

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

In re TRUECAR, INC. SHAREHOLDER
DERIVATIVE LITIGATION

Lead Case No. 1:19-cv-00617

(Consolidated with Case No. 1:19-cv-00625)

This Document Relates To:

ALL ACTIONS

**THE TRUECAR DEFENDANTS' OPENING BRIEF IN SUPPORT OF
MOTION TO STAY PROCEEDINGS PENDING TRANSFER TO MDL NO. 2900**

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Defendants Victor “Chip” Perry, Michael Guthrie, John Pierantoni, Abhishek Agrawal, Robert Buce, Christopher Claus, Steven Dietz, John Krafcik, Erin Lantz, John Mendel, Wesley Nichols, Ion Yadigaroglu, and Nominal Defendant TrueCar, Inc. (collectively, the “TrueCar Defendants”) submit the following brief in support of their Motion for a brief stay of this action pending a decision on transfer of this case by the Judicial Panel on Multidistrict Litigation (“JPML”) to MDL No. 2900, *In re TrueCar, Inc. Shareholder Derivative Litigation*.

INTRODUCTION

This is a shareholder derivative action alleging that Defendants breached their fiduciary duties by causing or allowing the Company to issue false and misleading statements (or failing to disclose material adverse facts) about TrueCar’s business, and future prospects. Plaintiffs purport to allege claims under the Securities Exchange Act as well as state law claims that will be governed by Delaware Law, the state of TrueCar’s incorporation. A substantially identical case has been filed in the U.S. District Court for the Central District of California captioned, *Drulias v. Guthrie*, No. 2:19-cv-01636 (C.D. Cal. Mar. 6, 2019). Both the Delaware cases and the California case assert similar claims based on the same underlying factual and legal issues. Rather than have to litigate the same claims in two different courts across the country, the TrueCar Defendants have moved the JPML to consolidate the cases and transfer them to the District of Delaware. Briefing on the motion to transfer will be complete by June 4, and the Panel is likely to decide the motion to transfer shortly thereafter.

Until the Panel renders a decision, the TrueCar Defendants respectfully request that this case be stayed temporarily. At that point, when the forum has been decided, the parties can meet and confer regarding deadlines in the consolidated cases. A stay should be granted for several reasons.

First, a stay would simplify the issues before this Court and promote judicial economy. As the TrueCar Defendants are seeking to have the cases consolidated and transferred to the District of Delaware, the matter should be stayed pending consolidation. This case is likely to

be consolidated with the case from the Central District of California as part of an MDL proceeding and then transferred to this Court. If the Panel decides otherwise, the case will be transferred to the Central District of California and this Court will have no further pretrial obligations.

Second, this case is still in its early stages. A brief stay will not affect discovery deadlines or trial, as none of these dates had been set. And, Plaintiffs have already stipulated to extend the TrueCar Defendants' time to respond to the operative complaint until June 3, 2019.

Third, given that this case is still in its early stages, a brief stay will not prejudice Plaintiffs. Indeed, all parties may ultimately benefit from avoiding the needless duplication of effort that would occur if briefing and case management in this Court were mooted by MDL consolidation. *See Munchel v. Wyeth LLC*, No. Civ. A. 12-906-LPS, 2012 WL 4050072, at *5 (D. Del. Sept. 11, 2012) (no undue prejudice to Plaintiff "who remains free to press her arguments before the JPML"). A brief stay would avoid the risk of inconsistent rulings inherent in requiring the TrueCar Defendants to litigate nearly identical cases in more than one district simultaneously but in an uncoordinated fashion. *Pennsylvania ex rel. Kane v. McGraw-Hill Cos.*, No. 1:13-CV-605, 2013 WL 1397434, at *4 (M.D. Pa. April 5, 2013) (granting motion to stay pending consideration by JPML of motion to transfer because the "specter of inconsistent verdicts, and the opportunity to simplify the issues and to promote judicial economy strongly militate in favor of granting the motion to stay").

For these reasons, a short stay of this case pending the Panel's decision would best serve the interests of the Court and the parties by conserving judicial resources, avoiding duplicative litigation, and avoiding inconsistent rulings—the very interests the MDL procedure was designed to promote.

