

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

**IN RE: PAYCHECK PROTECTION
PROGRAM (PPP) AGENT FEES
LITIGATION**

MDL No. 2950

**WELLS FARGO BANK N.A.’S RESPONSE TO ALLIANT CPA GROUP LLC’S
MOTION FOR TRANSFER OF ACTIONS**

Wells Fargo Bank N.A. (“Wells Fargo”)¹ files this response to Alliant CPA Group LLC’s (“Alliant”) Motion for Transfer of Actions to the Northern District of Georgia Pursuant to 28 U.S.C. § 1407 for a Coordinated and/or Consolidated Proceeding (ECF No. 1). Wells Fargo agrees that a single, consolidated proceeding for the proposed actions would result in significant efficiencies and preserve judicial resources and therefore supports the creation of the proposed multidistrict litigation in the Northern District of Georgia.

The actions proposed for consolidation are uniquely positioned to benefit from centralized proceedings. Each case—filed by putative “agents” claiming that they are entitled to fees from lenders for assisting borrowers prepare and submit loan applications through the Paycheck Protection Program (“PPP”)—turns in large part on a single issue: whether agents who assist borrowers in applying for PPP loans are entitled to fees from lenders even if those lenders have not otherwise agreed to pay them. Indeed, for many cases, plaintiffs, and defendants, that may well be the *only* issue on which liability turns.

¹ Specially appearing Defendant Wells Fargo & Co., which has been named as a defendant in several of the actions at issue, is not a proper defendant to those actions. It is a financial holding company under the Bank Holding Company Act of 1956, 12 U.S.C. § 1841 *et seq.*, and has never offered loans under the Paycheck Protection Program.

The efficiencies from consolidation are considerable. Alliant’s Motion identified 12 cases for consolidation, with 19 additional cases noticed as potential tag-along actions since then. (See ECF Nos. 25, 88, 94, 98, 111, 134, 135, 143.) And putative agents are continuing to file new cases, with multiple potential tag-along actions filed as recently as several days ago. See, e.g., *Ratliff CPA Firm, PC v. Intuit Inc.*, No. 20-cv-02241 (D.S.C. filed June 12, 2020); *Ratliff CPA Firm, PC v. Citizens Bank*, No. 20-cv-02240 (D.S.C. filed June 12, 2020). Absent centralization, dozens of courts across the country will be forced to decide an identical issue, potentially subjecting defendants to various inconsistent rulings, and placing unnecessary burdens on both the parties *and* the courts. By centralizing these cases for pre-trial proceedings and, crucially, resolution of the central question underlying liability, many if not all of these cases could be resolved entirely in one ruling. See *In re Standard & Poor’s Rating Agency Litig.*, 949 F. Supp. 2d 1360, 1362 (J.P.M.L 2013) (explaining that numerous courts having to separately decide the issue of whether federal-question jurisdiction existed over identical claims could lead to “the very conflicting results and obligations and undue expenditure of judicial resources that centralization would help to avoid”).

For this reason, these “agent fee” actions are different from the various PPP loan-related actions filed against lenders that are wholly unsuitable for consolidation. For example, several plaintiffs have brought claims against Wells Fargo and other lenders alleging generally that the lenders prioritized certain applications over others or otherwise did not process applications on a “first-come, first-served” basis, and some plaintiffs have separately sought consolidation of those actions as well. See *In re Wells Fargo Paycheck Protection Plan Litig.*, MDL No. 2954 (filed June 9, 2020). The various claims brought in those actions will depend heavily on the individual circumstances of each plaintiff—including whether the plaintiff applied

for or received a loan from another lender, was harmed from any delay in receiving a loan, or relied on any statements made by lenders in deciding to apply for a loan, among many other factual circumstances. As to the cases brought by putative agents, on the other hand, there is a single, potentially dispositive issue common to all claims and the benefits of consolidation are significant.

Wells Fargo recognizes that a common legal question alone generally is not sufficient to justify consolidation under Section 1407(a). *In re Medi-Cal Reimbursement Rate Reduction Litig.*, 652 F. Supp. 2d 1378 (J.P.M.L. 2009) (“Merely to avoid *two* federal courts having to decide the same issue is, by itself, *usually* not sufficient to justify Section 1407 centralization.” (emphasis added)). But the significant efficiencies that would result given the unique circumstances presented by the dispositive common question at issue in these actions, as well as the growing number of courts and parties involved, support consolidation under Section 1407. More than 100 entities have been named as defendants so far, and at least 16 lenders have already been named as defendants in multiple actions. Given the size of many of these institutions and the scope of the PPP, it is likely that many lenders will be implicated in further suits. Likewise, there is a distinct possibility that many of the *plaintiffs* will claim that they have assisted with applications submitted to multiple lenders. The parties and the courts are thus faced with a morass of overlapping actions that very well may continue to grow. Proactively centralizing them now, for coordinated resolution of the same key issue on which each turns and, if necessary, any additional questions of what plaintiffs must show to demonstrate their entitlement to fees, is the cleanest and most efficient course.

