

**BEFORE THE UNITED STATES JUDICIAL PANEL ON
MULTI DISTRICT LITIGATION**

In re MCGREGOR-MAYWEATHER) MDL Docket No.
BOXING MATCH PAY-PER-VIEW)
LITIGATION)
_____)

**MOTION OF DEFENDANTS SHOWTIME NETWORKS INC. AND
SHOWTIME DIGITAL INC. TO CENTRALIZE ACTIONS IN THE SOUTHERN DISTRICT
OF NEW YORK PURSUANT TO 28 U.S.C. § 1407
FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS**

Pursuant to 28 U.S.C. § 1407, Defendants Showtime Networks Inc. and Showtime Digital Inc. (together, “Movants”) respectfully move this Panel for an order to centralize the eight federal actions listed in the Schedule of Actions in the United States District Court of the Southern District of New York for pretrial proceedings. In support of this motion, Movants allege as follows:

1. Eight Similar Actions are Pending in the Federal Courts: Eight federal putative consumer class actions (the “Consumer Class Actions”) that all arise out of the live internet stream and promotions of the boxing match between Floyd Mayweather and Conor McGregor on August 26, 2017 (the “Fight”) are currently pending in five separate federal districts in four different states. *See* Schedule of Actions, attached as Ex. A.

2. Common Questions of Fact Exist: All of the Consumer Class Actions involve one or more common questions of fact. Generally, each plaintiff alleges that they purchased the right to view the Fight, and the defendants falsely advertised the Fight, engaged in deceptive business practices in violation of state consumer protection statutes, and were unjustly enriched, among other allegations. These allegations will be challenged by such similar pretrial motions that party and judicial efficiency would be significantly promoted by centralization before a

single judge. And, if the Consumer Class Actions survive initial motions practice, factual development and discovery requests are likely to be overlapping.

3. Transfer Will Further the Convenience of Parties and Witnesses: Centralization of the Consumer Class Actions in a single district will prevent redundant briefing of the same pretrial motions, including motions to compel arbitration on an individual basis, which would bar class litigation. In the unlikely event that the cases proceeded to discovery, centralization will prevent unnecessary duplication of document productions, depositions, and pretrial and discovery motions, which would otherwise be an undue burden the parties and witnesses.

4. Transfer Promotes Justice and Efficiency: Transfer of the Consumer Class Actions to a single district for coordinated to consolidated pretrial proceedings will promote the efficient use of judicial resources and just outcomes for the parties by eliminating the risk of inconsistent pre-trial rulings.

5. The Consumer Class Actions Should be Transferred to the Southern District of New York, Or in the Alternative to the District of Nevada: The United States District Court for the Southern District of New York is the most suitable forum in which the requested coordinated or consolidated pre-trial proceedings should be conducted. Three of the eight Consumer Class Actions were filed in the Southern District of New York, more than any other district. Additionally, Movants have their headquarters in New York City, therefore, many of the witnesses and documents that are likely to be the subject of pre-trial discovery are located within the Southern District of New York or in close proximity thereto.

6. The United States District Court for the Southern District of New York is well suited to handle the Consumer Class Actions. The Panel has previously recognized that the

Southern District of New York has both unique expertise in and resources to manage complex multidistrict litigations, including putative consumer class actions.

7. In the alternative, transfer to the United States District Court for the District of Nevada would be appropriate, since the arena where the Fight occurred is located there and two of the Consumer Class Actions, which Movants are not parties to, are pending there.

WHEREFORE, Movants respectfully request that, pursuant to 28 U.S.C. § 1407, the MDL panel order the centralization of the Consumer Class Actions listed on the Schedule of Actions in the United States District Court of the Southern District of New York for coordinated or consolidated pre-trial proceedings.

DATED: October 3, 2017

Respectfully submitted,

/s/ Yehudah L. Buchweitz

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DEFENDANTS SHOWTIME NETWORKS INC. AND SHOWTIME DIGITAL INC.'S
MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION TO CENTRALIZE ACTIONS PURSUANT TO 28 U.S.C. § 1407
FOR COORDINATED OR CONSOLIDATED PRETRIAL PROCEEDINGS

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Pursuant to 28 U.S.C. § 1407 and Rule 6.2(a) of the Rules of Procedure for the Judicial Panel on Multidistrict Litigation (the “Panel”), Defendants Showtime Networks Inc. (“SNI”) and Showtime Digital Inc. (together “Movants”) respectfully submit this memorandum in support of their motion to centralize several related actions in the United States District Court for the Southern District of New York for pretrial proceedings.¹

I. PRELIMINARY STATEMENT

Currently, there are eight related putative consumer class actions (the “Consumer Class Actions”) that were filed in five federal districts in New York, California, Oregon, and Nevada by viewers of the live internet stream of the boxing match between Floyd Mayweather and Conor McGregor on August 26, 2017 (the “Fight”). *See* Ex. A, attached to the Declaration of Yehudah L. Buchweitz in Support of Defendant Showtime Networks Inc.’s Motion to Centralize Actions in the Southern District of New York Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings, dated October 2, 2017 (“Buchweitz Decl.”).² SNI is named

¹ While Movants contend that consolidation in and transfer to a single multidistrict litigation is appropriate, Movants expressly reserve all rights to: (1) move to compel arbitration on an individual basis under the agreements between the parties, (2) assert any and all defenses under Federal Rule of Civil Procedure 23, including but not limited to opposing class certification on the grounds that individual factual and legal issues do not predominate over common issues of fact and law, and (3) oppose discovery in the various actions.

