

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

IN RE: SNOWFLAKE, INC., DATA
SECURITY BREACH LITIGATION

**2:24-MD-03126-BMM
CASE MANAGEMENT
ORDER REGARDING
FORM OF THE COMPLAINT,
ORDER OF PRELIMINARY
MOTIONS, AND INITIAL
DISCLOSURES**

The Court conducted a case management conference on January 9, 2025. (Doc. 283.) The Parties discussed their positions on the form of the complaint, the schedule for filing motions to compel arbitration and Rule 12 motions to dismiss, the modified initial disclosures, and forthcoming schedules. (*Id.*)

A. Form of the Complaint

Plaintiffs' Lead Counsel proposed filing a representative complaint setting forth priority claims. The representative claims would function as an operative, binding adjudication of all identical claims within the MDL, and claims not included in the complaint would be stayed pending resolution of the representative claims. (Doc. 280.) Defendants oppose. Defendants argue that Plaintiffs instead file an operative, superseding complaint asserting all viable claims. The Parties would then litigate certain representative claims and stay others pending resolution of the

representative claims. (Doc. 279.) Both Parties’ proposals contemplate filing a complaint—legally operative to different extents—and litigating a representative subset of claims. The Court finds that Plaintiffs’ proposed operative, representative complaint comports with the practice of other MDL courts, does not prejudice Defendants, and promotes the efficient management of the MDL.

The multidistrict litigation process seeks to “promote the just and efficient conduct” of “civil actions involving one or more common questions of fact” that are pending in different districts through transfer to a single district for “coordinated or consolidated pretrial proceedings.” 28 U.S.C. § 1407(a). “A district court must be afforded ‘broad discretion to administer the [MDL] proceeding as a whole,’ because ‘multidistrict litigation is a special breed of complex litigation where the whole is bigger than the sum of its parts.’” *In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MC-2543 JMF, 2015 WL 3619584, *6 (S.D.N.Y. June 10, 2015) (quoting *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1232 (9th Cir. 2006)).

The MDL court may use this discretion when determining how to consolidate the various transferred actions. Federal Rule of Civil Procedure 42(a) empowers the Court to “order” “actions involving a common question of law or fact” to be “consolidated” and to conduct proceedings in order “to avoid unnecessary costs or delay[.]” MDL courts often approve the filing of some form of master complaint,

whether consolidated or representative, in order to advance the litigation. *See, e.g., In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 699 (9th Cir. 2011); *In Re Lumber Liquidators Chinese-Manufactured Flooring Products Marketing, Sales Practices and Products Liability Litigation*, No. 1:15-md-02627 (E.D. Va. Sept. 3, 2015) (Doc. 528, Pretrial Order #5).

A court must also determine whether the master complaint will be treated as “administrative” or “superseding” relative to the individual complaints. *In re: Soc’y Ins. Co. Covid-19 Bus. Interruption Prot. Ins. Litig.*, No. 20 C 5965, 2021 WL 3290962, *2 (N.D. Ill. Aug. 1, 2021). A consolidated complaint typically functions as an administrative tool and does not supersede other underlying complaints or perform a legal function until expressly treated as binding. *See In re GM*, 2015 WL 3619584 at *7; *In re: Soc’y Ins. Co. Covid-19 Bus. Interruption Prot. Ins. Litig.*, 2021 WL 3290962 at *2–3.

A consolidated complaint also can be treated as superseding, or replacing, the “prior individual pleadings.” *Gelboim v. Bank of Am. Corp.*, ___ U.S. ___, 135 S. Ct. 897, 904 n.3 (2015). “In such a case, the transferee court may treat the master pleadings as merging the discrete actions for the duration of the MDL pretrial proceedings.” *Id.* A court also may treat a master complaint as operative for the representative claims contained within it and the same claims contained within other non-representative claims consolidated into the MDL, but as non-operative (non-

superseding) for different claims not contained within the representative complaint. *In re: Soc’y Ins. Co. Covid-19 Bus. Interruption Prot. Ins. Litig.*, 2021 WL 3290962 at * 3. The Court’s ultimate consideration depends “on the particulars of a given MDL” because, “no two MDLs are exactly alike.” *Id.* at *8.

This process of consolidation and formation of a master complaint, however, does not require a group of plaintiffs to chose to consolidate *all* claims into a single, operative complaint, with the effect of extinguishing all other claims. “Within the context of MDL proceedings, individual cases that are consolidated or coordinated for pretrial purposes remain fundamentally separate actions, intended to resume their independent status once the pretrial stage of litigation is over.” *In re Korean Air Lines Co., Ltd.*, 642 F.3d 685, 700 (9th Cir. 2011). Plaintiffs remain masters of their complaints. *Retired Emps. Ass’n of Orange Cnty., Inc. v. Cnty. of Orange*, No. SACV 07-1301 AG (MLGx), 2008 WL 11342773, at *2 (C.D. Cal. Aug. 4, 2008).

