■ **Motion to transfer venue; intervening change in the law; timeliness.** In October 2017, this column noted Judge Nelson's grant of a motion to transfer venue in a patent action. The plaintiff subsequently petitioned the Federal Circuit for a writ of mandamus, and the Federal Circuit vacated Judge Nelson's order after holding in a related case that Fed. R. Civ. P. 1 could be considered in addition to Fed. R. Civ. P. 12 when evaluating the timeliness of a venue defense. Evaluating the defendants' renewed motion to transfer venue under this standard, and rejecting the plaintiff's argument that the defendant had engaged in "tactical gamesmanship" and that it would be prejudiced by a venue transfer close to the trial ready date, Judge Nelson once again ordered venue transferred to the Western District of Pennsylvania. ***Cutsforth, Inc. v. LEMM Liq. Co.***, 2018 WL 847763 (D. Minn. 2/13/2018).

■ **Alleged arbitrator bias; TRO and preliminary injunction denied.** Adopting a report and recommendation by Magistrate Judge Menendez, Judge Davis denied the plaintiffs' motion for a temporary restraining order and preliminary injunction premised on alleged arbitrator bias. Magistrate Judge Menendez had found that the court was powerless to stay the arbitration, and that the plaintiffs' claims of irreparable harm were belied by their ability to seek relief after the conclusion of the arbitration. ***Shields v. General Mills, Inc.***, 2018 WL 895398 (D. Minn 1/26/2018), *Report and Recommendation adopted*, 2018 WL 894570 (D. Minn. 2/14/2018).

■ **Fed. R. Civ. P. 9(b) and 12(b)(6); motion to dismiss granted.** Chief Judge Tunheim dismissed several of the plaintiff insureds' claims against their insurer under *Iqbal* and *Twombly*, finding that their promissory estoppel, breach of fiduciary duty, and tortious interference claims failed to allege "sufficient facts" to support those claims. In addition, the plaintiffs' fraud claim was dismissed pursuant to Fed. R. 9(b) due to their failure to meet the "heightened" pleading standard. All of these claims were dismissed without prejudice. ***Diocese of St. Cloud v. Arrowood Indem. Co.***, 2018 WL 1175421 (D. Minn. 3/6/2018).

■ **Local Rule 5.6; continued sealing of documents.** While granting the plaintiff's motion for continued sealing of documents relating to his "garden variety" emotional distress claims, Magistrate Judge Rau described as "problematic" the plaintiff's request to prevent disclosure of this information "at hearings or trial," finding that this matter should be addressed through a motion *in limine*, and that his request for the continued sealing of meet and confer statements and proposed orders was "generally inappropriate." ***Feinwachs ex rel. United States v. Minnesota Hosp. Assoc.***, 2018 WL 882808 (D. Minn. 2/13/2018).

■ **Fed. R. Civ. P. 9(b); fraud claims dismissed; "informal" request to amend denied.** Judge Frank dismissed numerous fraud claims, finding that they "lack[ed] the particularity required under Rule 9(b)" because they failed to provide details about allegedly fraudulent materials, failed to explain how alleged misrepresentations were false or misleading, because their allegations regarding intent were "conclusory," and because their reliance allegations were "insufficiently specific." Judge Frank also denied plaintiffs' "informal" request for leave to amend, but dismissed plaintiffs' claims without prejudice. ***Bhatia v. 3M Co.***, 2018 WL 1122374 (D. Minn. 3/1/2018).

■ **Motion to strike late-filed reply brief denied.** Chief Judge Tunheim denied the defendants' "motion to strike" the plaintiffs' untimely reply brief submitted in support of their motion for class certification, on the basis that "neither the Federal Rules of Civil Procedure nor the local rules for the District of Minnesota permit a party to move to strike a belatedly filed brief." ***Portz v. St. Cloud State Univ.***, 2018 WL 1050405 (D. Minn. 2/26/2018).

■ **35 U.S.C. §285; attorney's fees denied to prevailing plaintiff in patent case.** Chief Judge Tunheim denied the prevailing patent plaintiff's request for attorney's fees, finding that the case was not "exceptional" for purposes of 35 U.S.C. §285. ***Schwendimann v. Arkwright Advanced Coating, Inc.***, 2018 WL 1041038 (D. Minn. 2/23/2018).

■ **Removal; remand; request for sanctions and fees denied.** Where the defendant removed the plaintiff's action on the basis of ERISA preemption, Chief Judge Tunheim granted the plaintiff's motion to remand, but the denied the plaintiff's request for costs and fees under 28 U.S.C. §1447(c), finding that the removal was "not unreasonable," and also denied the plaintiff's related motion for sanctions under Fed. R. Civ. P. 11. ***Miller v. Starkey Labs., Inc.***, 2018 WL 1141377 (D. Minn. 3/2/2018).