² All complaints or amended complaints filed in the Consumer Class Actions shall be hereinafter referred to as “___ Compl.” or “___ Am. Compl.” respectively where the blank represents the first named plaintiff in each case. For example, the complaint in *Riley v. Zuffa, LLC*, No. 17-cv-02308 (D. Nev. Sept. 1, 2017) shall be referred to as “Riley Compl.” The complaints or amended complaints and docket sheets are attached to the Buchweitz Decl. as Exhibits B, C, D, E, F, G, H, and I.

as a defendant in five of the Consumer Class Actions.³ Entities related to Ultimate Fighting Championship (“UFC”) are defendants in five cases as well, including two with Movants.⁴

The Consumer Class Actions should be centralized for pretrial proceedings for three principal reasons. First, the Consumer Class Actions involve one or more common questions of fact because the cases all arise out of the live internet streaming of the Fight and the promotions of the Fight. While each case contains different facts relating to each viewer’s internet streaming experience—such as the streaming service from which the Fight was purchased, the device(s) used, and the types of technical difficulties that may have been encountered—there are more than sufficient common factual allegations related to the claims and defenses to merit centralization. Second, transfer will further the convenience of parties and witnesses, including by streamlining initial motion practice—which Movants believe will lead to an early resolution of the Consumer Class Actions—and, in the event there is any discovery, will ensure that burdens are appropriately minimized on a coordinated basis. Third, transfer will promote judicial economy and fairness to the parties by ensuring consistent rulings and a centralized oversight of pretrial development of the factual record.

The most appropriate forum for pretrial proceedings is the Southern District of New York. Three of the eight Consumer Class Actions were filed there, more than any other district. SNI, along with certain of the other defendants named in the Consumer Class Actions, are

³ *Bartel v. Showtime Networks, Inc.*, No. 3:17-cv-1331 (D. Ore. Aug. 26, 2017); *Mallh v. Showtime Networks, Inc.*, No. 17-cv-06549 (S.D.N.Y. Aug. 28, 2017); *Garcia v. Showtime Networks, Inc.*, No. 17-cv-01803 (S.D. Cal. Sept. 6, 2017); *Ferrandini v. Zuffa, LLC*, No. 17-cv-06781 (C.D. Cal. Sept. 14, 2017); *Vance v. Showtime Networks, Inc.*, No. 17-cv-06894 (S.D.N.Y. Sept. 11, 2017). In addition, three related cases do not include Movants as parties, and they are included in the Schedule of Actions. See Buchweitz Decl., Ex. A.

⁴ William Morris Endeavor Entertainment, LLC (“WME”) owns a controlling interest in Zuffa, LLC (“Zuffa”), which owns UFC (collectively, the “UFC Defendants”).

headquartered or have an office in or near the Southern District of New York. Finally, the United States District Court for the Southern District of New York is highly qualified to handle this consolidated action. In the alternative, transfer to the District of Nevada would also be appropriate, because the Fight occurred there and two of the Consumer Class Actions, to which Movants are not parties, are pending there. For all these reasons, as set forth in more detail below, the Panel should grant this Motion.

II. BACKGROUND

The Consumer Class Actions arise out of the Fight, which occurred on August 26, 2017. The Fight was made available to consumers live on a pay-per-view (“PPV”) basis, meaning that consumers had the opportunity to purchase access to the Fight for private, non-commercial viewing from an authorized distributor. There were three primary steps in transmitting the Fight from the boxing arena to each consumer viewing the Fight. The first step was that an affiliate of SNI produced the Fight, including by creating the signal containing the live feed, which was then uplinked from the arena to multiple satellites. In the second step, from these satellites, authorized cable, satellite, telco (which are telephone companies that provide multichannel video service, including premium channels such as Showtime), and internet distributors downlinked the signal. In the third step, these distributors transmitted the Fight to their customers.

