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

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| **IN RE PAYCHECK PROTECTION PROGRAM (PPP) AGENT FEES LITIGATION** | ) | **MDL No. 2950** |

**REGIONS BANK AND REGIONS FINANCIAL CORPORATION'S OPPOSITION TO CENTRALIZATION OF ACTIONS UNDER 28 U.S.C. § 1407**

Regions Bank[1] opposes centralization. All the lawsuits underlying Alliant's Motion to Transfer — the twelve identified there and any tag-alongs in which plaintiffs allege that they are entitled to "agent fees" from banks that participated in the PPP — are futile. ***The CARES Act and the PPP regulations do not provide a private cause of action for alleged violations of the PPP***. Centralizing more than a dozen cases, all of which rest on a theory for which federal law provides no private cause of action, would be a great waste of resources. Besides that, the plaintiffs jumped the gun, making the lawsuits against Regions and certain other banks non-justiciable. The law says that any agent fees will be paid "out of" the "lender fees" received from the SBA, so the banks are unable to do anything on agent fees until they receive their lender fees. Although the SBA in the past few days has begun to disburse lender fees, most of the banks (including Regions) had not received any

[1] Regions Financial Corporation is named as a defendant in the Northern District of Alabama case and thus here in Alliant's Motion to Transfer, but Regions Financial Corporation is a holding company, not a bank, and had no involvement with the PPP. Therefore, as set out in its Motion to Dismiss in the Northern District of Alabama case, Regions Financial Corporation has been sued improperly. Regions Financial Corporation nevertheless joins in this opposition.

lender fees when they were served with the complaints. And Regions, like at least some of the other banks, fully intends to proceed with ***paying agent fees to those agents who have properly documented their services***. Thus, the plaintiffs' claims were unripe to start, and soon the banks' payments of the agent fees will moot the claims for good. These cases will need no discovery. The banks who may choose ***not*** to pay agent fees perhaps are differently situated, but Regions and others like it should not be heaped in with them in an MDL.

Even if one of the plaintiffs somehow made it past the pleadings stage, the ensuing discovery would be case-specific. The relevant documents and witnesses in one action would have nothing to do with any of the others. Beyond the existence of the PPP, the actions encompassed by the Motion to Transfer are distinct: different banks, borrowers, and agents, and no alleged facts that tie together the various banks' PPP operations. ***The record here therefore contains nothing to overcome the Panel's usual reluctance to centralize actions against many different defendants in one MDL***.

Centralization under 28 U.S.C. § 1407 would only drive up costs for the parties and misuse the transferee court's time.

## BACKGROUND[2]

### I. The PPP Authorized Private Lenders to Fund SBA-Backed Loans to Small Businesses in Response to the COVID-19 Pandemic

Congress created the PPP through the CARES Act. The PPP requires participating private lenders, such as Regions, to determine borrowers' eligibility and then provide the

[2] Regions currently is a defendant in two cases: No. 2:20-cv-591 (N.D. Ala.), in which it is the only defendant, and No. 1:20-cv-22339 (S.D. Fla.), in which it is one of twenty. The complaints are attached as Exhibits A and B, respectively. Regions' Motion to Dismiss in the Northern District of Alabama is attached as Exhibit C. Regions intends to move to sever and transfer the claims in the Southern District of Florida to the Northern District of Alabama, but as of this filing, Regions has not even been served.

capital to fund the loans. *See, e.g.*, Interim Final Rule ("IFR"), 85 Fed. Reg. 20811, 20812 (effective April 15, 2020).[3] The SBA will forgive the loans for borrowers who spend the money the right way.

