

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

MDL Docket No. 16-60

In Re: SPROUTS FARMERS MARKET, INC., DATA BREACH LITIGATION

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**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO TRANSFER  
CASE FOR COORDINATED PROCEEDINGS IN MULTIDISTRICT LITIGATION  
UNDER 28 U.S.C. § 1407**

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Debra Price "Price," the Plaintiff in the case styled *Debra Price, on behalf of herself and all others similarly situated v. Sprouts Farmers Market, Inc.*, United States District Court for the District of Colorado, Case No. 16-cv-855-WJM-MJW, submits this Memorandum of Law in Support of her Motion to Transfer Case for Coordinated or Consolidated Proceedings in Multidistrict Litigation Under 28 U.S.C. § 1407 filed concurrently with this memorandum.

I. INTRODUCTION

Price filed her purported class action lawsuit in the District of Colorado on April 14, 2016. Price brought the action on behalf of herself and all those similarly situated, specifically employees and former employees of Sprouts Farmers Market whose 2015 W-2's were sent to an unknown party by Sprouts in an alleged phishing scam. Since the first week in April 2016 three other purported class actions have been filed in federal and state courts in California arising from the same facts as Price's case. All cases have since been removed to federal court. The lawsuits all contain common facts, and centralization under Section 1407 in Arizona will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.

## II. BACKGROUND

Four civil actions are pending in multiple districts arising from the same nucleus of operative fact, namely the Plaintiffs in all cases are or were employees of Sprouts Farmers Market in 2015 whose 2015 W-2s were released by Sprouts, unencrypted, to an unknown party. As a result those 21,000 employees' names, addresses and social security numbers are in the hands of phishers/scammers who have subsequently misused that information to commit various crimes against the Plaintiffs.

The four cases filed to date are Price's case, *Debra Price, on behalf of herself and all others similarly situated v. Sprouts Farmers Market, Inc.*, United States District Court for the District of Colorado, Case No.: 16-cv-855; *Julio Hernandez, Cynthia Byrne and Danielle Butler, on behalf of themselves and all others similarly situated v. Sprouts Farmers Market, Inc.*, Case No.: 16-cv-00958 pending in the United States District Court for the Southern District of California; *Nancy Castellano, an individual, on behalf of herself and all others similarly situated employees v. Sprouts Farmers Market, Inc.*, Case No.: 16-cv-01184 pending in the United States District Court for the Southern District of California; and *Beverly Porras and Leticia Stocks, individually and on behalf of all others similarly situated v. Sprouts Farmers Market, Inc.*, Case No.: 16-cv-01005 pending in the United States District Court for the Central District of California. All the cases filed to date are putative class action lawsuits.

## III. ARGUMENT

### A. STANDARD

Under 28 U.S.C. § 1407, a party to any action in which transfer for coordinated or consolidated pretrial proceedings may be appropriate may file a motion seeking such relief

where there are (1) one or more common questions of fact and (2) for the convenience of the parties and witnesses and will promote the just and efficient conduct of the actions. 28 U.S.C. §§ 1407(a), (c)(ii).

The Panel considers the following factors in deciding whether to transfer a case under § 1407: 1) the elimination of duplication in discovery; 2) the avoidance of conflicting rules and schedules; 3) the reduction of litigation cost; and 4) the conservation of the time and effort of the parties, attorneys, witnesses and courts. *See In re Plumbing Fixture Cases*, 298 F. Supp. 484 (J.P.M.L. 1968). Centralization of overlapping putative class actions under § 1407 is especially important to prevent inconsistent pretrial rulings with respect to class certification. *See In re High Sulfur Content Gasoline Products Liability Litigation*, 344 F. Supp. 2d 755, 757 (U.S.J.P.M.L. 2004).

Transfer under Section 1407 has the valuable effect of placing all actions in this docket before a single judge who can formulate a pretrial program that allows discovery with respect to any non-common issues to proceed concurrently with discovery on common issues. It also ensures that pretrial proceedings will be conducted judiciously to the overall benefit of the parties. *In re Vioxx Products Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005)(internal citation omitted).

#### 1. ALL CASES INVOLVE COMMON FACTS

The common questions of facts in these cases predominate over the different facts. Plaintiffs in all cases are or were employees of Sprouts Farmers Market in 2015 whose 2015 W-2s were released by Sprouts, unencrypted, to an unknown party. As a result those 21,000 employees' names, addresses and social security numbers are in the hands of phishers/scammers who have subsequently misused that information to commit various crimes against the Plaintiffs.

