

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

**IN RE: KEFFER DEVELOPMENT
SERVICES, LLC LITIGATION**

MDL DOCKET NO. _____

**BRIEF IN SUPPORT OF KEFFER DEVELOPMENT SERVICES, LLC MOTION
TO TRANSFER RELATED CASES FOR CONSOLIDATED
PRETRIAL PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

**DILLON, MCCANDLESS, KING,
COULTER & GRAHAM LLP**

Thomas W. King, III
PA I.D. No. 21580
tking@dmkcg.com

Jordan P. Shuber
PA I.D. No. 317823
jshuber@dmkcg.com

Carl A. Fejko
PA I.D. No. 331216
cfejko@dmkcg.com

Kyle S. Uhlman
CA I.D. No. 302292
kuhlman@dmkcg.com

128 West Cunningham Street
Butler, PA 16001
Telephone: 724-283-2200
Facsimile: 724-283-2298

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INTRODUCTION

Keffer Development Services, LLC (“Keffer”) is a defendant in thirteen identical cases pending in federal courts across the United States—twelve of which are putative class actions. Eight cases are currently pending in the U.S. District Court for the Eastern District of Michigan, with the remaining five filed in federal courts in various other jurisdictions. Similar Plaintiffs’ firms nationwide appear to be actively filing or preparing to file additional related actions, nationwide.

As the volume of federal litigation increases, so do the burdens of managing duplicative discovery, conflicting rulings, and procedural inefficiencies. Accordingly, Keffer seeks an order pursuant to 28 U.S.C. § 1407 and JPML Rule 6.2 consolidating the thirteen currently filed cases—listed in the accompanying Schedule of Actions—and any subsequently filed tag-along actions, in the U.S. District Court for the Eastern District of Michigan.

BACKGROUND

Keffer Development Services, LLC (“Keffer”), a Pennsylvania-based limited liability company, is a common defendant in a series of federal lawsuits arising from allegations that

former University of Michigan¹ football coach Matthew Weiss exploited vulnerabilities in student-athlete data systems employed and utilized by Keffer in various universities throughout the country. These lawsuits, all filed since March of this year, and now occurring across six jurisdictions, accuse Weiss of accessing sensitive personal information of over 150,000 athletes across more than 100 institutions between 2015 and January 2023. The plaintiffs allege that Weiss used this information to hack into the social media, email, and cloud storage accounts of at least 3,300 individuals, predominantly female student-athletes, to obtain intimate photos and videos without their consent.

The lawsuits all assert that Keffer provided electronic medical record and student-athlete training systems, via Athletic Trainer System software, to numerous universities, failed to implement adequate security measures to protect the data it managed. The various plaintiffs around the country have alleged that this negligence facilitated Weiss's unauthorized access to the sensitive information stated above. The claims against Keffer include violations under the Computer Fraud and Abuse Act, the Stored Communications Act, Title IX, and various state laws, encompassing allegations of invasion of privacy, gross negligence, and intentional infliction of emotional distress.

Keffer has denied wrongdoing and intends to vigorously defend itself against the allegations. The company maintains that it fully cooperated with law enforcement during the investigation and disputes the claims of negligence and misconduct.

This proposed multidistrict litigation consolidates numerous lawsuits filed across various federal courts, including the Eastern District of Michigan, the Middle District of North

¹ Notably, eight cases were consolidated in the Eastern District of Michigan, where Keffer seeks to formulate this MDL.

Carolina, the Northern District of Ohio, the Central District of California, the Northern District of Illinois, and the District of Massachusetts. The cases involve multiple universities, including the University of Michigan, High Point University, Malone University, Loyola University Chicago, and Simmons University, all of which are alleged to have failed to adequately protect student-athlete data, thereby enabling Weiss's alleged misconduct.

The central issue in this litigation is whether Keffer and the implicated universities exercised reasonable care in safeguarding sensitive student data and whether their actions or inactions contributed to the alleged breaches of privacy and subsequent harm to the plaintiffs. Thirteen lawsuits against Keffer are currently pending in six federal districts as follows, and as set out in the attached Schedule of Actions (the "Actions"):

a. Eastern District of Michigan:

i. JANE DOE 1, and JANE DOE 2 vs. MATTHEW WEISS; the REGENTS OF THE UNIVERSITY OF MICHIGAN; the UNIVERSITY OF MICHIGAN; KEFFER DEVELOPMENT SERVICES, LLC, No. 2:25-cv-10806 (E.D. MI) (March 21, 2025)