While United States consumers have for many years been able to purchase PPV exhibitions such as major boxing matches through traditional cable, satellite and telco distributors, for the Fight, consumers could also purchase an internet live stream from certain internet distributors. SNI and UFC were two of the authorized distributors of the Fight through their apps and web sites on a streaming basis over the internet within the United States. SNI distributed the internet live stream through its website, www.showtimeppv.com, and the Showtime PPV application available on iTunes and Apple products. Similarly, UFC, Sony, and

Sling distributed the live stream of the Fight through their applications and other web platforms. NeuLion, Inc. (“NeuLion”), a defendant in three of the Consumer Class Actions, handled certain functions for customers purchasing the Fight from UFC.

In each of the Consumer Class Actions, plaintiffs allege that they had technical difficulties viewing the internet live stream of the Fight. The Consumer Class Actions filed to date are summarized below:

Case	Defendant(s)	Class Definition(s)	Claims
<i>Bartel v. Showtime Networks, Inc.</i> (D. Ore.)	SNI	Oregon class: Oregon consumers who: a) Viewed defendant’s app advertisement on iTunes, then paid to stream the Fight from Showtime PPV app, and b) Who were unable to view the Fight on defendant’s app in HD at 1080p resolution and at 60 frames per second, and who experienced ongoing grainy video, error screens, buffer events, and stalls instead.	Violation of the Oregon Unlawful Trade Practice Act ORS 646.608; unjust enrichment
<i>Daas v. NeuLion, Inc.</i> (S.D.N.Y.)	NeuLion Zuffa	Nationwide class and Virginia, Alabama, Connecticut, Texas, Massachusetts, Florida, Arizona, California subclasses: All persons who purchased live pay-per-view streaming services provided by Defendants in connection with the Boxing Matches.	Breach of the implied warranty of merchantability; breach of contract; unjust enrichment; violations of the Virginia Consumer Protection Act, VA. Code Ann. § 59.1-196 <i>et seq.</i> ; California’s Unfair Competition Law, California Business & Professions Code §§ 17200 <i>et seq.</i> ; Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 <i>et seq.</i> ; Connecticut’s Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110 <i>et seq.</i> ; Arizona Consumer Fraud Act, Ariz. Rev. Stat. § 44-1521 <i>et seq.</i>
<i>Ferrandini v. Zuffa, LLC</i>	Zuffa SNI UFC	California class: All individuals residing in California, who were unable to	Violation of California’s Unfair Competition Law, Business & Professions Code

Case	Defendant(s)	Class Definition(s)	Claims
(C.D. Cal.) ⁵		watch any, or all, of the Fight live due to technical failures of Zuffa, SNI, and UFC's streaming services to handle the expected high volume of consumers.	§§ 17200 <i>et seq.</i> ; California's False Advertising Law Business & Professions Code §§ [17500] <i>et seq.</i> ; unjust enrichment; breach of contract.
<i>Garcia v. Showtime Networks, Inc.</i> (S.D. Cal.)	SNI WME Zuffa	California class: All consumers who purchased the Live Stream of the Fight in California, and who did not receive a refund.	Violation of California's Song-Beverly Consumer Warranty Act, Civil Code §§ 1790 <i>et seq.</i> ; California Consumer Legal Remedies Act, Civil Code §§ 1750 <i>et seq.</i> ; unjust enrichment; California's Unfair Competition Law Business & Professions Code §§ 17200 <i>et seq.</i>
<i>Mallh v. Showtime Networks, Inc.</i> (S.D.N.Y.)	SNI	Nationwide class and New York subclass: All purchasers who purchased the Fight, from SNI, for viewing through Showtime PPV or in any other media.	Breach of contract; consumer fraud and/or unconscionable or unfair practices; violation of N.Y. Gen. Bus. Law §§ 349 & 350; unjust enrichment
<i>Park v. Zuffa, LLC</i> (D. Nev.)	Zuffa NeuLion	Nationwide and California class: All persons who paid money to watch the Fight held on August 26, 2017, via UFC, UFC.com, UFC.tv, the UFC app, and/or other platforms operated by Zuffa and NeuLion.	Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. § 598.0915 <i>et seq.</i> ; California Consumer Legal Remedies Act, Civil Code §§ 1750 <i>et seq.</i> ; California's Unfair Competition Law Business & Professions Code §§ 17200 <i>et seq.</i> ; breach of contract; unjust enrichment/money had and received; breach of implied warranty of merchantability
<i>Riley v. Zuffa, LLC</i> (D. Nev.)	Zuffa NeuLion	Nationwide class and Florida, Illinois, Arizona subclasses: All persons that paid money to watch the Fight on pay-per-view, purchased	Breach of contract; Nevada Deceptive Trade Practices Act, Nev. Rev. Stat. § 598.0915 <i>et seq.</i> ; Florida Deceptive and Unfair Trade Practices Act,

⁵ Plaintiffs in the *Ferrandini* case filed in California Superior Court. The case was subsequently removed to the United States District Court for the Central District of California. *See* Notice of Removal, *Ferrandini v. Zuffa, LLC*, No. 17-cv-06781 (C.D. Cal. Sept. 14, 2017), ECF No. 1; Notice of Showtime Networks Inc.'s Consent to Removal, *Ferrandini v. Zuffa, LLC*, No. 17-cv-06781 (C.D. Cal. Sept. 15, 2017), ECF No. 6.