NATURE AND STAGE OF THE PROCEEDINGS

There are currently two shareholder derivative cases pending in two different districts: this consolidated case in Delaware, captioned *In re TrueCar, Inc. Shareholder Derivative Litigation*, No. 1:19-cv-00617 (D. Del), and the case pending before the Central District of California, captioned *Drulias v. Guthrie*, No. 2:19-cv-01636 (C.D. Cal.).

On May 3, 2019, the TrueCar Defendants moved to establish an MDL for all of these cases. MDL No. 2900, Dkt. 1. The TrueCar Defendants believe that an MDL will be the most efficient and sensible way to handle pretrial proceedings in these actions. Given the many benefits of consolidation, the TrueCar Defendants expect that the Panel will grant the motion, consolidate these cases, and assign them to one judicial district for pretrial proceedings. The Panel has set a briefing schedule for the motion; briefing on the motion to transfer will be complete by June 4. MDL No. 2900, Dkt. 4.

In this case, Plaintiffs stipulated to extend the TrueCar Defendants' time for responding to the complaint until June 3, 2019, and Defendant United Services Automobile Association has not yet been served. There are no discovery deadlines or a trial date.

Before filing this Motion, counsel for the TrueCar Defendants asked Plaintiffs' counsel if they would consent to a stay to obviate the need for this Motion. Plaintiffs' counsel does not consent to a stay.

SUMMARY OF ARGUMENT

The factors applied by this Court when determining whether to grant a stay pending transfer of this case to the MDL all weigh in favor of a stay:

- **Simplification of issues.** The stay is intended to give the JPML an opportunity to consolidate and transfer the cases before the District of Delaware. If the Panel decides otherwise, the case will be transferred to the Central District of California and this Court will have no further obligations.
- **Impact on deadlines.** This case is still at the pleading stage and the TrueCar Defendants' deadline to respond to Plaintiffs' complaint is not until June 3. There is no pending discovery or trial date. Accordingly, this factor weighs entirely in favor of a stay.
- **Prejudice.** A stay of limited duration pending transfer to the MDL will not prejudice Plaintiffs. The absence of a stay risks duplicative litigation and inconsistent rulings, results in inefficiencies, and prejudices all parties.

STATEMENT OF FACTS

The shareholder derivative cases currently pending in two different districts are substantially similar. All of the cases allege that certain of TrueCar's current and former directors and officers breached their fiduciary duties by willfully and/or recklessly causing or allowing the Company to issue false and misleading statements or failing to disclose material adverse facts about TrueCar's business, operations and future prospects. All of the cases allege claims for breach of fiduciary duty and related state law claims as well as claims arising under the Securities Exchange Act. All of the cases were only recently filed; pleading-stage motions are scheduled to be filed in both cases in the next month. Neither this Court nor the Central District of California has expended significant resources to date. In fact, the TrueCar Defendants have not even responded to the operative complaint in this action yet.

On May 3, 2019, the TrueCar Defendants moved to establish an MDL for all these cases. MDL No. 2900, Dkt. 1. The TrueCar Defendants believe that an MDL will be the most efficient and sensible way to handle pretrial proceedings in these actions. Given the many benefits of consolidation, TrueCar Defendants expect that the Panel will grant the motion, consolidate all of these cases, and assign them to one judicial district (this Court) for pretrial proceedings. The Panel has set a briefing schedule for the motion; briefing on the motion to transfer will be complete by June 4. MDL No. 2900, Dkt. 4.

ARGUMENT

Federal courts possess the inherent power to stay proceedings before them. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936); *Bechtel Corp. v. Local 215, Laborers' Int'l Union of N. Am.*, 544 F.2d 1207, 1215 (3d Cir. 1976). “[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis*, 299 U.S. at 254-55. This Court, and others across the country, routinely exercises this power to stay cases pending decisions by the Panel on motions to consolidate and transfer. *See, e.g., Munchel*, 2012 WL 4050072, at *5 (granting stay “until after the J.P.M.L. makes its determination”); *Young v. Bristol-Myers Squibb Co.*, No. CV 17-609-LPS, 2017 WL 2774735, at *3 (D. Del. June 27, 2017) (“stayed pending the JPML’s decision as to whether to transfer this case to MDL”); *Hutchins v. Bayer Corp.*, No. CIV.A. 08-640-JJF-LP, 2009 WL 192468 (D. Del. Jan. 23, 2009) (same).¹ “[A] transferor court has discretion to stay proceedings pending a decision by the Panel regarding transfer. This is especially prudent when a stay would further the policies of judicial economy, efficiency, and consistency that are deeply embodied in the MDL statute.” 15 Charles A. Wright, et al., *Federal Practice & Procedure* § 3866.1 (4th ed.).