ii. JANE DOE 1, and JANE DOE 2, obo themselves and others similarly situated, vs. MATTHEW WEISS; the REGENTS OF THE UNIVERSITY OF MICHIGAN; the UNIVERSITY OF MICHIGAN; KEFFER DEVELOPMENT SERVICES, LLC, No. 2:25-cv-10855 (E.D. MI) (March 26, 2025)

iii. JANE DOE 1 vs. MATTHEW WEISS; the REGENTS OF THE UNIVERSITY OF MICHIGAN; the UNIVERSITY OF MICHIGAN; KEFFER DEVELOPMENT SERVICES, LLC, No. 2:25-cv-10988 (E.D. MI) (April 7, 2025)

iv. JANE DOE 1, obo herself and others similarly situated, vs. THE UNIVERSITY OF MICHIGAN BOARD OF REGENTS; KEFFER DEVELOPMENT SERVICES, LLC, and MATTHEW WEISS, No. 2:25-cv-10951 (E.D. MI) (April 2, 2025)

v. JANE DOE 1, obo herself and others similarly situated, vs. THE UNIVERSITY OF MICHIGAN BOARD OF REGENTS; KEFFER DEVELOPMENT SERVICES, LLC, and MATTHEW WEISS, No. 2:25-cv-10876 (E.D. MI) (March 28, 2025)

vi. STUDENT DOE 1, obo herself and others similarly situated, vs. THE UNIVERSITY OF MICHIGAN BOARD OF REGENTS; KEFFER DEVELOPMENT SERVICES, LLC, and MATTHEW WEISS, No. 2:25-cv-10999 (E.D. MI) (April 8, 2025)

vii. JANE DOE 1, JANE DOE 2, JANE DOE 3, JANE DOE 4, JANE DOE 5, JANE DOE 6, JANE DOE 7, JANE DOE 8, JANE DOE 9, JANE DOE 10, and JANE DOE 11, vs. THE REGENTS OF THE UNIVERSITY OF MICHIGAN; the UNIVERSITY OF MICHIGAN; KEFFER DEVELOPMENT SERVICES, LLC, and MATTHEW WEISS, No. 2:25-cv-10946 (E.D. MI) (April 2, 2025)

viii. JANE ROE CLF 001 vs. MATTHEW WEISS; THE REGENTS OF THE UNIVERSITY OF MICHIGAN; THE UNIVERISTY OF MICHIGAN; KEFFER DEVELOPMENT SERVICES, LLC, No. 2:25-cv-10870 (E.D. MI) (March 27, 2025)

b. Northern District of Illinois: JANE DOE 1 vs. MATTHEW WEISS; LOYALA UNIVERSITY CHICAGO, AND KEFFER DEVELOPMENT SERVICES, LLC, No. 2:25-cv-04233 (N.D. IL) (April 17, 2025)

c. Northern District of Ohio: JANE DOE 1 vs. MATTHEW WEISS, MALONE UNIVERSITY and KEFFER DEVELOPMENT, LLC, No. 5:25-cv-00827 (N.D. OH) (April 24, 2025)

d. Central District of California: JANE DOE 1 vs. MATTHEW WEISS, CALIFORNIA STATE UNIVERSITY, SAN BERNARDINO, BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, and KEFFER DEVELOPMENT SERVICES, LCC, No. 5:25-cv-00997 (C.D. CA) (April 23, 2025)

e. Middle District of North Carolina: JANE DOES 1 and 2 vs. MATTHEW WEISS, HIGH POINT UNIVERSITY, and KEFFER DEVELOPMENT SERVICES, LLC, No. 1:25-cv-00303 (M.D. NC) (April 23, 2025)

f. District Court of Massachusetts: JANE DOE vs. MATTHEW WEISS; the TRUSTEES OF SIMMONS UNIVERSITY; SIMMONS UNIVERSITY; and KEFFER DEVELOPMENT SERVICES, LLC, No. 1:25-cv-11151, (D.C. MA) (April 28, 2025)

LEGAL STANDARD

Transfer and consolidation of federal cases is appropriate when actions pending in different judicial districts involve similar questions of fact such that consolidating pretrial

proceedings would “promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407.

In relevant part, Section 1407 provides:

When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.

All of these suits directly overlap in many ways. Twelve are class actions brought on behalf of nationwide classes and/or subclasses based on plaintiff age or state of residency. All of the complaints name Keffer as a defendant, and all actions also name Matthew Weiss and an educational institution.

ARGUMENT

The transfer and coordination of the Actions is appropriate and necessary in the case at hand.

Multidistrict litigation is designed “to promote the just and efficient conduct’ of ‘civil actions involving one or more common questions of fact’ that are pending in different districts.” *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1229 (9th Cir. 2006) (quoting 28 U.S.C. § 1407(a)). Transfer is appropriate where it will serve “the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407.