Case	Defendant(s)	Class Definition(s)	Claims
		through UFC, UFC.com, UFC.tv, the UFC app, and/or other platform operated by Zuffa and NeuLion.	Fla. Stat. § 501.201 <i>et seq.</i> ; Illinois Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 <i>et seq.</i> ; Arizona Consumer Fraud Act, Ariz. Rev. Stat. § 44-1521 <i>et seq.</i> ; unjust enrichment/money had and received; breach of implied warranty of merchantability
<i>Vance v. Showtime Networks, Inc.</i> (S.D.N.Y.)	SNI Showtime Digital Inc.	Nationwide class and New York subclass: All persons in the United States who purchased the Showtime PPV live stream of the Fight, for viewing through the Showtime PPV app, the Showtime PPV website, or through any other means or media.	Breach of contract; violation of N.Y. Gen. Bus. Law §§ 349 & 350; unjust enrichment

III. TRANSFER UNDER 28 U.S.C. § 1407 IS APPROPRIATE AND CONVENIENT

Under 28 U.S.C. § 1407, civil actions pending in different districts should be transferred to one district for coordinated or consolidated pretrial proceedings where: (1) the actions “involv[e] one or more common questions of fact”; (2) transfer “will be for the convenience of parties and witnesses”; and (3) transfer “will promote the just and efficient conduct of such actions.” The Consumer Class Actions easily meet this standard and should be consolidated for pretrial proceedings.

A. The Consumer Class Actions Present One or More Common Questions of Fact

Transfer under 28 U.S.C. § 1407 is appropriate where, as here, “one or more common questions of fact are pending in different districts.” This threshold requirement is met “when two or more complaints assert comparable allegations against identical defendants based upon similar transactions and events, common factual questions are presumed.” *In re Air W., Inc. Sec. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974).

The Consumer Class Actions are premised on the same core factual allegations and overlapping legal theories, and therefore consolidation is appropriate. *See In re: Pacquiao-Mayweather Boxing Match Pay-Per-View Litig.*, 122 F. Supp. 3d 1372, 1374 (J.P.M.L. 2015) (ordering transfer and consolidation where “the claims against all of the defendants, and all the causes of action asserted, are based on a common factual core” of a boxing match where consumers claim they were misled into buying the fight); *In re: Subway Footlong Sandwich Mktg. & Sales Practices Litig.*, 949 F. Supp. 2d 1369, 1370 (J.P.M.L. 2013) (finding that the allegations in seven actions “share factual questions arising from plaintiffs’ allegation that defendants have engaged in a false or misleading advertising campaign” in violation of “state consumer protection laws”); *In re: Frito-Lay N. Am., Inc. All Nat. Litig.*, 908 F. Supp. 2d 1379, 1380 (J.P.M.L. 2012) (ordering transfer and consolidation of seven actions based on the fact that they “share factual questions” arising out of allegations of false advertising).

Plaintiffs in the Consumer Class Actions assert nearly identical allegations and legal claims against Movants, the UFC Defendants, and NeuLion (collectively, the “Defendants”) including that:

- purchasers of the Fight faced difficulties in streaming the Fight, *see* Bartel Compl. ¶ 5, Daas Compl. ¶¶ 25-26, Ferrandini Compl. ¶¶ 21-22, Garcia Compl. ¶¶ 25, 27, 29, Mallh Compl. ¶¶ 13, 15, Park Am. Compl. ¶¶ 11, 50-51, Riley Compl. ¶¶ 10, 57-60, 64, Vance Compl. ¶ 14;
- Defendants falsely advertised the Fight, *see* Bartel Compl. ¶¶ 8, 11, Daas Compl. ¶¶ 24, 75, 113, Ferrandini Compl. ¶¶ 16, 24, 61, Garcia Compl. ¶ 11, Mallh Compl. ¶¶ 9, 42, Park Am. Compl. ¶¶ 10, 13, 51, 95, 147, Riley Compl. ¶¶ 9, 12, 118, 129, 157, 172, Vance Compl. ¶¶ 14, 36;
- the streaming of the Fight was delayed, *see* Garcia Compl. ¶ 25, Mallh Compl. ¶¶ 13-15, Park Am. Compl. ¶ 49, Riley Compl. ¶ 62;
- purchasers of the Fight received error messages while attempting to stream or view of the Fight, *see* Bartel Compl. ¶ 5, Ferrandini Compl. ¶ 21, Garcia Compl. ¶¶ 25, 29, Vance Compl. ¶¶ 4, 14;