**A. The SBA Shall Pay Lender Fees**

The CARES Act creates a way to compensate lenders who participate in the PPP. *See* 15 U.S.C. § 636(a)(36)(P)(i) (the SBA "shall reimburse a lender authorized to make a covered loan" at fee rates of 1%, 3%, or 5%, depending on the amount of the loan). Subsequent guidance confirmed the steps that lenders must take to receive those fees.[4]

Regions followed the SBA's rules. Upon filing its Motion to Dismiss in the Northern District of Alabama, ***Regions had not yet received any lender fees***. [Motion to Dismiss, Ex. C, ¶ 9.] During the week of June 15, Regions received its first tranche of lender fees, representing only a portion of the amount Regions is owed. As of this filing, Regions has not received all the lender fees due from the SBA. The SBA has not provided a schedule for subsequent tranches of lender fees.

**B. The Agent Fees Will Be Paid Out of the Lender Fees**

The PPP also contemplates some borrowers' uses of agents to assist with applications. The IFR set out how agent fees, if any, would be paid: "***Agent fees will be***

[3] Regions has funded approximately 44,000 loans, or $4.8 billion in capital. More than 5,000 lenders have funded more than $500 billion in PPP loans. Regions does not appear to be among the ten largest PPP lenders. The largest PPP lender has extended more than $28.6 billion in 254,000 loans. *See* SBA, Paycheck Protection Program Report, Summary of PPP Approved Lending (May 30, 2020), *available at* https://bit.ly/2AwiwfL.

[4] Each lender must submit a report, labeled Form 1502, that details the lender's PPP loans and the fees due thereon. *See* SBA, Procedural Notice, No. 5000-20028 (May 21, 2020), *available at* https://bit.ly/2XW27tO.

***paid by the lender out of the fees the lender receives from SBA***." 85 Fed. Reg. 20811, 20816 (emphasis added). The fee rates of 0.25%, 0.50%, and 1%, depending on the amount of the loan, follow from "the fees that lenders receive for making PPP loans." *Id.*

To be eligible for agent fees, each agent must provide to the lender certain information about the services performed for the borrower.[5] Then, after the lender receives the lender fees, the lender will be able to pay agent fees to those agents who have properly followed the rules. This means that, after Regions has received the lender fees on a particular borrower's loan, Regions ***intends promptly to pay fees to the agent***, if any, as long as the agent properly documented its services. [Motion to Dismiss, Ex. C, ¶ 12.] The process of paying agent fees therefore is ongoing for the loans for which Regions has received the lender fees (i.e., those included in the first tranche). As a matter of law, Regions cannot yet pay all agent fees because it has not yet received all lender fees.

## II. The False Claims That Regions Refuses to Pay Agent Fees Are Not Viable

### A. The Northern District of Alabama Is Likely to Dismiss the Claims Against Regions

In the Northern District of Alabama case, plaintiff Leigh, King, Norton & Underwood, LLC ("LKNU"), alleges that Regions is engaging in an "on-going," "uniform and calculated" "pattern and practice" of failing to pay fees to agents who prepare PPP loan applications. [Complaint, Ex. A, ¶ 27.] Not so. The plain language of the SBA regulation reflects that Regions cannot pay agent fees until it has received the lender fees; the undisputed facts show that Regions had not received the lender fees when it was served with the Complaint; and the clear statements from Regions itself establish that Regions

[5] The agent must file a report, labeled Form 159, that contains the information that the SBA requires before the payment of agent fees. *See* SBA Form 159, Fee Disclosure and Compensation Agreement, *available at* https://bit.ly/2MYxRsa.

intends to pay agent fees, barring further guidance from the SBA, as long as the agents have properly documented their services. [*See* Motion to Dismiss, Ex. C.] In fact, now that Regions has begun receiving lender fees from the SBA, Regions will begin paying agent fees promptly. In any case, neither the CARES Act nor the PPP regulations give a plaintiff a right to sue.

Regions thus filed the Motion to Dismiss on June 4, and under the court's order, the parties will complete briefing on the Motion to Dismiss before the end of June.