¹*See also Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997) (“[I]t is often appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved.”); *Jones v. Sanofi US Servs. Inc.*, No. CV 18-8268-R, 2018 WL 6842605, at *2 (C.D. Cal. Nov. 19, 2018) (granting stay “pending determination on transfer by the Judicial Panel on Multidistrict Litigation”); *Freitas v. McKesson Corp.*, No. C 11-05967 JW, 2012 WL 161211 (N.D. Cal. Jan. 10, 2012); *McCreary v. Merck & Co.*, No. CIV. 04-2576 WQH WMC, 2005 WL 6124182 (S.D. Cal. Mar. 3, 2005); *Paul v. Aviva Life & Annuity Co.*, No. 09-1038, 2009 WL 2244766, at *1 (N.D. Ill. July 27, 2009); *Walker v. Merck & Co.*, No. 05-CV-360-DRH, 2005 WL 1565839, at *2 (S.D. Ill. June 22, 2005); *Smith v. Merck & Co.*, No. 06-CV-0931-DRH, 2006 WL 3842190, at *1 (S.D. Ill. Dec. 29, 2006); *Packer v. Power Balance, LLC*, No. CIV. A. 11-802 WJM, 2011 WL 1099001, at *1 (D.N.J. Mar. 22, 2011) (“Stays of a civil actions are common when the issue of transfer is before the JPML.”); *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998) (courts “frequently grant stays pending a decision by the MDL Panel regarding whether to transfer a case”).

Courts routinely look to three general factors in weighing a motion to stay: (1) whether a stay will simplify the issues for trial; (2) whether the stay will affect discovery or trial; and (3) whether granting a stay would cause the non-moving party to suffer undue prejudice from any delay. *Enhanced Security Research, LLC v. Cisco Sys., Inc.*, No. C.A. 09-571-JJF, 2010 WL 2573925, at *3 (D. Del. June 25, 2010); *St. Clair Intellectual Property Consultants v. Sony Corp.*, No. CIV. A. 01-557 JJF, 2003 WL 25283239, at *1 (D. Del. Jan. 30, 2003) (identifying three factors generally considered in connection with motion to stay). All of these factors support a short stay of the proceedings before this Court until after the pending MDL Motion is resolved.

A. A Brief Stay Would Simplify the Issues for Trial and Promote Judicial Efficiency.

First, a stay will simplify the issues before this Court. A stay will give the JPML an opportunity to consolidate the cases before the District of Delaware, so the matter should be stayed pending consolidation. If the Panel decides otherwise, the case will be transferred to the Central District of California and this Court will have no further obligations. *Munchel*, 2012 WL 4050072, at *5 (“short stay will simplify (or eliminate) the pretrial issues before this Court” as “it is highly likely that this matter will be transferred to MDL . . . for consolidated or coordinated pretrial proceedings”).

In addition, this Court, and the other federal court in which a parallel action is pending, should not be forced to expend resources on discovery management, legal analysis of the claims pled, or evaluating the common issues of law and fact in all of these cases until after the Panel rules. *See, e.g., McGraw-Hill*, 2013 WL 1397434, at *4 (granting motion to stay pending consideration by JPML of motion to transfer because the “specter of inconsistent verdicts, and the opportunity to simplify the issues and to promote judicial economy strongly militate in favor of granting the motion to stay”); *Rivers*, 980 F. Supp. at 1360-61 (granting request for stay pending JPML ruling and holding that a “great deal of this Court’s time and energy” would be saved by a stay, avoiding needless expenditure of this Court’s “energies familiarizing itself

with the intricacies of a case that [may] be heard by another judge” and replication of case management duties with the other courts). Both consistency and judicial economy will be served by staying proceedings in these actions pending the Panel’s decision on the MDL motion.