- Defendants deceived viewers in violation of various state consumer protection statutes, *see* Bartel Compl. ¶¶ 21-22, Daas Compl. ¶¶ 70-118, Ferrandini Compl. ¶¶ 41-55, Garcia Compl. ¶¶ 44-69, 74-81, Mallh Compl. ¶¶ 33-43, Park Am. Compl. ¶¶ 84-147, Riley Compl. ¶¶ 107-176, Vance Compl. ¶¶ 25-41;
- Defendants were unjustly enriched, *see* Bartel Complaint ¶ 23, Daas Compl. ¶¶ 64-69, Ferrandini Compl. ¶¶ 56-60, Garcia Compl. ¶¶ 70-73, Mallh Compl. ¶¶ 44-46, Park Am. Compl. ¶¶ 113-117, Riley Compl. ¶¶ 177-181, Vance Compl. ¶¶ 42-45.

These overlapping allegations and claims will require similar motion practice, and overlapping discovery in the event that these cases survive to the discovery stage. Further, plaintiffs seek similar forms of relief, including compensatory damages, statutory damages, and attorneys' fees. *See* Bartel Compl. p. 17, Daas Compl. pp. 22-23, Ferrandini Compl. p. 12, Garcia Compl. pp. 19-20, Mallh Comp. p. 9, Park Am. Compl. pp. 39-40, Riley Compl. pp. 39-40, Vance Compl. p. 16. Additionally, certain fact allegations, including what may have caused certain purchasers to be unable to view the live stream, or what advertising was seen or read by purchasers in advance of the Fight, will also overlap across the Consumer Class Actions, making centralization the optimal path for efficiently and consistently litigating those issues, both through motion practice and if needed, during discovery.

Similarly, the putative class definitions in each of the Consumer Class Actions are substantially similar and overlap because they involve a purported class of all persons nationwide (or in various overlapping subclasses) who purchased live streams of the Fight from one or more of the Defendants' streaming platforms for viewing, but were unable to view the Fight live. *See* Bartel Compl. ¶ 12, Daas Compl. ¶ 33, Ferrandini Compl. ¶ 26, Garcia Compl. ¶ 34, Mallh Compl. ¶ 19, Park Am. Compl. ¶ 67, Riley Compl. ¶ 79, Vance Compl. ¶ 19. While Movants dispute that a valid nationwide (or any other) class may be certified here, declining to consolidate would subject the parties to potentially inconsistent rulings pertaining to whether or not the plaintiffs can litigate the same alleged wrongdoing. *See In re: Pacquiao-Mayweather*

Boxing Match Pay-Per-View Litig., 122 F. Supp. 3d at 1374 (finding that centralization was warranted where “the actions involve overlapping putative classes of pay-per-view purchasers.”).

Further, there are common defenses that must be resolved in each of the Consumer Class Actions. For example, each of the Consumer Class Actions will be subject to Movants’ threshold defense that some or all of the putative class members agreed to waive class litigation and resolve their disputes through individual arbitration. Centralization at this stage would prevent inconsistent rulings and unfair outcomes on this and other potential defenses for all parties.

B. Consolidating the Consumer Class Actions Will Further the Convenience of Parties and Witnesses

Given the sufficiently similar legal claims and factual allegations, the Consumer Class Actions should be consolidated in the interest of convenience to the parties and witnesses involved. Each of the Consumer Class Actions will require the same pretrial motions, including motions by Movants to compel arbitration on an individual basis. Absent consolidation, the parties will be required to brief duplicative pretrial motions and could face inconsistent rulings in eight separate actions. *See In re Republic Nat'l-Realty Equities Sec. Litig.*, 382 F. Supp. 1403, 1406 (J.P.M.L. 1974) (consolidating several class actions and finding that “it is necessary to have all class action questions resolved by a single judge in order to eliminate the possibility of conflicting class determinations.”). To date, Movants are already required in the next several weeks to respond to three complaints containing nearly parallel claims and similar factual allegations. In addition, without consolidation Movants would be required to conduct Rule 26(f) conferences with multiple sets of counsel for plaintiffs in the Consumer Class Actions. Filing even more responses to complaints in the Consumer Class Actions will be inefficient and inconvenient to all parties and to the courts. Centralization of the Consumer Class Actions will

allow Defendants to respond more efficiently and will allow the court to resolve threshold pleading issues at one time.

Further, if the Consumer Class Actions survive to the discovery stage of litigation, which Movants respectfully believe they will not, the overlapping issues will necessitate overlapping discovery. In the event that the Consumer Class Actions proceed to discovery, it is likely that plaintiffs will seek many of the same documents, testimony, and other discoverable information regarding Defendants' conduct with respect to advertising, provision of the streaming services, and policies for offering refunds. Without consolidation, the parties would have to prepare and respond to duplicative discovery requests, attend numerous and duplicative case management conferences in each jurisdiction, set and comply with potentially divergent and conflicting schedules for each case, and attend multiple hearings on similar issues in the various jurisdictions. Witnesses would likewise face repeated depositions pertaining to the same issues, which will cause the exact inefficiencies that multidistrict litigation was designed to curtail. *See In re Pub. Air Travel Tariff Litig.*, 360 F. Supp. 1397, 1399 (J.P.M.L. 1973) ("Since each action contains similar Rule 23 class allegations, such discovery would be common to each action and could best be pursued if coordinated under the supervision of a single judge"). Coordination in a single district will minimize duplicative document production, inconvenience to witnesses, and overall expense to the parties.