Defendants correctly point out that in the *Facebook* MDL, the plaintiffs initially filed a consolidated (administrative) complaint containing all claims and then treated a subset of representative claims contained within it as superseding. *In re: Facebook, Inc., Consumer Privacy User Profile Litigation*, No. 18-md-02843-VC, Dkt. 190 (N.D. Cal. Nov. 9, 2018) (Pretrial Order No. 12: Prioritization of Claims). This approach prompted the parties to discuss a plan to dismiss without

prejudice the five non-priority defendants while the priority claims were pending. *Id.*; Dkt. 194 (Nov. 15, 2018) (Minute Entry).

In contrast, Plaintiffs here intend to advance representative claims against *all* Defendants with an operative complaint. (Doc. 280 at 8.) No Defendant must await resolution of the representative claims while all claims against it are stayed. Plaintiffs' proposal also echoes the approach in *Facebook* in the most important respect: the representative complaint will be treated as superseding for all other claims within its auspices. Resolution of these claims will bind cases presenting the same claims already within the MDL and will inform resolution of the others stayed while these are resolved.

Further, the *Facebook* consolidated complaint simply reiterated all claims against all the defendants already named in the individual cases transferred to the MDL and automatically consolidated within it. *In re: Facebook, Inc., Consumer Privacy User Profile Litigation*, No. 18-md-02843-VC, Dkt. 156 at 6 (N.D. Cal. Oct. 3, 2018) (Plaintiffs' Motion for Entry of Pretrial Order Addressing Claim Prioritization). The primary administrative efficiency served by recognizing the consolidated complaint as superseding *was* the identification of prioritized claims. *In re: Facebook, Inc., Consumer Privacy User Profile Litigation*, No. 18-md-02843-VC, Dkt. 190 (N.D. Cal. Nov. 9, 2018) (Pretrial Order No. 12: Prioritization of Claims).

Like in *Facebook*, Defendants here have notice of the universe of claims against them by virtue of their inclusion in the MDL. These claims already have been consolidated into the MDL by the transfer order from the JPML. (Doc. 1.) Plaintiffs' filing of a master complaint at this stage should aim to streamline the existing claims against Defendants and narrow the proceedings to selected representative claims. The Court concludes that the prompt and efficient resolution of these proceedings would be served through the Court's consideration of a select number of representative cases contained within an operative complaint.

B. Timing of Motions to Compel Arbitration and Motions to Dismiss

The Parties indicated at the hearing that only certain Defendants intend to file motions to compel arbitration. To avoid unnecessary delay for all Parties, any Defendant seeking to compel arbitration should file its motion contemporaneously with other Defendants' Rule 12 motions to dismiss. The Parties shall meet and confer and submit a new joint proposed schedule for filing simultaneous motions to compel arbitration and motions to dismiss. An individual Defendant that files a motion to compel arbitration may file a Rule 12 motion to dismiss after the Court resolves the motion to compel arbitration.

C. Discovery Issues

The Parties shall meet and confer regarding the modified initial disclosures and come to an agreement on the definitions of the terms. The Parties should

endeavor to agree on initial disclosures and interrogatories, but if agreement cannot be reached, the Parties may request a telephonic status conference to present their respective positions. The Parties shall meet and confer regarding the proposed protective order and electronic discovery protocol and submit a joint memorandum to the Court within a reasonable time, but no later than 15 days from the date of this order.

Accordingly, it is **HEREBY ORDERED** that:

- 1) Plaintiffs may file an operative, representative complaint setting forth priority claims as described in Doc. 280 on or before February 3, 2025;
- 2) All claims already filed in the MDL and not included in the representative complaint shall be **STAYED** pending resolution of the priority claims;
- 3) In the event the stay of non-priority claims is lifted, Plaintiffs' Co-Lead Counsel and Defendants shall meet and confer regarding an appropriate approach to addressing the claims, and the Parties shall submit a joint status report describing their respective motions positions;
- 4) The Parties shall meet and confer and submit a new joint proposed schedule for filing simultaneous motions to compel arbitration and motions to dismiss no later than 15 days from the date of this order;

- 5) The Parties shall meet and confer regarding the modified initial disclosures and come to an agreement on the definitions of the terms no later than 15 days from the date of this order;
- 6) The Parties shall meet and confer regarding the proposed protective order and electronic discovery protocol and submit a joint memorandum to the Court no later than 15 days from the date of this order;
- 7) Further case management conferences will take place on the following dates: February 6, 2025, at 10:00 a.m.; March 3, 2025, at 10:00 a.m.; April 10, 2025, at 10:00 a.m.; May 8, 2025, at 10:00 a.m.; June 12, 2025, at 1:30 p.m.; and July 10, 2025, at 10:00 a.m. The conferences will take place at the Mike Mansfield Federal Courthouse in Butte, Montana.

DATED this 14th day of January, 2025.



Brian Morris, Chief District Judge
United States District Court