### B. The Southern District of Florida Is Likely to Dismiss the Claims Against Regions or Transfer Them to the Northern District of Alabama

The day after Regions moved to dismiss the Regions Action, Full Compliance, LLC, sued Regions and nineteen other banks in the Southern District of Florida. Like LKNU, Full Compliance fails to understand how the PPP works and further misstates Regions' position on agent fees. [Complaint, Ex. B, ¶¶ 50 & 51 ("Defendants funded PPP loans for Borrowers represented by Plaintiffs and the Class, ***received their Lender Fees from the Federal Government***, and failed to pay the Agent Fees earned by the Plaintiffs and Class out of the Lender Fees received"; "Defendants have either failed and refused to pay, or are willing to pay only a partial percentage of, the monies owed in Agent Fees to Plaintiffs and the Class, thus ***retaining for themselves all of the statutory fees allotted by the Government for Agents as part of the PPP***." (emphasis added)).] This is false because Regions had not received any lender fees when the suit was filed and because Regions fully intends to pay agent fees, as stated above.

Like the Northern District of Alabama, the Southern District of Florida is likely to dispose of this case under Fed. R. Civ. P. 12. Regions plans to move, in the alternative, to sever and transfer the claims against Regions to the Northern District of Alabama under 28

U.S.C. § 1404. The prior pending action there and the presence of Regions' headquarters in Birmingham (within the District) favor transferring the claims, so the Northern District of Alabama can handle the claims against Regions in one fell swoop.

## III. Alliant's Motion to Transfer Similarly Reflects an Unviable Theory

Like LKNU's and Full Compliance's complaints, Alliant's Motion to Transfer misapprehends the PPP process, contending that the "Lender Fees that ***the Lenders have been paid*** by the Federal Government to date is [sic] approximately $20 billion." [Motion to Transfer, at 3 (emphasis added).] Alliant also says, with no supporting authority, that "the defendants . . . each ***received their Lender Fee*** from the Federal Government pursuant to the SBA Regulations." [*Id.* at 8 (emphasis added).] As for agent fees, Alliant argues that "[a]ll of the Related Actions allege that ***defendants have either failed to pay at all or failed to pay the full fee*** owed to plaintiffs [i.e., agents], damaging plaintiffs and the PPP Agents nationwide." [*Id.* (emphasis added).] The fundamental premise of the Motion to Transfer therefore is deeply flawed. Regions and at least some other banks fully intend to pay agent fees but, as a matter of law, were unable to do so prior to receipt of the lender fees.

## ARGUMENT

Alliant has not carried — and no other party will be able to carry — the burden to show that transfer "will further the purposes of Section 1407." *In re Cable Tie Pat. Litig.*, 487 F. Supp. 1351, 1354 (J.P.M.L. 1980). Centralization would conflict with those purposes for two reasons. First, it would disrupt the original forum courts' opportunities to resolve straightforward motions to dismiss. Regions' Motion to Dismiss is not the first or the last of its kind. Centralizing cases with clear legal grounds for dismissal would unnecessarily increase the time and expense required to resolve this case. Second, even if the cases proceeded to discovery, an MDL would be anything but convenient and efficient, given the distinctness of all facts that would be at issue in the various cases.

## I. The Panel Should Allow the Original Forum Courts To Resolve the Legal Issues, Including the Absence of Any Private Right of Action

As a practical matter, dispositive motion practice is likely to resolve the claims against Regions and other banks. First, under well-established law, a plaintiff has no right of action for an alleged violation of an SBA lending program. *See, e.g.*, *Aardwoolf Corp. v. Nelson Capital Corp.*, 861 F.2d 46, 48 (2d Cir. 1988) ("[T]he Small Business Act does not provide a debtor such as [the plaintiff] with a private cause of action . . . .") ; *Bulluck v. Newtek Small Bus. Fin., Inc.*, _ F. App'x _, No. 19-10238, 2020 WL 1490702, at *3 (11th Cir. Mar. 27, 2020) ("[W]e agree with the district court that no private right of action exists for a violation of the Small Business Act or the regulations."). The CARES Act did not herald any change in that jurisprudence, as the United States District Court for the District of Maryland recently held. *See Profiles, Inc. v. Bank of Am. Corp*., __ F. Supp. 3d __, No. SAG-20-0894, 2020 WL 1849710, at *7 (D. Md. Apr. 13, 2020) ("The ***plain language of the statute does not suggest . . . a private remedy against participating SBA lenders***. To the extent Congress intends to create such a private right of action, it will be able to make its intent clear, if it ultimately amends the CARES Act." (emphasis added)).[6]