To be sure, certain actions may present questions of ripeness and standing that raise threshold issues concerning the courts’ jurisdiction, but such matters also can be addressed in a

centralized proceeding, if they are not resolved on their own in due course.² Further, questions regarding plaintiff-specific or lender-specific circumstances, including whether plaintiffs have satisfied other possible prerequisites to receive agent fees, may be rendered moot by first deciding whether plaintiffs actually have any legal entitlement to demand fees under the applicable statutes and regulations in the first place or, alternatively, can be resolved through discovery. Indeed, it appears that many of the complaints filed thus far present no such factual issues because plaintiffs simply claim that they assisted a borrower, and the lenders have stated that they will not pay any agent fees or will only pay a portion of them. *See, e.g.*, Corrected First Amended Complaint ¶¶ 45-53, *Am. Video Duplicating, Inc.*, No. 20-cv-03815 (C.D. Cal. June 12, 2020); Amended Complaint ¶¶ 38-46, *Fruci & Assocs., PS v. A10 Capital, LLC*, No. 20-cv-00864 (W.D. Wash. June 9, 2020); Complaint ¶¶ 53-61, *Full Compliance, LLC v. Amerant Bank, N.A.*, No. 20-cv-22339 (S.D. Fla. June 5, 2020); Complaint ¶¶ 38-44, *ImpAcct LLC v. JPMorgan Chase & Co.*, No. 20-cv-01344 (D. Colo. May 12, 2020). Plaintiffs' claims largely do not depend on such factual details, but rather, are based on the simple (and incorrect) assertion that they are entitled to fees for their work *under the statute and regulation alone*. *See, e.g.*, Complaint ¶¶ 41, 51-52, *Am. Video Duplicating, Inc.*, No. 20-cv-03815 (C.D. Cal. June 12, 2020). By that theory, whether a plaintiff filled out a particular form or had a separate agreement with a lender is a secondary issue.

² Indeed, plaintiffs in several actions have already agreed to dismiss the financial holding companies, which are not proper defendants to these actions, *see supra* n. 1, named in their original complaints. *See, e.g.*, Notice of Dismissal, *Am. Video Duplicating, Inc. v. Citigroup Inc.*, No. 20-cv-03815 (C.D. Cal. June 15, 2020); Notice of Dismissal, *Brunner Accounting Grp. v. SVB Fin. Grp.*, No. 20-cv-04235 (C.D. Cal. June 1, 2020); Notice of Dismissal, *Am. Video Duplicating, Inc. v. Royal Bank of Canada*, No. 20-cv-04036 (C.D. Cal. June 1, 2020) (voluntarily dismissing defendants Royal Bank of Canada, Small Business Loan Source, Inc., Celtic Investment, Inc., and Celtic Bank Corporation).

The creation of defendant-specific multidistrict proceedings is not a reasonable alternative, as it would lose the clear benefit of centralization—having a single court decide the core issue of these claims—with little if any upside. It would also require further expenditure of judicial resources by forcing the Panel to carve out claims in multi-defendant suits against specific lenders and send them piecemeal across the country. To the extent that this Panel determines that consolidation is warranted, it should consolidate *all* agent-fee actions. Any individual defendant that believes it should be excluded can then use the mechanism provided by Section 1407(a) to sever its claims from a particular action or move for remand under the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation.

Finally, Wells Fargo agrees with Alliant that the Northern District of Georgia is an appropriate forum for consolidation. The Northern District of Georgia, and in particular the main federal courthouse located in Atlanta, offers a convenient and centralized locale for the many parties involved. As Alliant notes, “the ease of access, economical travel options, Atlanta’s banking and financial services industry and its geographically central location” make the Northern District of Georgia a suitable transferee forum. (ECF No. 1-1 at 13.) Further, the district has experience with multidistrict litigations, and it appears to have sufficient resources available to effectively and expeditiously administer this proposed proceeding. (*See id.* at 16-17 (citing caseload statistics for the Northern District of Georgia).)

Given the unique efficiencies that consolidation of these agent-fee actions presents, Wells Fargo submits that the Panel should create the proposed multidistrict proceeding and consolidate all agent-fee cases for pre-trial proceedings in the Northern District of Georgia.

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