Upon receiving a motion to transfer, the Panel “analyzes each group of cases in light of the statutory criteria and the primary purposes of the MDL process to determine whether transfer is appropriate.” *In re PPA Prods. Liab. Litig.*, 460 F.3d at 1230. Four factors help determine whether transfer will facilitate the convenience of the parties and promote the just and efficient conduct of the transferred case: (1) elimination of duplicative discovery; (2) avoidance of conflicting rulings and schedules; (3) reduction of litigation costs; and (4) conservation of the time and effort of the

parties, attorneys, witnesses, and courts. Manual for Complex Litigation (Fourth), § 20.131, at 219. To that end, centralization is appropriate to eliminate duplicative discovery, prevent inconsistent rulings, and conserve the resources of the parties, their counsel, and the judiciary. *See, e.g., In re Proven Networks, LLC, Pat. Litig.*, 492 F. Supp. 3d 1338, 1340 (J.P.M.L. 2020) (noting those factors in ordering consolidation).

Transfer is appropriate here because the Actions share common issues of fact and law and are in the early stages of litigation. To Plaintiffs' knowledge, Initial Case Management Conferences have yet to occur in any of the cases listed in the Schedule of Actions filed herewith. Further, there are motions filed in numerous cases, and stipulations to extend deadlines, including briefing schedules for proposed motions, that have been entered. Accordingly, consolidated proceedings will streamline discovery, avoid inconsistent pretrial rulings, and preserve judicial and party resources.

The Actions share common questions of fact and law that merit transfer and consolidation.

The threshold requirement of Section 1407 is that there be questions of fact and law common to the cases for which MDL treatment is sought. Commonalities in factual and legal questions need not be complete, nor even the majority, to merit transfer. *In re Katz Interactive Call Processing Pat. Litig.*, 481 F. Supp. 2d 1353, 1355 (J.P.M.L. 2007). “[I]ndividualized factual issues” do not “negate the efficiencies to be gained by centralization.” *In re Nat’l Prescription Opiate Litig.*, 290 F. Supp. 3d 1375, 1379 (J.P.M.L. 2017).

The Actions here share sufficient common factual and legal questions. The claims in each of those actions arise from the same course of conduct by the defendants. Among the numerous common questions of fact are:

- What specific data systems did Keffer provide to the universities, and what types of data did these systems store?
- What cybersecurity protocols and safeguards did Keffer implement to protect student-athlete information?
- Did Keffer comply with industry standards or legal obligations (e.g., FERPA, HIPAA where applicable, or other privacy laws)?
- Was there a known vulnerability or deficiency in Keffer's software that could have been exploited?
- How did Matthew Weiss allegedly access the sensitive data?
- Did the data breaches result from a vulnerability in Keffer's software or a failure in its security policies?
- Was Keffer aware—or should it have been aware—of any prior incidents or potential breaches?
- Did Keffer knowingly or negligently permit access to third parties like Weiss?
- Did Keffer have any professional or contractual relationship with Matthew Weiss?
- To what extent did Keffer's actions (or inactions) contribute to Weiss's ability to obtain sensitive information?
- Did Keffer owe a duty of care to the student-athletes whose data it managed, even though they were not direct clients?
- Did Keffer breach that duty through inadequate data security or oversight?
- Were there warnings, red flags, or complaints that Keffer failed to act on before the breach occurred?

- What information did Keffer provide to universities about system vulnerabilities or security features?
- Were universities adequately informed about how to configure and maintain secure environments with Keffer's products?
- Did Keffer perform any audits, security checks, or provide updates to mitigate risks?
- Was the sensitive data actually accessed, and if so, how many individuals were affected across institutions?
- Was the breach preventable, and did Keffer's security failures cause or contribute to emotional, reputational, or economic harm?
- Did Keffer have a plan for incident response and mitigation?

Given that these common issues exist in each related case, in some form or another, MDL treatment is appropriate.

Transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the Actions.

Transfer and consolidation of similar actions is appropriate when it would enhance the convenience of the litigation and promote the just and efficient conduct of the actions to be coordinated. Here, pretrial coordination of the Actions will ease the burdens on the parties and the judicial system. All of the Actions are in their early stages and to alleviate the parties' burden, stipulations to adjust briefing schedules for these motions will be requested as more and more cases are being filed. To the best of the undersigned's knowledge, no discovery has occurred in any of the Actions. The first action was filed in the Eastern District of Michigan, only several hours from where Keffer maintains its principal place of business, approximately two months ago. Now is the optimal time for coordination, for the convenience of the parties and witnesses and to ensure a just and

efficient resolution of the Actions and similar cases yet to be filed. Consolidation by this Panel will avoid the waste of duplicative discovery and the risk of inconsistent rulings and will result in conservation of judicial and party resources. Taken collectively, these factors establish that the Actions are appropriate for coordination under 28 U.S.C. § 1407.