B. A Brief Stay Will Not Impact Discovery or Trial.

The second factor—whether a stay will impact discovery or trial—also weighs in favor of a stay. This case is still at a very early stage and discovery has not yet begun. *See Young*, 2017 WL 2774735, at *3 (a stay “will not affect discovery or any other deadlines, as none have been set”). Plaintiffs have already stipulated to extend the TrueCar Defendants’ time for responding to the complaint until June 3, 2019, and Defendant United Services Automobile Association has not yet been served. There are no discovery deadlines or a trial date. Thus, a short stay to allow the JPML to determine whether the cases should be transferred to the MDL will not affect discovery or trial in any way.

C. A Brief Stay Would Not Prejudice Plaintiffs.

Plaintiffs will suffer no prejudice from a brief stay. Indeed, a stay would benefit all parties because they would avoid needless expense and duplication of effort.

The proposed stay is likely to be brief. Briefing on the motion to transfer will be complete by June 4, and the Panel will likely render a decision on the motion shortly thereafter. Thus, any delay to Plaintiff would be minimal. *Good*, 5 F. Supp. 2d at 809 (finding that stay of case pending Panel’s transfer decision would not prejudice the plaintiff where the stay “would likely be brief”); *Nekritz v. Canary Cap. Partners, LLC*, No. CIV. 03-5081 (DRD), 2004 WL 1462035, at *4 (D.N.J. Jan. 12, 2004) (“[A]ny prejudice to the [p]laintiff from a relatively brief delay in pursuing his claims will be minimal.”).

This case is still at the pleading stage and discovery has not yet begun. Courts recognize that this weighs heavily in favor of a stay. *See Fuller v. Amerigas Propane, Inc.*, No. 09-2616 TEH, 2009 WL 2390358, at *1 (N.D. Cal. Aug. 3, 2009) (observing “no meaningful

prejudice . . . to [p]laintiff” where the case was in “very early procedural stages” and the Panel was “expected to hear [the] matter within a few months”).

The possibility that pleading-stage motions in two different courts could result in inconsistent rulings strongly supports a brief stay because of the potential prejudice to Defendants. *A.D. v. Pfizer, Inc.*, No. 13-CV-02466-JST, 2013 WL 3889159, at *2 (N.D. Cal. July 26, 2013) (failure to stay poses “the risk of unnecessary proceedings and inconsistent rulings on recurring questions of law and fact if the case is not stayed”); *see Bd. of Trustees of Teachers’ Ret. Sys. v. Worldcom, Inc.*, 244 F. Supp. 900, 905 (N.D. Ill. 2002) (granting stay pending Panel decision and noting “genuine” risk of inconsistent rulings “given the difficulty of the jurisdictional issues presented” in remand motion).

In these circumstances, the “potential prejudice to [p]laintiffs that could result from a stay is minimal,” whereas defendants face “the risk of unnecessary proceedings and inconsistent rulings on recurring questions of law and fact if the case is not stayed.” *A.D.*, 2013 WL 3889159, at *2; *Jones*, 2018 WL 6842605, at *2 (defendant would suffer “hardship and inequity” as “it would face the prospect of inconsistent rulings if it were forced to litigate the same issues in multiple forums”). Otherwise, cases would be litigated in a piecemeal fashion, which may lead to wasted effort and inconsistent rulings. At the very least, a stay would permit the parties to brief one set of pleading-stage motions against the operative complaint. *See Ernyes-Kofler v. Sanofi S.A.*, No. 5:16-CV-07307-EJD, 2017 WL 813506, at *2 (N.D. Cal. Mar. 2, 2017) (noting that a stay “might help [p]laintiffs avoid unnecessary effort and expense”).

CONCLUSION

For these reasons, the TrueCar Defendants respectfully request that this Court grant their motion to stay all further proceedings in this case until a decision from the JPML on the Motion to Consolidate and Transfer filed in MDL No. 2900, at which point the parties can meet and confer regarding deadlines to respond to Plaintiffs' operative complaint.

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