Second, the claims are doubly non-justiciable — either unripe or moot. The IFR

[6] True enough, whether the CARES Act creates a private right of action may be a legal question common to the Regions Action and other actions, but common legal questions on their own cannot support centralization. As the Panel has repeatedly held, "merely to avoid two federal courts having to decide the same issue is, by itself, usually not sufficient to justify Section 1407 centralization." *In re Medi–Cal Reimbursement Rate Reduction Litig.,* 652 F. Supp. 2d 1378, 1378 (J.P.M.L. 2009). District courts around the country are competent to decide similar questions of law, as shown already by the *Profiles* court in the District of Maryland, and Alliant has shown no common factual questions that would warrant divesting the district courts of the cases.

states that "[a]gent fees will be paid by the lender ***out of the fees the lender receives from the SBA***." 85 Fed. Reg. 20811, 20816. Regions, like most of the other banks, had not yet received any lender fees when it moved to dismiss for lack of subject matter jurisdiction in the Northern District of Alabama. [Motion to Dismiss, Ex. C, ¶¶ 9–12.] Even now that the SBA has begun disbursing lender fees, Regions undisputedly is not refusing to pay agent fees. As a result, there still is ***no case or controversy arising out of a refusal to pay agent fees***. *See, e.g.*, *Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon ***contingent future events*** that may not occur as anticipated, or indeed ***may not occur at all***." (emphasis added)). At this point, any allegation that Regions refuses to pay agent fees is a pure fabrication.

That the SBA has begun paying lender fees in no way strengthens the case for an MDL. On the contrary, the SBA's payments elucidate the baselessness of the plaintiffs' various claims against Regions and others because those banks will turn around and ***pay the agent fees to agents who provided legitimate assistance to borrowers and have properly documented that assistance***. [Motion to Dismiss, Ex. C, ¶ 12.] The plaintiffs' claims therefore will be mooted. Although some banks have announced that they will not pay agent fees, Regions and others should not be wrapped into an MDL focused on banks ***not*** paying agent fees when they will pay agent fees as soon as they can.

"[M]otions to dismiss or remand, raising issues unique to the particular case, may be particularly appropriate for resolution before the Panel acts on the motion to transfer." *Manual for Complex Litigation (Fourth)* § 20.131 (2004).[7] In other words, the interests of

[7] A denial of Alliant's Motion to Transfer because of the legal issues pending before the original forum courts would be in line with the Panel's longstanding precedent. *See, e.g.*, *In re U.S. Navy Variable Reenlistment Bonus Litig.*, 407 F. Supp. 1405, 1407 (J.P.M.L.

efficiency and convenience weigh in favor of allowing the original forum courts to take up the legal issues,[8] rather than sending all the actions and all the various to a transferee court.

## II. Even If a Case Could Survive Rule 12, Centralization Would Be Inconvenient, Inefficient, and Unwieldy

"The objective of transfer is to eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost, and save the time and effort of the parties, the attorneys, the witnesses, and the courts." *Manual for Complex Litigation*, § 20.131 (4th ed.). Here, if a case were to proceed to discovery, transfer would not further this objective.

### A. The Multiplicity of Defendants Demands Denial of the Motion

The Panel consistently has held that multiple defendants, combined with the need for defendant-specific discovery, warrant denying a motion to consolidate. *See, e.g.*, *In re Mortg. Indus. Home Affordable Modification Program (HAMP) Contract Litig.*, 867 F. Supp. 2d 1338, 1338–39 (J.P.M.L. 2012) (explaining that actions challenging "industry-