C. Consolidation Will Promote Just and Efficient Conduct of the Consumer Class Actions

Consolidation will also conserve judicial resources and promote just outcomes for the parties. *See e.g. In re: Pacquiao-Mayweather Boxing Match Pay-Per-View Litig.*, 122 F. Supp. 3d at 1374 (holding that centralization will "prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel and the

judiciary”); *In re Acacia Media Techs. Corp. Patent Litig.*, 360 F. Supp. 2d 1377, 1379 (J.P.M.L. 2005) (where each action shared factual and legal issues, consolidation was necessary to “prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary”).

As noted above, the common fact and legal issues across the Consumer Class Actions will necessitate the same pretrial motions, including motions to compel arbitration on an individual basis or, in the event that the cases proceed to that stage, motions related to class certification. Absent consolidation, each district court judge will be required to resolve these and other overlapping pretrial issues, which could result in hearings in at least five different districts and in potentially inconsistent and therefore unfair rulings. *See In re First Nat’l Bank, Heavener, Okla. (First Mortg. Revenue Bonds) Sec. Litig.*, 451 F. Supp. 995, 996-97 (J.P.M.L. 1978) (consolidation necessary where the allegations are “substantially the same” and “even though only two actions are involved, in order to prevent duplicative pretrial proceedings and eliminate the possibility of inconsistent pretrial rulings”). In particular, unless the Consumer Class Actions are consolidated, the parties run the risk of inconsistent rulings such as where several courts compel individual arbitration, precluding class certification, while just one court certifies a class, resulting in unfair outcomes and a significant waste of party and judicial resources. *See In re Republic Nat’l-Realty Equities Sec. Litig.*, 382 F. Supp. at 1406 (finding that centralization was necessary to “achieve the most expeditious method of organizing the class or classes and any necessary subclasses.”).

Additionally, there are six sets of plaintiffs’ counsel in the eight Consumer Class Actions. Consolidation would reduce the number of plaintiffs’ firms that Movants need to engage with, making it easier to coordinate the proceedings and eliminating duplicative efforts.

IV. THE PANEL SHOULD TRANSFER THESE ACTIONS TO THE SOUTHERN DISTRICT OF NEW YORK, OR IN THE ALTERNATIVE TO THE DISTRICT OF NEVADA.

A. The Southern District of New York is the Most Convenient Forum

The eight Consumer Class Actions are presently pending in five separate districts in four different states. Despite the geographic dispersion of the Consumer Class Actions, however, the Southern District of New York is the most convenient.

This Panel has indicated that, pursuant to 28 U.S.C. § 1407(a), one important factor in determining where to transfer actions for coordinated or consolidated multidistrict litigation is the convenience of the parties and witnesses. *See, e.g., In re Rio Hair Naturalizer Prods. Liab. Litig.*, 904 F. Supp. 1407, 1408 (J.P.M.L. 1995). With respect to this factor, the Panel has indicated that it will consider such matters as the parties' principal place of business and the location of the documents, and witnesses necessary to conduct the pretrial proceedings. *See, e.g., In re "Factor VIII or IX Concentrate Blood Prods." Liab. Litig.*, 853 F. Supp. 454, 455 (J.P.M.L. 1993) (transferring to district where two of the four defendants had significant contacts); *In re Air Crash Disaster Near Coolidge, Ariz., on May 6, 1971*, 362 F. Supp. 573, 573 (J.P.M.L. 1973) (location of documents and anticipated witnesses important to consolidation decision). This factor strongly favors the Southern District of New York.

Of the six entities currently named as Defendants in the Consumer Class Actions, Movants are both headquartered within the Southern District of New York and NeuLion is headquartered within close proximity (in Long Island). In the unlikely event that the Consumer Class Actions reach the discovery stage, many of the witnesses, employees, and documents that are likely to be the subject of anticipated pretrial discovery are, thus, located within the Southern District of New York or in close proximity.

In similar circumstances, this Panel has transferred multidistrict litigation to the sites of the defendant's corporate headquarters, or the district where the greatest number of witnesses and documents are likely to be found. *See, e.g., In re Salomon Bros. Treasury Sec. Litig.*, 796 F. Supp. 1537, 1538 (J.P.M.L. 1992) ("Salomon's allegedly illegal activities took place in New York at Salomon's corporate headquarters, and documents and witnesses relating to Salomon's conduct are located there"); *In re Baldwin-United Corp. Litig.*, 581 F. Supp. 739, 741 (J.P.M.L. 1984) ("[M]any of the parties, potential witnesses and relevant documents are located in the Southern District of New York (where defendant broker dealer firms have their principal offices and headquarters.)").

