pending cases within the Western District of Missouri. Judge Ketchmark is already familiar with the claims and parties. Meanwhile, the action pending in the District of Kansas was recently reassigned to a different Judge not located in the Kansas City metropolitan area after AGI changed counsel, resulting in the original District Judge assigned to

the case, who sits in Kansas City, Kansas, recusing herself. The recently assigned Judge, who sits in Wichita, Kansas, likely has far less familiarity with the claims at issue.

Additionally, the Kansas City International Airport (MCI) is a short distance from the Charles Evans Whittaker U.S. Courthouse where Judge Ketchmark sits. MCI has non-stop flights to and from numerous cities in the United States and Canada, which is helpful since key witnesses are spread across both the U.S. and Canada. Thus, Kansas City, and the Western District of Missouri, is a sensible and convenient location and forum for this litigation.

CONCLUSION

For these reasons, the Defendants respectfully request the Panel order the transfer and consolidation of the actions listed in the Defendants' Schedule of Actions to the Western District of Missouri for the purpose of coordination of pretrial proceedings in a single forum pursuant to 28 U.S.C. §1407.

DATED: November 1, 2024

Respectfully submitted,
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