1976) ("[W]e are of the view that questions of law rather than common questions of fact are significantly preponderant and, hence, Section 1407 treatment would in any event be unwarranted."); *In re Am. Home Prods. Corp. "Released Value" Claims Litig.*, 448 F. Supp. 276, 278 (J.P.M.L. 1978) ("Thus, since these actions involve a common question of law and share few, if any, questions of fact, transfer under Section 1407 is inappropriate."); *In re The Boeing Company Empl. Prac. Litig.*, 293 F. Supp. 2d 1382, 1383 (J.P.M.L. 2003) (denying transfer) ("It further appears that the Pennsylvania action is moving forward rapidly and that a motion for summary judgment may be filed shortly. If after the Pennsylvania court has ruled on any summary judgment motions, it appears that any allegations of company-wide discrimination remain unresolved in the Pennsylvania action, movants can again seek Section 1407 centralization.").

[8] For examples of the growing number of motions to dismiss on legal grounds in addition to Regions' Motion, see Defendants' Motion to Dismiss, Doc. 17, David S. Lowry, CPA, Ltd. v. U.S. Bancorp et al., No. 1:20-cv-348 (S.D. Ohio); Motion to Dismiss of Defendant Cross River Bank, Doc. 43, A.D. Sims, LLC v. Wintrust Fin. Corp., et al., No. 1:20-cv-2644 (N.D. Ill.). Furthermore, at least one district court has ordered the plaintiff to show cause as to why the complaint should not be dismissed for lack of subject matter jurisdiction under the Class Action Fairness Act. Order to Show Cause, Doc. 6, Aloha Accounting and Tax, LLC v. First Hawaiian Bank et al., No. 1:20-cv-254 (D. Haw.).

wide misconduct in mortgage origination, servicing, and foreclosure practices" where "the nature of plaintiffs' allegations and ***the involvement of many different non-overlapping defendants make the existence of common questions of fact unlikely***" (emphasis added)); *see also In re Am. Bd. of Med. Specialties Maint. of Certification Antitrust Litig.*, 382 F. Supp. 3d 1353, 1353–54 (J.P.M.L. 2019) ("[I]ndividualized discovery and legal issues . . . are likely to be numerous and substantial.").[9]

Alliant tries to manufacture some "common questions of fact" that Alliant hopes could bolster centralization under § 1407. Instead, Alliant ends up bolstering the opposite. Some of the purported "common questions of fact" identified by Alliant hinge largely on a ***legal*** determination and are thus insufficient to justify centralization. [Motion, at 8 ("Whether defendants were required to pay the PPP Agent fees to the plaintiffs"; "Whether defendants complied with their legal obligations under the terms of the CARES Act").] Others confirm the defendant-specific nature of the discovery that would be at issue. [*Id.* ("Whether defendants complied with all applicable SBA Regulations in processing applications for PPP funds and in distributing PPP funds"; "Whether defendants have a policy and/or practice of failing to compensate PPP Agents who facilitated PPP loans to the detriment of the PPP Agents"; "Whether the defendants converted plaintiffs' and Agents' PPP Agent fees").[10]

[9] Importantly, none of the plaintiffs appear to have alleged that any of the banks collaborated, coordinated, or otherwise conspired on PPP matters. *See In re Prescription Drug Co-Pay Subsidy Antitrust Litig.*, 883 F. Supp. 2d 1334, 1335 (J.P.M.L. 2012) (citing the plaintiffs' ***failure to "allege that any of the defendants conspired or collaborated*** to develop and implement th[e] co-pay and subsidy programs" (emphasis added)).