Pretrial transfer will reduce the burden and costs of discovery significantly for both the parties to the Actions and the judiciary. The pending actions share the same basic theory of liability and underlying factual allegations and injuries, such that all cases will involve the same core discovery, fact witnesses, and general liability and causation experts. MDL treatment will enable a single court to establish a pretrial plan that will minimize the inconvenience and expenses of duplicative discovery, which is precisely the purpose of transfer and coordination under Section 1407.

Consolidation will also permit both Plaintiffs' and Defendants' counsel to coordinate efforts and share the pretrial workload among the various and numerous counsel working on this matter. Instead of different law firms pursuing different litigation strategies and engaging in duplicative discovery and motion practice, a coordinated team of attorneys can pursue the claims in one court, before one judge, preserving both Plaintiffs' and Defendants' resources and allowing their attorneys to work together in common to further these cases. The Panel has previously endorsed this rationale, noting that "prudent counsel will combine their forces and apportion the workload in order to streamline the efforts of the parties and witnesses, their counsel and the judiciary, thereby effectuating an overall savings of case and a minimum of inconvenience to all concerned." *In re Baldwin-United Corp. Litig.*, 581 F. Supp. 739, 741 (J.P.M.L. 1984).

Additionally, pretrial centralization will enable Defendants to concentrate their attention and discovery efforts in one federal forum, rather than numerous district courts throughout the country. As a result, Defendants will be able to move quickly and effectively through discovery, enhancing

the overall efficiency of the litigation. *See In re Apple iPhone 3G Prod. Liab. Litig.*, 630 F. Supp. 2d 1382, 1383 (J.P.M.L. 2009) (noting efficiency obtained through MDL process). Rather than conducting general discovery in thirteen different actions in at least six different district courts, written discovery and depositions of key witnesses can be coordinated and completed just once. This ability to streamline the work of discovery and coordinate efforts among counsel will serve the interests of justice.

Further, discovery has yet to begin in the Michigan Eastern District and there are currently no discovery orders, bellwether selection process, or trials set. Therefore, it would be impeccable timing for establishing an MDL now, as the opportunity remains to comprehensively coordinate discovery.

A single centralized and coordinated pretrial plan will also further fairness and efficiency by avoiding inconsistent pretrial rulings. *See In re Levaquin Prods. Liab. Litig.*, 560 F. Supp. 2d 1384, 1385 (J.P.M.L. 2008). There are already thirteen related cases pending in six district courts involving multiple different Plaintiffs' counsel, with many more to come. As discussed above, numerous identical motions have been filed (or are anticipated to be filed), including several pending before different judges in the same district court. Inconsistent rulings are inevitable as these various courts set discovery and trial schedules and tackle individual motions. Transfer and consolidation will avoid this serious risk.

MDL treatment will enable a single court to establish a pretrial plan that will minimize the inconvenience and expenses of litigating numerous cases separately, which is precisely the purpose of transfer and coordination under Section 1407. Transferring the Actions for pretrial coordination will make this litigation far more efficient and convenient for all involved. One court overseeing these actions will allow the judiciary to conserve limited resources. If transfer is denied, however, the Actions and tag-along cases will proceed on independent tracks in at least six different courts, requiring

duplicative discovery, including repeated depositions of the same corporate personnel and expert witnesses, risking inconsistent rulings and wasting resources.

The Eastern District of Michigan is the most suitable forum for this MDL.

Pursuant to 28 U.S.C. § 1407, the Judicial Panel on Multidistrict Litigation (JPML) is authorized to transfer civil actions involving common questions of fact to a single district “for coordinated or consolidated pretrial proceedings.” The key criteria for such consolidation include the convenience of parties and witnesses and the promotion of the just and efficient conduct of the litigation. In the present litigation involving Keffer Development Services, LLC and Matthew Weiss, the Eastern District of Michigan (“EDM”) is the most suitable and logical venue for centralization.

Under 28 U.S.C. § 1407(a):

When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings...for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.

Relevant factors considered by the JPML include:

- Location of witnesses and evidence;
- Judicial experience with similar cases;
- The nexus between the forum and the factual issues;
- The number and concentration of actions already pending in that district; and
- Resources and docket conditions of the district.