The cases also generally allege that Sprouts was negligent in storing, maintaining and disclosing its employees' Internal Revenue Service ("IRS") 2015 W-2 forms; That due to Sprouts' negligence Plaintiffs have suffered actual damages and have been placed at an increased risk of fraud, identity theft, and many have already been victims of fraud and identity theft; That Sprouts failed to timely and reasonably notify the Plaintiffs of the data breach in accordance with the laws of most states, including Arizona, and its failure to secure Plaintiffs' personally identifying information has actually and proximately caused the Plaintiffs' injury; That Sprouts has offered an insufficient remedy to the Plaintiffs to protect against the financial injury associated with repairing identity theft that has already occurred, monitoring future attempts at identity theft, compensating the Plaintiffs for damage that has already occurred and will continue to occur in the future, and guarding against unauthorized tax filing and other abuse that is a direct and proximate result of Sprout's violations.

## 2. COORDINATION WILL SERVE THE CONVENIENCE OF THE PARTIES

Coordinating the four class actions into one joined district action will serve to be convenient. The data breach occurred in Arizona, where Sprouts is domiciled and its corporate headquarters is located; the people involved in the release of the data are employees of Sprouts' in Arizona, and will be called as witnesses in Arizona; the documents related to that release are also on best information and belief in Arizona at the Defendant's headquarters. The data released was that of Sprouts' 2015 employees, numbering more than 21,000 individuals who are located all over the country, though most-probably concentrated within the 13 states in which Sprouts has its over 200 stores. Because the witnesses, documents and the only defendant in this action are located in Arizona, the parties will have the convenience of having one judge preside

over one consolidated case in that District, or in such other District as the MDL Panel might designate.

3. COORDINATION WILL PROMOTE JUDICIAL EFFICIENCY AND AVOID DUPLICATION

Because the allegations of all the cases are essentially the same, the parties will face duplicative discovery if the cases are not consolidated or transferred. Having one judge preside over one consolidated set of pretrial proceedings will promote judicial efficiency. The parties will necessarily ask the same or similar questions in interrogatories, seek the same documents through requests or production, will depose the same witnesses, seek the same protective orders, and assert the same privileges in the case. If the Panel consolidates the cases the parties will coordinate their efforts, thereby leading to the saving of both time and money, and judicial resources.

4. COORDINATION WILL AVOID INCONSISTENT RULINGS ESPECIALLY AS RELATED TO CLASS CERTIFICATION

Centralization of overlapping putative class actions under § 1407 is especially important to prevent inconsistent pretrial rulings with respect to class certification. *See In re High Sulfur Content Gasoline Products Liability Litigation*, 344 F. Supp. 2d 755, 757 (U.S.J.P.M.L. 2004). That is true here too. Because of the similarity of the allegations in the complaints, and the possibility that other actions may be filed that will contain the same allegations, the possibility of inconsistent ruling on pretrial motions is increased. Sprouts will likely present the same pretrial motions in each case and the same discovery objections and privileges. Plaintiff has already filed a motion to compel arbitration in the Colorado case and an inconsistent ruling on that issue would pose a problem because the purported class is and will remain the same in each action. In

light of this risk it is in the best interest of the parties, the witnesses and the Court to consolidate and transfer these actions to the District of Arizona.

#### 5. TRANSFER TO THE DISTRICT OF ARIZONA IS APPROPRIATE

The District of Arizona is the most appropriate place to transfer the cases. Because Sprouts is domiciled and maintains its headquarters in Arizona, the witnesses and the documents are in Arizona, and the main facts these cases arise from occurred in Arizona, consolidation of these proceedings in the District of Arizona is convenient for all parties and witnesses and is the appropriate forum. Additionally, Arizona is geographically located at the center point between where all cases listed in Schedule A are currently pending.

In cases similar to this one involving data breaches this Court has recognized that the common facts, the convenience of the parties, the promotion of judicial efficiency, and the protection against inconsistent judicial rulings, all justified the centralization of the litigation in a coordinated pretrial proceeding. *See, e.g., In re Anthem, Inc., Customer Data Sec. Breach Litig.*, 109 F. Supp. 3d 1364 (J.P.M.L. 2015); *In re Schnuck Market's Inc., Customer Data Sec. Breach Litig.*, 978 F. Supp. 2d 1379 (J.P.M.L. 2013).

#### IV. CONCLUSION

Based on the foregoing, Plaintiff Debra Price's Motion to Transfer Case for Consolidation and Coordinated Proceedings in Multidistrict Litigation under 28 U.S.C. § 1407 to the District of Arizona should be granted and all related actions, as well as subsequently filed actions with similar allegations should be transferred to the United States District for the District of Arizona.

Respectfully submitted this 14<sup>th</sup> day of June 2016.

**THE SAWAYA LAW FIRM**

*s/David Hunter Miller*

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