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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AL-HARAMAIN ISLAMIC
FOUNDATION, *et al.*,

CV. 06-274- KI

Plaintiffs,

v.

GEORGE W. BUSH, *et al.*,

Defendants.

**DEFENDANTS' REPLY TO
PLAINTIFFS' RESPONSE TO NOTICE
OF DECISION BY THE JUDICIAL
PANEL ON MULTIDISTRICT
LITIGATION**

Plaintiffs have filed a Response to Defendants' Notice of Decision by the Judicial Panel on Multidistrict Litigation ("Pl. Resp."). Defendants file this short reply to clarify the record on three points.

First, Plaintiffs argue that a stay of proceedings in this case and a continuance of the August 29 hearing date pending a final decision regarding the transfer of this action would be "contrary" to Rule 1.5 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation ("JPML" or "Panel"). Pl. Resp. at 2. Plaintiffs' argument is clearly wrong. Rule 1.5 merely provides that a conditional transfer order does not, by itself, *automatically* suspend proceedings in the district court where the action is pending and does not limit the jurisdiction of that court until a final transfer order is issued. In no way, however, does Rule 1.5 limit this Court's ability or authority to decide that a temporary stay of proceedings is practical and in the best interests of judicial economy pending final resolution of the transfer issue. The Court, of course, has the inherent authority to control its docket and to issue such a stay. *See Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Indeed, other courts in related cases have stayed proceedings for this precise reason. *See, e.g., Bissitt v. Verizon Communications*, Civil Action No. 06-220, Order (D.R.I. July 19, 2006); *Conner v. AT&T*, 2006 WL 1817094 (E.D. Cal. June 30, 2006).^{1/}

Second, Plaintiffs suggest that this case will not be transferred because it involves certain issues not present in other cases. *See* Pl. Resp. at 3. The JPML, however, expressly rejected precisely this kind of argument in deciding that the cases should be consolidated for coordinated

¹ These stays were issued even before the JPML issued its ruling on August 9, 2006 ("JPML Order"). The current posture here presents an even stronger basis for a stay, given that the Panel has now ruled, has transferred the 17 actions subject to Verizon's original motion, and has held that this case is to be treated as a potential "tag-along" action. *See* JPML Order at 1 n.1.

pretrial proceedings. *See* JPML Order at 2 (“Some parties oppose transfer because they view their actions to be more narrowly drawn (such as with respect to breadth of defendants, nature of alleged improper conduct, range of legal theories, or type of relief sought) than other MDL-1791 actions, and they thus seek to avoid entanglement in a litigation which they deem to be broader in scope. Transfer under Section 1407, however, does not require a complete identity or even majority of common factual issues as a prerequisite to transfer.”).

Third, Plaintiffs suggest that the JPML might choose not to issue a conditional transfer order in this case. *See* Pl. Resp. at 3. In light of the JPML’s decision to treat this action as a potential “tag-along” action, *see* JPML Order at 1 n.1, the substantive basis for its transfer of the original 17 actions (including the language quoted above), and the JPML rules governing “tag-along” actions, there is no basis to believe that a conditional transfer order will not issue in this case. Our understanding from the JPML Clerk’s Office is that conditional transfer orders related to MDL-1791 will likely issue within two weeks.

Accordingly, Plaintiffs’ arguments in opposition to a temporary stay of proceedings and adjournment of the August 29 hearing are without merit. Defendants respectfully suggest that a stay is the most appropriate and efficient way to proceed pending final resolution of the transfer of this action.

Dated: August 16, 2006

Respectfully submitted,

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