JOSH JACOBSON
Law Office of Josh Jacobson
jacobsonlawoffice@att.net

IMMIGRATION LAW

JUDICIAL LAW

■ **Detained immigrants and bonds.** The U.S. Supreme Court reversed the 9th Circuit Court of Appeals by holding that INA §§235(b), 236(a), and 236(c) do not give detained noncitizens the right to periodic bond hearings over the course of their detention. "Because the Court of Appeals erroneously concluded that periodic bond hearings are required under the immigration provisions at issue here, it had no occasion to consider respondents' constitutional arguments on their merits." Consequently, the Court remanded the case for the 9th Circuit to consider the respondents' constitutional arguments. ***Jennings et al. v. Rodriguez et al.***, 583 U.S. ___ (2018). *https://www.supremecourt.gov/opinions/17pdf/15-1204_f29g.pdf*

■ **Deferred Action for Childhood Arrivals (DACA) developments.** On 1/9/2018, the U.S. District Court for the Northern District of California issued a nationwide injunction ordering the U.S. Department of Homeland Security (DHS), pending final judgment, to maintain the DACA program on the same terms and conditions as were in effect prior to the government's 9/5/2017 rescission with certain exceptions: (1) new applications by applicants who had never held deferred action need not be processed; (2) the advance parole feature of DACA need not be continued for anyone for the time being; and (3) DHS may take certain steps to ensure that fair discretion is exercised on an individualized basis for each renewal application. The district court further noted, "Nothing in this order prohibits the agency from proceeding to remove any individual, including any DACA enrollee, who it determines poses a risk to national security or public safety, or otherwise deserves, in its judgment, to be removed. Nor does this order bar the agency from granting advance parole in individual cases it finds deserving, or from granting deferred action to new individuals on an *ad hoc* basis." ***Regents of University of California, et al. v. U.S. Department of Homeland Security, et al.*** (3:17-CV-05211-WHA) (N.D. Cal. 1/9/2018). *https://www.nilc.org/wp-content/uploads/2018/01/Regents-v-DHS-prelim-injunction-2018-01-09.pdf*

On 2/13/2018, the U.S. District

Court for the Eastern District of New York issued an injunction on a universal or "nationwide" basis ordering the U.S. Department of Homeland Security (DHS) to maintain the DACA program in existence prior to the 9/5/2017 rescission with the following exceptions: (1) DHS need not consider DACA applications by those who were never before granted DACA benefits; (2) the agency need not continue granting advance parole to DACA beneficiaries; and (3) DHS may adjudicate renewal requests on a case-by-case basis. "Accordingly, the court finds that the balance of the equities tip decidedly in Plaintiffs' favor, and that the public interest would be well-served by an injunction." ***Batalla Vidal v. Nielsen*** (1:16-CV-04756-NGG-JO) (E.D.N.Y. 2/13/2018). *https://www.nilc.org/wp-content/uploads/2018/02/Batalla-Vidal-v-Nielsen-updated-pi-order-2018-02-13.pdf*

On 1/18/2018, the government asked in a petition for *certiorari* before judgment that the U.S. Supreme Court take up its appeal of the California U.S. District Court's 1/9/2018 decision. ***United States Department of Homeland Security, et al., v. Regents of the University of California, et al.*** *https://www.supremecourt.gov/DocketPDF/17/17-1003/28381/20180119100226711_DACA%20Rule%2011%20Petition.pdf*

On 2/26/2018, the U.S. Supreme Court declined to do so, for now. *https://www.supremecourt.gov/orders/courtorders/022618zor_j426.pdf*

On 3/5/2018, the U.S. District Court for the District of Maryland declined to enjoin the government's rescission of the DACA program, finding it had the authority to do so. However, the court noted that it would not allow the government to rely on DACA-provided information to "track and remove" DACA recipients. "Therefore, while the Government will not be enjoined from rescinding DACA, given the substantial risk for irreparable harm in using Dreamers' DACA-provided information, the Court will enjoin the Government from using information provided by Dreamers through the DACA program for enforcement purposes." ***Casa de Maryland, et al. v. DHS, et al.*** (8:17-cv-02942-RWT) (D. Md. 3/5/2018). *http://cdn.cnn.com/cnn/2018/images/03/06/maryland-daca-opinion.pdf*

Stay tuned.

ADMINISTRATIVE ACTION

■ **Temporary Protected Status extended for Syria.** On 3/5/2018, the Department of Homeland Security announced that Secretary of Homeland Security Kirstjen Nielsen had extended the designation of Syria for Temporary Protected Status for 18 months, from 4/1/2018 through 9/30/2019. The re-registration period runs from 3/5/2018 to 5/4/2018. According to Secretary Nielsen, "an 18-month extension is warranted because the ongoing armed conflict and extraordinary and temporary conditions that prompted Syria's 2016 redesignation for TPS persist. Syria is engulfed in an ongoing civil war marked by brutal violence against civilians, egregious human rights violations and abuses, and a humanitarian disaster on a devastating scale across the country." 83 *Fed. Reg.* 9329-36 (3/5/2018). *https://www.gpo.gov/fdsys/pkg/FR-2018-03-05/pdf/2018-04454.pdf*

R. MARK FREY
Frey Law Office
rmfrey@cs.com

INTELLECTUAL PROPERTY

JUDICIAL LAW

■ **Patents: Litigation stay pending reexamination and post-grant review.** Judge Bowbeer recently stayed patent litigation until the conclusion of reexamination and post-grant review of some, but not all, of the patents-in-suit. Telebrands sued Seasonal Specialties alleging Seasonal's Laser Motion product infringed Telebrands' utility and design patents. Seasonal moved to stay the litigation after the Patent Office ordered a reexamination of Telebrands' utility patents and a third party filed requests for post-grant review of the patents. A stay in proceedings allows courts to control their dockets, to conserve judicial resources, and to provide for the just determination of cases before it. A court considers: (1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether a stay will simplify the issues in the litigation and facilitate trial; and (3) whether discovery is complete and a trial date is set. The court found that each factor favored a stay. First, Telebrands did not seek a preliminary injunction, indicating that it would not be irreparably harmed by Seasonal's continued sales of the accused products during the stay. Second, the litigation was in its early stages and discovery was just starting. Third, it was highly likely the reexaminations and post-grant reviews would materially affect the patents-in-suit even though not all of the patents-in-suit were subject to reexaminations and review. After deciding to stay the portion of the case where the patents were subject to review, the