BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: PAYCHECK PROTECTION PROGRAM ("PPP") AGENT FEES	MDL No. 2950 Civil Action No. 1:20-cv-22339

INTERESTED PARTY RESPONSE OF OCEAN BANK IN OPPOSITION TO MOVANT ALLIANT CPA GROUP, LLC'S MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407

Pursuant to Rule 6.2(e) of the Rules of Procedure for the United States Judicial Panel on Multidistrict Litigation, Defendant Ocean Bank—one of twenty lenders sued in *Full Compliance, LLC, et al. v. Amerant Bank, N.A., et al.*, Case No. 1:20-cv-22339-JEM (S.D. Fla. June 5, 2020), which was recently noticed as a potential tag-along action on June 10 by Defendant Celtic Bank Corp. d/b/a/ Celtic Bank (Doc. 88)—joins the Regional and Small Bank Group's Response in Opposition to Movant Alliant CPA Group, LLC's Motion for Transfer of Actions (Doc. 166), and briefly emphasizes the prejudice that small, community financial institutions with limited resources, such as Ocean Bank, will experience if an industry-wide MDL is created.[1]

According to the Small Business Administration's most recent report dated June 6, 2020, on the Paycheck Protection Program (PPP) (**Exhibit A**), over 4.5 million PPP loans totaling over $511 billion have been made by 5,458 lenders to small businesses in each of the 50 states and various U.S. territories, including American Samoa, Guam, the Northern Mariana Islands, Puerto

[1] Ocean Bank has not been served in the *Full Compliance* action. Ocean Bank makes a special appearance herein and expressly reserves, and does not waive or intend to waive, any of its rights or defenses in the *Full Compliance* action, including, without limitation, the defenses of insufficiency of service of process, lack of jurisdiction, or improper venue.

Rico, and the U.S. Virgin Islands.[2] 97.7% of the lenders that made PPP loans are small financial institutions with *under $10 billion* in assets. 82.7% are small financial institutions with *under $1 billion* in assets. Most of these small lenders are community banks or credit unions that serve the local communities in which they operate.

Articles recounting the overwhelming influence of community banks in lending PPP funds to small businesses abound. *See*, *e.g.*, Jessica Menton & Mark Fahey, *Small Banks and Small Businesses Turned Out To Be a Good Combination When It Came to PPP Loans*, USA TODAY, June 2, 2020, https://www.usatoday.com/story/money/usaandmain/2020/06/02/ppp-loans-community-banks-more-helpful-small-businesses/5300871002/ ("Banks with less than $10 billion in assets issued about 60% of loans in the first round of the PPP, according to the Small Business Administration (SBA). Bigger banks have bounced back during the ongoing second round of the program, but weeks after many customers already had secured loans through small banks."); Matthew C. Klein, *Smaller Banks Doled Out Bulk of PPP Loans, Fed Data Shows,* BARRON'S, May 5, 2020, https://www.barrons.com/articles/smaller-banks-doled-out-bulk-of-ppp-loans-fed-data-show-51588677303 ("Smaller lenders were responsible for almost all of the credit provided to small businesses under the Paycheck Protection Program through April 22, a Barron's analysis shows, a finding that underscores the struggle the U.S. is facing to prop up the small business that make up the backbone of the economy.").

Ocean Bank is one such community bank, which was recently sued in the Southern District of Florida by a two-member Florida accounting firm, purporting to represent a nationwide class of

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[2] Available at https://www.sba.gov/sites/default/files/2020-06/PPP_Report_Public_200606%20FINAL_-508.pdf (last visited June 17, 2020).

similarly situated plaintiffs, alleging state law claims, including declaratory relief, unjust enrichment, and conversion, arising out of alleged non-payment of agent fees. *See Full Compliance, LLC v. Amerant Bank, N.A.*, Case No. 1:20-cv-22339-JEM (S.D. Fla. June 5, 2020). Ocean Bank has not even been served yet, but already is facing the potential burden of being dragged into the Northern District of Georgia to defend multidistrict litigation with dozens of other lenders—many of which have far more resources and at least have a business presence in Georgia.

Ocean Bank would be severely prejudiced if it is swept up in the proposed multidistrict litigation. It is a small community bank with under $5 billion in assets that serves the South Florida area. Its twenty-three branches are all located in Miami-Dade County or Broward County. It has been sued in only one action, currently pending in the Southern District of Florida, where all of the relevant documents and witnesses are located. It funded only about $187 million in PPP loans. And more than 90% of its loan exposure is in the South Florida area.

Nevertheless, if consolidation occurs, Ocean Bank will have to appear in the Northern District of Georgia for pretrial proceedings involving cases in which it is not even a party, claims under other state laws, and defendants with far greater resources that will dominate the proceedings. Litigation costs and delays will increase substantially, especially because local counsel must be retained pursuant to Northern District of Georgia Local Rule 83.1, many of the issues considered during pretrial proceedings may not relate to Ocean Bank, and dozens of defendants and plaintiffs will be permitted to provide input on discovery. *In re Dietgoal Innovations*, *LLC*, 999 F. Supp. 2d 1380, 1381 (J.P.M.L. 2014) (denying centralization because of the "heightened inconvenience that transfer may cause certain parties").

Any benefit derived from centralization will be minimal. The named defendants vary from action to action. *In re Cordarone (Amiodarone Hydrochloride) Mktg., Sales Practices & Prods. Liab. Litig.*, 190 F. Supp. 3d 1346, 1347 (J.P.M.L. 2016) ("Given the different defendants sued in these actions, centralization appears unlikely to serve the convenience of a substantial number of parties and their witnesses."). And most if not all of the discovery will be plaintiff- and defendant-specific. *In re Proton-Pump Inhibitor Prods. Liab. Litig.*, 273 F. Supp. 3d 1360, 1361 (J.P.M.L. 2017) (denying centralization because "the named defendants vary from action to action," "the various defendants are competitors," and "a significant amount of the discovery in these actions appears almost certain to be defendant-specific").

The better path forward is to let each case proceed in the jurisdiction in which it was filed or to consolidate only the claims against any nationwide bank who does not oppose centralization, such as Wells Fargo, into separate MDLs. *See In re Alien Children Educ. Litig.*, 482 F. Supp. 326, 329 (J.P.M.L. 1979) (separating equal protection claims against individual school districts and remanding to the districts in which they were filed because each district had "different exclusionary policies" and plaintiffs with "different characteristics"); *see also In re Galveston, Tex. Oil Well Platform Disaster*, 322 F. Supp. 1405, 1407 (J.P.M.L. 1971) (inconvenience of transfer for opponents of centralization outweighed the convenience for proponents of centralization).

For the foregoing reasons, and for the reasons in the Regional and Small Bank Group's Response in Opposition to Movant Alliant CPA Group, LLC's Motion for Transfer of Actions (Doc. 166), Ocean Bank respectfully requests that the Panel deny the Motion to Transfer (Doc. 1).

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Respectfully submitted,

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