

On Deck In JPML: Baby Food, 23andMe Privacy, NCAA

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Law360 (March 27, 2024, 7:15 PM EDT) -- The Judicial Panel on Multidistrict Litigation's packed meeting Thursday in South Carolina will see the panel mulling consolidation of privacy litigation against 23andMe, claims of heavy metals in baby food, and scholarship-fixing claims by student athletes against the NCAA — and that's just for starters.

The panel will hold its second meeting of the year at a federal court complex in Charleston, where it's set to consider one of the densest oral argument dockets in recent memory, with 10 matters on deck.

Here's a look at some of the cases.

More Privacy Breach Fallout for 23andMe

23andMe is looking to transfer to the Northern District of California a large number of actions in that district, plus one in the state's Central District and one in the Northern District of Illinois.

In representative complaints, customers Alexandra Hoffman and Alexandra Klawitter **claimed** the genetic profiling company failed to safeguard its customers' personal data, exposing their Ashkenazi Jewish ancestry. Other customers have made claims that Chinese ancestry profiles were also targeted.

23andMe announced in an Oct. 6 blog post that "threat actors" obtained personally identifiable information and health information. It said the company believed hackers were able to access account information because customers reuse usernames and passwords across multiple websites. The company said it was cooperating with law enforcement, working with forensic experts and notifying affected users.

Hoffman and Farmer said users' personal information was targeted because of its value in exploiting and stealing identities. Farmer said the breach allowed third parties to download and sell targeted private information on the dark web. Their suits also accuse 23andMe of failing to say whether it was able to contain or end the cybersecurity threat, or explain how the breach occurred.

State attorneys general have **also questioned** 23andMe about the breach.

The case is In re 23andMe Inc. Customer Data Security Breach Litigation, MDL No. 3098.

Baby Food Makers Face Toxin Claims

A group of baby food manufacturers, including Gerber Products Co., The Hain Celestial Group Inc. and Beech-Nut Nutrition Co., is urging the JPML **not to consolidate** suits claiming the products contain heavy metals, causing autism spectrum disorder and other conditions, saying there's no benefit to grouping them in an MDL.

The defendants say the JPML should follow its own example from three years ago, when it decided the companies' marketing and manufacturing operations were too disparate to warrant consolidation.

The suits stem from a congressional report three years ago that seven manufacturers had allowed high levels of arsenic, lead, cadmium and mercury into their food. The current litigation says instances of autism spectrum disorder, ADHD and other conditions are linked.

Beech-Nut and other makers claim no scientific studies support this claim, pointing to a similar case in which Hain Celestial got a mid-trial win when the judge found that the evidence didn't support the claims.

If the JPML does conclude that consolidation is necessary, Beech-Nut and other producers say the Southern District of New York is most appropriate. Michael Imbroscio of Covington & Burling LLP will represent Gerber and The Hain Celestial Group Inc. at oral argument.

The case is In re Baby Food Marketing, Sales Practices and Products Liability Litigation (No. II), MDL number 3101.

LDS Church Accused of Misusing Donations

A member of the Church of Jesus Christ of Latter-Day Saints has asked the JPML to centralize actions currently filed in Illinois, Utah, Tennessee and Washington over the church's use of tithe money from members.

In the Utah case, member Daniel Chappell **says the church** claims to use donations for "humanitarian relief" but holds "some, if not all" of those funds for different investment purposes.

Chappell says the Salt Lake City-based church — widely known as the Mormon or LDS church — is lying when it tells donors that "one hundred percent of every dollar donated" goes to help those in need. The church actually hides funds in its Ensign Peak Advisors Inc. investment entity, according to Chappell and co-plaintiffs Masen Christensen and John Oaks, who say they have donated hundreds of thousands of dollars.

A whistleblower alleged in December 2019 that the church had "funneled billions of dollars of donations into covert permanent investments through Ensign," according to the complaint, leading the U.S. Securities and Exchange Commission to accuse the church and investment firm of using shell companies to veil a \$32 billion portfolio. The church and Ensign agreed to pay \$5 million in civil penalties to settle the matter, without admitting or denying wrongdoing.

Funds were used to bail out a failing life insurance company and build a Salt Lake City mall, the church members' suit claims. The trio wants to represent a nationwide class of potentially millions of donors since 1998.

Plaintiff Joel Long, represented by James Rosemergy of Carey Danis & Lowe, will argue that the cases should be grouped in the Central District of California. The LDS church will be represented by Mark Mester of Latham & Watkins LLP, who will argue the case should be centralized, but in the District of Utah.

The case is In re The Church Of Jesus Christ Of Latter-Day Saints Tithing Litigation, MDL No. 3102.