[10] Alliant also contends that general convenience, the number of defendants, and the presence of class allegations are bases for consolidation. [Motion to Transfer at 9–11.] The cases cited by Alliant do not apply here, however. None of the cases identifies the

The Panel's recent decision in *In re CP4 Fuel Pump Marketing, Sales Practices, and Products Liability Litigation*, 412 F. Supp. 3d 1365 (J.P.M.L. 2019) (Caldwell, J.), illustrates the impropriety of centralization here. There, a dozen actions involved allegations that three different automobile manufacturers used a defective "CP4 fuel pump" in their diesel engines. *Id.* at 1366. The Panel concluded that "that centralization is not necessary for the convenience of the parties and witnesses or to further the just and efficient conduct of this litigation." *Id.* Among the key considerations "cut[ting] against centralization" were the defendant-specific and plaintiff-specific issues at stake. *Id.* For example, the manufacturers employed ***different*** "***design[s]***," conducted different "testing," "***interact[ed]***" ***differently*** with the manufacturer of the CP4 fuel pump, and engaged in ***different*** "***marketing and communications with consumers***." *Id.* at 1366–67 (emphasis added). The Panel also explained that "considerable discovery likely will target ***plaintiffs' individual — and varying — ownership experiences***." *Id.* at 1367 (emphasis added). More broadly, the Panel emphasized its "usual reluctance" to "centralize litigation against multiple, competing defendants." *Id.* "[C]entralizing competing defendants in the same

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number of defendants as a ground for consolidation. And all of the cases were consolidated because of significant ***common factual questions***. *See In re Pilot Flying J Fuel Rebate Contract Litig. (No. II)*, 11 F. Supp. 3d 1351, 1352 (J.P.M.L. 2014) (cases were based on same allegedly fraudulent scheme); *In re Fisher-Price Rockn Play Sleeper*, 412 F. Supp. 3d 1357, 1358 (J.P.M.L. 2019) (cases shared common issue of whether a baby rocker's angled design rendered it unsafe); *In re Chrysler LLC 2.7 Liter V-6 Engine Oil Sludge Prods. Liab. Litig.* 598 F. Supp. 2d 1372, 1373 (J.P.M.L. 2009) ("actions share[d] factual questions arising out of the allegation of a common defect in the 2.7 liter engine of several models of Chrysler vehicles for the years 1998 through at least 2003"); *In re North Sea Brent Crude Oil Futures Litig.*, 978 F. Supp. 2d 1384, 1385 (J.P.M.L. 2013) (all actions involved the "undeniably complex" issues of whether defendants manipulated crude oil prices and futures and "discovery is certain to be international in scope" given defendants' European headquarters).

MDL," the Panel explained, "likely would complicate case management due to the need to protect trade secret and confidential information." *Id.* In addition, "a multi-defendant MDL may prolong pretrial proceedings, because of, *inter alia*, the possible ***need for separate discovery and motion tracks***." *Id.* (emphasis added).[11]

The same principles counsel against MDL treatment in this case. The existence of the same lending program does not overcome the uniqueness of each defendant bank's interactions with the borrowers and their agents and the differences in the defendant banks' PPP marketing and communications on PPP matters. The individualized experiences of the plaintiffs also will be distinct for each action, as the parties in each will need discovery on whether the alleged "agents" provided legitimate assistance and properly qualified as agents under the law. Further complicating matters, some banks, like Regions, have announced their plans to pay agent fees; others, however, do not plan to pay agent fees. Lumping them all together for discovery would be unworkable. As a result, the various actions reveal the need for separate discovery and motion tracks.[12] Plus, centralizing competing banks in the same MDL would significantly complicate case management because the competing banks, like the competitors in *CP4 Fuel Pump*, would need to protect against disclosure of trade secrets and confidential business information.[13]

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[11] For contrast, take the Panel's recent decision to grant a § 1407 motion where a series of actions all named ***the same defendant***. *See In re Uber Techs., Inc., Data Sec. Breach Litig*. 304 F. Supp. 3d 1351 (J. P. M. L. 2018).

[12] Indeed, Regions and other banks already have launched their own motion tracks.

[13] Any argument from Alliant or any other party that the *CP4 Fuel Pump* holding somehow should be limited to products liability cases would miss the mark. Look no further than the Panel's 2008 decision in *In re Auction Rate Securities (ARS) Marketing Litigation*, 581 F. Supp. 2d 1371 (J.P.M.L. 2008), which involved securities fraud actions filed against dozens of banks in the wake of widespread failure in the market for auction

Overall, centralization would complicate pretrial proceedings and make them more expensive by forcing lawyers to needlessly crisscross the country to attend irrelevant depositions and review irrelevant documents.