See: *In re Nat’l Prescription Opiate Litig.*, 290 F. Supp. 3d 1375 (J.P.M.L. 2017), *In re Equifax, Inc., Customer Data Sec. Breach Litig.*, 289 F. Supp. 3d 1322 (J.P.M.L. 2017)

The EDM has a factual nexus to the core allegations. Firstly, Matthew Weiss, as a former assistant football coach at the University of Michigan, allegedly accessed data from student-athletes nationwide by exploiting vulnerabilities in university systems and/or Keffer-related platforms. Secondly, the initial and most detailed investigations by law enforcement originated in Ann Arbor, Michigan, which lies within the Eastern District. Additionally, the University of Michigan is a named defendant in numerous lawsuits and is centrally involved in the factual matrix. All of these facts converge to show that the EDM represents the epicenter of the alleged wrongdoing, supporting centralization. See: *In re Michigan Flint Water Cases*, 192 F. Supp. 3d 1380, 1381 (J.P.M.L. 2016) (choosing E.D. Mich. because it was the “focal point of the events giving rise to this litigation”).

The EDM also has a concentration of related actions as a significant number of the pending cases—including the earliest-filed and most developed complaints—are already lodged in the EDM. Centralizing all the Actions in a district where litigation is already underway supports judicial economy and avoids duplication. See: *In re Epipen (Epinephrine Injection, USP) Mktg., Sales Practices & Antitrust Litig.*, 268 F. Supp. 3d 1353, 1355 (J.P.M.L. 2017) (“We generally select a transferee district where a number of actions are already pending.”).

The EDM also has the experience and resources to handle multidistrict litigation. In fact, the EDM has demonstrated an ability to manage large-scale MDLs and complex technical and privacy litigation, including high-profile data breach and product liability cases. The district also has judges experienced in managing multi-party, privacy-based, and technology-related litigation. Finally, docket conditions in the EDM are manageable compared to congested venues like the Northern District of Illinois or Central District of California. See: *In*

re Ford Motor Co. DPS6 Powershift Transmission Prods. Liab. Litig., 289 F. Supp. 3d 1350 (J.P.M.L. 2018).

The EDM provides convenience for the most parties and witnesses. Key parties, particularly Weiss and the University of Michigan, are located in or near the district, as well as likely witnesses, including Michigan-based university staff, data security personnel, and law enforcement agents involved in the original criminal investigation. The University of Michigan's IT systems, as part of the allegations, are also housed in the district. Keffer, though based in Pennsylvania, allegedly interacted with Michigan systems and personnel, making this district equally relevant to its defense, and Keffer's location in northwestern Pennsylvania means that—save for its home district—the EDM arguably provides the most convenience for them as well.

When looking at the other possible venues involved in this litigation, it is clear that the opposing venues are less suitable than the EDM. While other universities named as defendants are spread across the country, none hold as central a role in the alleged scheme as Michigan; and, as stated above, Keffer Development Services, though based in Pennsylvania, allegedly interacted with Michigan systems and personnel, making this district equally relevant to its defense. As such, consolidating elsewhere would likely result in duplicative discovery and inconvenience key witnesses and defendants most closely tied to the central events. For these reasons, the Eastern District of Michigan is the most appropriate forum for the centralized multidistrict litigation involving Keffer Development Services, LLC, Matthew Weiss, and associated universities. It is the factual, procedural, and logistical hub of the controversy, and consolidation there would best serve the interests of judicial efficiency, consistency, and fairness.

CONCLUSION

For the foregoing reasons, Keffer Development Services, LLC respectfully requests that the Judicial Panel on Multidistrict Litigation grant its Motion to Transfer and Consolidate all related actions for coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407. These actions involve common factual and legal issues, are in the early stages of litigation, and are best suited for consolidation in the United States District Court for the Eastern District of Michigan. Centralization in that forum will promote the just and efficient conduct of the litigation by eliminating duplicative discovery, avoiding inconsistent pretrial rulings, reducing litigation costs, and preserving judicial and party resources. Accordingly, transfer to the Eastern District of Michigan is not only appropriate, but essential to ensure fairness, consistency, and efficiency in managing this complex and wide-reaching litigation.

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Respectfully submitted,

**DILLON, MCCANDLESS, KING,
COULTER & GRAHAM LLP**

By: /s/ Thomas W. King, III
Thomas W. King, III
PA I.D. No. 21580
Jordan P. Shuber
PA I.D. No. 317823
Carl A. Fejko
PA I.D. No. 331216
Kyle S. Uhlman
CA I.D. No. 302292
128 West Cunningham Street
Butler, PA 16001
Telephone: 724-283-2200
Facsimile: 724-283-2298
TKing@dmkcg.com

*Attorneys for Defendant Keffer
Development Services, LLC*