Regeneron Looks to Group Suits Over Eye Medicine Patents

Regeneron has accused numerous other biotech and pharma companies of infringing as many as 38 patents connected to a top eye medication, Eylea.

In **one suit** filed in November, Regeneron said South Korea-based Celltrion is seeking approval to manufacture and market a biosimilar called CT-P42.

Eylea was first approved by the U.S. Food and Drug Administration in 2011 and helps prevent vision loss and permanent blindness through a genetically engineered fusion protein called aflibercept.

Celltrion announced in June that it had submitted an abbreviated biologics drug application for its biosimilar eye medication and told Regeneron in September that it intended to begin marketing CT-P42 as soon as the FDA approved the application, Regeneron said.

Regeneron's exclusivity period expires May 18.

If centralized, the MDL would be composed entirely of suits brought by Regeneron. Other suits proposed for inclusion are against Mylan, Amgen, Formycon AG and others.

Mylan, represented by Deanne Mazzochi of Rakoczy Molino Mazzochi Siwik LLP, will oppose centralization. Amgen, represented by Joseph Hynds of Rothwell Figg Ernst & Manbeck PC, will take the same stance. Amgen has argued that the move to centralize Biologics Price and Competition Act cases "is a matter of first impression" for the panel.

Regeneron, represented by David Berl of Williams & Connolly, will argue for centralization in the Northern District of West Virginia.

The case is In re Aflibercept Patent Litigation, MDL No. 3103.

Hotel Chains Face Claims They Ignored Sex Trafficking

Several hotel chains will oppose an initiative to centralize claims that they ignored sex trafficking on their properties. The chains have argued they were not aware such abuses were happening.

In a representative complaint, a trafficking survivor known as S.C. is suing Choice Hotels International Inc., Wyndham Hotels & Resorts Inc., Red Roof Inns Inc., Days Inns Worldwide Inc., Holiday Hospitality Franchising LLC, Six Continents Hotels Inc. and Crowne Plaza LLC under the Trafficking Victims Protection Reauthorization Act, **alleging they allowed crimes against her** to continue. The hotels have replied that they did not knowingly allow her to be trafficked.

Red Roof Inns, for example, has argued that even if S.C. had named the specific Red Roof employees or the owner of the franchise location she was trafficked through, that still would not grant her a claim against the company. Red Roof said that it trains employees on how to prevent trafficking but that there is no evidence any workers ever saw S.C. enter or leave the site she has named.

There are suits in California, Georgia, Minnesota, New Mexico, Texas, Pennsylvania, South Carolina and Washington, plus a large number of suits in Ohio.

By and large, the chains oppose centralization. Choice Hotels will be represented by Sara Turner of Baker Donelson Bearman Caldwell & Berkowitz PC, David Sager of DLA Piper will argue for Wyndham, John Hamrick of Holland & Knight LLP will oppose on behalf of Holiday

Hospitality Franchising, Karen Campbell of [Lewis Brisbois Bisgaard & Smith LLP](#) will argue on behalf of [Best Western International Inc.](#), and Chelsea Mikula of [Tucker Ellis LLP](#) will argue for Red Roof Inns.

The case is In re Hotel Industry Sex Trafficking Litigation (No. II), MDL No. [3104](#).

NCAA Faces Athletes' Claims Over Fixing Scholarship Amounts

The NCAA is facing litigation from student-athletes — again — and wants the JPML to centralize at least five cases.

A representative suit in California federal court against the NCAA and the five major sports conferences says they have "exercised their monopoly power in the labor markets for Division I college sport by fixing the prices of scholarships," raking in billions while the athletes receive little in comparison.

The named plaintiffs are DeWayne Carter, a defensive tackle for Duke University's football team; Nya Harrison, a junior and a defender on Stanford University's women's soccer team; and Sedona Prince, a basketball player for the women's team at Texas Christian University.

"In college sports, only the athletes are treated as amateurs," the Carter plaintiffs said in their suit. "Everyone else involved enjoys the compensation that results from unrestrained competition for the athletes' services."

They're seeking to centralize their suit and another from Colorado in the Northern District of California. The NCAA will support the idea.

Christopher Yates of Latham & Watkins LLP will be presenting oral argument against centralization on behalf of his client, the [Atlantic Coast Conference](#), as well as on behalf of the NCAA, the Big 12, the [Southeastern Conference](#), the Big Ten and the [Pac-12 Conference](#).

It's part of a much broader landscape of litigation against the NCAA. In September, a California federal judge certified a class of 184,000 athletes seeking **injunctive relief concerning name**, image and likeness rights.

The college sports governing body is also facing litigation from a group of state attorneys general over its **transfer eligibility** rule.

The case is In re College Athlete Compensation Antitrust Litigation, MDL No. [3105](#).

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