### B. If Discovery Were Needed and Coordination Were Called For, Informal Coordination Would Be the Appropriate Alternative to Centralization for All the Cases

A review of the cases listed on the Schedule of Related Actions reveals that the law firms Graylaw Group and Dhillon Law Group represent the plaintiffs in eleven of the twelve cases, and the law firm Geragos & Geragos represents the plaintiffs in eight of the twelve, proving that the plaintiffs would be able to coordinate among themselves if there were any reason to engage in overlapping discovery (a doubtful proposition for the reasons explained above). The Panel therefore should decline centralization. *See, e.g.*, *In re Best Buy Co., Inc., Cal. Song-Beverly Credit Card Act Litig.*, 804 F. Supp. 2d 1376, 1378 (J.P.M.L. 2011) ("[C]entralization under Section 1407 should be the last solution after considered review of all other options."); *In re Rite Aid Corp. Wage and Hour Emp't Practices Litig.*, 655 F. Supp. 2d 1376, 1377 (J.P.M.L. 2009) ("***[c]ooperation among counsel*** and the parties is ***particularly appropriate*** here, where ***plaintiffs in four of the six actions*** encompassed by the motion ***share counsel***" (emphasis added)).

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rate securities ("ARS"). The Panel held that the movant failed to carry its burden of proving sufficiently complex and numerous common questions of fact, and the Panel's reasoning compels the denial of Alliant's Motion. After acknowledging that the actions "share[d] some general common factual questions," the Panel focused on the fact that all the actions were brought against different entities. *Id.* Furthermore, the Panel explained, the actions involved "***different representations made to each purchaser*** of ARS," which would "***necessarily vary from institution to institution*** (and perhaps from ARS to ARS)." *Id.* (emphasis added). So it is here, with PPP loans instead of ARS: The particular interactions between the agent and the lender will have varied from institution to institution, and centralized discovery will not be productive.

### C. For Regions, § 1404 Transfer of the Southern District of Florida Claims to the Northern District of Alabama Is Preferable to Centralization Under § 1407

Finally, without burdening the Panel or a transferee court, Regions intends to take action that actually would serve the interests of convenience and judicial economy. Regions intends not only to move to dismiss the claims in the Southern District of Florida but also to move under § 1404 to sever and transfer the claims against Regions to the Northern District of Alabama. While the Southern District of Florida, like all the other original forum courts, will have everything it needs to dismiss the case under Rule 12, Regions will present this alternative option because of the prior pending action in the Northern District of Alabama. This would allow that court to resolve all the Regions claims at once. And because Regions' headquarters are in Birmingham, it would be more convenient and efficient to conduct any discovery that might be needed. The Panel's precedent shows that this is a preferable alternative to centralization. *See, e.g.*, *In re Dollar Tree Stores, Inc., Fair Labor Standards Act (FLSA) & Wage & Hour Litig.*, 829 F. Supp. 2d 1376, 1377 (J.P.M.L. 2011) ("Section 1404 transfer, if appropriate, [is a] preferable alternative[e] to Section 1407 centralization.").

## CONCLUSION

Undersigned counsel is unaware of any centralized MDLs that involved claims for which no private rights of action existed. This should not be the first. Furthermore, the differences among the various banks, including but not limited to the reality that some banks have announced that they will pay agent fees while others have declared the opposite, make these cases unsuitable for centralization. For all the reasons discussed, the Panel should not centralize these cases under § 1407.

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s/Larry B. Childs
Larry B. Childs
Brian J. Malcom
Charles W. Prueter
WALLER LANSDEN DORTCH & DAVIS, LLP
1901 Sixth Avenue North, Suite 1400
Birmingham, Alabama 35203
larry.childs@wallerlaw.com
brian.malcom@wallerlaw.com
charles.prueter@wallerlaw.com
205.226.5700 telephone

*Counsel for Regions Bank and Regions Financial Corporation*