

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

IN RE: Paycheck Protection Program (“PPP”) Agent Fees Litigation

MDL Docket No. 2950

**RESPONSE OF DEFENDANTS FIRST HAWAIIAN BANK, BANK OF HAWAII,
CENTRAL PACIFIC BANK, AMERICAN SAVINGS BANK, F.S.B., AND
KABBAGE, INC. IN OPPOSITION TO MOTION FOR TRANSFER OF ACTIONS
PURSUANT TO 28 U.S.C. § 1407**

Pursuant to Rule 6.1(c) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, defendants in *Aloha Accounting & Tax, LLC v. First Hawaiian Bank*, No. 1:20-cv-00254-JAO-RT (D. Haw.) (the “*Aloha Accounting Action*”) submit this consolidated response in opposition to Alliant CPA Group LLC’s 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 (the “Motion”).

1. To avoid duplicative filings, defendants First Hawaiian Bank, Bank of Hawaii, Central Pacific Bank, American Savings Bank, F.S.B. (mistakenly sued as Hawaiian Electric, Inc., d/b/a American Savings Bank), and Kabbage, Inc. (collectively, the “Hawaii Defendants”)¹ hereby join in the opposition brief filed by Synovus Bank (Docket No. [171]), filed June 17, 2020.

2. There are additional grounds to deny the Motion with respect to the *Aloha Accounting Action*. On June 9, 2020, Judge Jill A. Otake issued an Order to Show Cause Why This Action Should Not Be Dismissed Without Prejudice (the “June 9 Order,” attached as Exhibit A). The June 9 Order refers to the likely Hawaii citizenship of more than two-thirds of

¹ The Hawaii Defendants have not yet been served in the *Aloha Accounting Action*. They make a special appearance herein and specifically reserve and do not waive any of their respective rights and defenses in the *Aloha Accounting Action*.

the class members and nearly all defendants, and notes that the mandatory home state exception likely deprives the court of jurisdiction. *See* June 9 Order at 3-5, *citing* 28 U.S.C. §1332(d)(4)(B) (court “shall” decline jurisdiction where “two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed”). Plaintiff has until June 23, 2020 to respond. *Id.* at 4.

3. The Judicial Panel has repeatedly denied transfer when a previously pending motion may render transfer unnecessary. *See, e.g., In re ATM Interchange Fee Antitrust Litig.*, 350 F. Supp. 2d 1361, 1362–63 (J.P.M.L. 2004) (denying transfer pursuant to § 1407 based on the possibility that a previously-pending motion would render § 1407 transfer unnecessary); *In re Republic Western Insurance Co. Insurance Coverage Litigation*, 206 F.Supp.2d 1364 (J.P.M.L. 2002) (“There is a reasonable prospect that the multidistrict character of the actions here before us may be eliminated by district court action on motions presently pending in the District of Massachusetts....”); *In re The Boeing Company Emp’t Practices Litig.*, 293 F. Supp. 2d 1382, 1383 (J.P.M.L. 2003) (denying transfer motion based on Panel’s conclusion that anticipated dispositive motion may resolve underlying action). Here, there is even greater reason to deny the transfer given that the court has already signaled dismissal is likely.

Accordingly, and based on the various reasons and authorities more fully set forth in the Synovus Opposition, the Hawaii Defendants respectfully request that the Panel deny the Motion.

Dated: June 17, 2020

Respectfully submitted,

/s/ Richard E. Gottlieb

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