Further, the Southern District of New York has the highest concentration of Consumer Class Actions, with three of the Actions pending before the same Judge. Movants are currently briefing motions to compel arbitration on an individual basis, or in the alternative to dismiss, the two such Consumer Class Actions in the Southern District of New York, and expect that briefing to be completed before a determination on this motion is made by the Panel. This Panel has transferred multi-district litigation to the District where most cases were pending, and to the District that was most familiar with the issues involved. *See In re Republic Nat'l-Realty Equities Sec. Litig.*, 382 F. Supp. at 1407 (transferring to district where highest concentration of underlying cases were pending before the same judge, and were proceeding expeditiously under his supervision); *In re Data Gen. Corp. Antitrust Litig.*, 470 F. Supp. 855, 859 (J.P.M.L. 1979) (familiarity of district court judge with legal and factual issues was factor in transferring actions to that district); *In re Plywood Antitrust Litig.*, 376 F. Supp. 1405, 1407 (J.P.M.L. 1974) (transfer was to forum with judge most familiar with issues in the case).

Additionally, New York City is well connected by air with flights arriving daily at three major airports: John F. Kennedy International, Newark Liberty International, and LaGuardia.

New York is also easily accessible by car via several major interstates, by train with Amtrak's national network, and several regional train options, and by bus through both national and local bus networks.

Here, the balance of party and witness convenience and judicial efficiency favors the transfer of the Consumer Class Actions to the Southern District of New York for coordination and consolidation.

B. The Southern District of New York Has Significant Experience with Multidistrict Litigation

In addition to its geographical convenience, the Southern District of New York is a suitable forum because of its significant experience in handling MDLs. Indeed, the Panel has recognized that the Southern District of New York has both unique expertise in and resources to manage complex multidistrict litigations, including consumer class actions. *See, e.g., In re Grand Theft Auto Video Game Consumer Litig. (No. II)*, 416 F. Supp. 2d 1350, 1351 (J.P.M.L. 2006) (ordering transfer and centralization in the Southern District of New York of consumer class actions alleging deceptive marketing). To date the District has handled, or is handling, at least 186 MDLs – the most of any federal district.⁶ Many of the District's judges, including the Judge currently assigned to the three Consumer Class Actions pending in the Southern District, have extensive experience handling both complex consumer class actions and multidistrict litigations.

⁶ See U.S. Judicial Panel on Multidistrict Litigation, "Multidistrict Litigation Terminated through September 30, 2016," at 6-12 (listing 162 previous MDLs in Southern District of New York as of September 30, 2016), available at:

http://www.jpml.uscourts.gov/sites/jpml/files/JPML_Terminated_Litigations-FY-2016_0.pdf;
U.S. Judicial Panel on Multidistrict Litigation, "MDLs Terminated Between January 1, 2017 and September 15, 2017," at 1 (listing two MDLs terminated in the Southern District of New York in 2017), available at http://www.jpml.uscourts.gov/sites/jpml/files/Recently_Terminated_MDLs-1-1-2017_to_9-15-2017.pdf

Moreover, the Southern District of New York has well-equipped staff and an excellent Clerk's office that is able to provide support services for managing this litigation.

C. In the Alternative, the Panel Should Transfer the Consumer Class Actions to the District of Nevada

In the alternative, transfer to the District of Nevada would be appropriate. Two of the Consumer Class Actions, which Movants are not parties to, are pending in the United States District Court for the District of Nevada. Further, the boxing arena where the Fight occurred and headquarters for the UFC Defendants are both located in Nevada.

V. CONCLUSION

For the reasons set forth above, Movants respectfully request the Panel enter an order centralizing the Consumer Class Actions in the United States District Court for the Southern District of New York for coordinated or consolidated pretrial proceedings.

DATED: October 3, 2017

Respectfully submitted,

/s/ Yehudah L. Buchweitz

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**BEFORE THE UNITED STATES JUDICIAL PANEL ON
MULTI DISTRICT LITIGATION**

In re MCGREGOR-MAYWEATHER) MDL Docket No.
BOXING MATCH PAY-PER-VIEW)
LITIGATION)
_____)

DECLARATION OF YEHUDAH L. BUCHWEITZ IN SUPPORT OF DEFENDANTS
SHOWTIME NETWORKS INC. AND SHOWTIME DIGITAL INC.'S MOTION TO
CENTRALIZE ACTIONS PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATED OR
CONSOLIDATED PRETRIAL PROCEEDINGS

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the following is true and correct.

1. I am a partner of the law firm Weil, Gotshal & Manges LLP, which represents Defendants Showtime Networks Inc. and Showtime Digital Inc. in the above-captioned litigation. I submit this declaration in support of Defendants' Motion to Centralize Actions Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings.

2. Annexed hereto as Exhibit A is a true and complete copy of the Schedule of Actions.

3. Annexed hereto as Exhibit B are true and complete copies of the Complaint and Docket Sheet in *Bartel v. Showtime Networks, Inc.*, 3:17-cv-01331-YY (D. Ore.).

4. Annexed hereto as Exhibit C are true and complete copies of the Complaint and Docket Sheet in *Daas, et al. v. NeuLion, Inc., et al.*, 1:17-cv-06944-VM (S.D.N.Y.).

5. Annexed hereto as Exhibit D are true and complete copies of the Complaint and Docket Sheet in *Ferrandini et al. v. Zuffa, LLC, et al.*, 2:17-cv-06781-R-KS (C.D. Cal.), which was originally filed in the Superior Court of the State of California.

6. Annexed hereto as Exhibit E are true and complete copies of the Complaint and Docket Sheet in *Garcia v. Showtime Networks, Inc., et al.*, 3:17-cv-01803-JM-AGS (S.D. Cal.).

7. Annexed hereto as Exhibit F are true and complete copies of the Complaint and Docket Sheet in *Mallh v. Showtime Networks Inc.*, 1:17-cv-06549 (S.D.N.Y.).

8. Annexed hereto as Exhibit G are true and complete copies of the Amended Complaint and Docket Sheet in *Park v. Zuffa, LLC, et al.*, 2:17-cv-02282 (D. Nev.).

9. Annexed hereto as Exhibit H are true and complete copies of the Complaint and Docket Sheet in *Riley, et al. v. Zuffa, LLC, et al.*, 2:17-cv-02308 (D. Nev.).

10. Annexed hereto as Exhibit I are true and complete copies of the Complaint and Docket Sheet in *Vance v. Showtime Networks, Inc., et al.*, 1:17-cv-06894 (S.D.N.Y.).

Date: October 3, 2017

/s/ Yehudah L. Buchweitz

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EXHIBIT A

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

In re McGregor-Mayweather Boxing Match Pay-Per-View Litigation

SCHEDULE OF ACTIONS

<u>Case Captions</u>	<u>Court</u>	<u>Civil Action No.</u>	<u>Judge</u>
<p>Plaintiffs: Dean Ferrandini, an individual, and Keefe Ferrandini, individually, and on behalf of all others similarly situated</p> <p>Defendants: Zuffa, LLC; Showtime Networks, Inc.; UFC; Does 1 through 100</p>	C.D. Cal. (Western Div.)	2:17-cv-06781	Manuel L. Real
<p>Plaintiff: Phillip Garcia, on behalf of himself and all others similarly situated</p> <p>Defendants: Showtime Networks, Inc.; William Morris Endeavor Entertainment, LLC; Zuffa, LLC; Does 1-10</p>	S.D. Cal.	3:17-cv-01803	Jeffrey T. Miller
<p>Plaintiff: Cameron Park, individually, and on behalf of all others similarly situated</p> <p>Defendants: Zuffa, LLC; Neulion, Inc.; Does 1-100</p>	D. Nevada	2:17-cv-02282	Andrew P. Gordon
<p>Plaintiffs: Joshua Riley, Michael Adami, Megan Duncan, and Benito Alicia Jr., as individuals, and on behalf of all others similarly situated</p> <p>Defendants: Zuffa, LLC; Neulion, Inc.; Does 1-100</p>	D. Nevada	2:17-cv-02308	Andrew P. Gordon
<p>Plaintiff: Victor Mallh, individually and on behalf of all others similarly situated</p> <p>Defendant: Showtime Networks Inc.</p>	S.D.N.Y.	1:17-cv-06549	Denise L. Cote
<p>Plaintiff: Jasmine Vance, individually and on behalf of all other similarly situated</p> <p>Defendants: Showtime Networks Inc.; Showtime Digital Inc.</p>	S.D.N.Y.	1:17-cv-06894	Denise L. Cote

<u>Case Captions</u>	<u>Court</u>	<u>Civil Action No.</u>	<u>Judge</u>
<p>Plaintiffs: Hasan Daas, Brad Grier, Wesley Inman, Matt LeBoeuf, Damian Luna, Lloyd Trushel, Mark White, and Dongsheng Liu, on behalf of themselves and all others similarly situated</p> <p>Defendants: Neulion, Inc.; Zuffa, LLC</p>	S.D.N.Y.	1:17-cv-06944	Denise L. Cote
<p>Plaintiff: Zack Bartel, an Oregon consumer, individually and on behalf of all others</p> <p>Defendant: Showtime Networks, Inc.</p>	D. Oregon (Portland Div.)	3:17-cv-01331	Youlee Yim You