BEFORE THE UNITED STATES
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE: Paycheck Protection Program ("PPP") Agent Fee Litigation	)))	MDL Docket No. 2950

ACADEMY BANK, N.A., JOINDER IN RESPONSES IN OPPOSITION TO MOTION FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407

Academy Bank, N.A. ("Academy") opposes the *Motion for Transfer of Actions to the Northern District of Georgia Pursuant to 28 U.S.C. § 1407* (the "Motion") filed by Alliant CPA Group LLC. *Doc. 1*. Academy hereby joins in and incorporates by reference the joint responses in opposition filed by Synovus Bank, et al., *Doc. 171*, and various Regional and Small Banks, *Doc. 166*, as well as that portion of the response filed by JP Morgan Chase Bank, N.A., *Doc. 158*, to the extent it opposes transfer of the subject actions to multi-district litigation consolidation and/or coordination. Because those filings properly provide the factual and legal grounds for denial of the Motion, Academy refers to them for support of its opposition.

Opposition to Transfer

While 72 defendants are named in the subject actions, 66 of those defendants are involved in only a single lawsuit. Therefore, there are very few defendants that are truly involved in multi-district litigation. *Doc. 166* at 1. In truth, the PPP litigation is simply not multi-district in nature. Academy is one of the many comparatively small bank defendants, *see* Exhibit B, at 2, to *Doc. 166*, that is involved in a single action. *See* Exhibit A to *Doc. 166*; *Doc. 171* at 13-14. Transfer of Academy's action would only result in unnecessary expense and delay by participation in an industry-wide case with large bank defendants truly involved in multi-district litigation. *Doc. 171* at 16.

The "multi-district" litigation is actually a product of gaming by plaintiff counsel in these cases by filing multiple cases against a few of the large banks despite making the same claims on behalf of the same putative members. *See Doc. 166* at 4; *Doc. 171* at 3. Such manipulation should not be rewarded by inflicting the cost of nationwide litigation against single-action smaller banks.

It cannot be known if there are common facts among the cases because the complaints allege no specific facts concerning the interaction with lenders and disclosure (if any) of alleged agency by the purported agent members, the existence (if any) of contracts for compensation, or other compliance with SBA requirements of the subject PPP loans made under SBA delegation. *See Doc. 158* at 8-9; *Doc. 166* at 4-5 & 7-10; *Doc. 171* at 4-5 & 8-10. Instead, it is likely that those facts are different among the various defendants. *Doc. 171* at 2.

There will likely not be common legal issues because the actions primarily assert claims styled as state law causes of action, which will vary from state to state depending the site of origination of the loan (assuming the plaintiffs have standing to assert state law claims arising under the law of states beyond those in which such plaintiffs' transactions occurred). *Doc. 166* at 10-11; *see also Doc. 171* at 10-13.

The complaints do not allege that the subject loans were made in the same transactions by the lenders joined as defendants. Instead, the loans were made in separate transactions by the defendants to borrowers who plaintiffs now claim to have acted as agents. Yet, the actions join these lenders engaged in separate transactions in violation of Rule 20, Fed. R. Civ. P., resulting in a misjoinder under Rule 21, Fed. R. Civ. P., that is then used as a bootstrap to justify inclusion of the single-action smaller banks in a vast multi-district case with their misjoined large bank co-defendants. The misjoinder is further relied upon by the plaintiffs to improperly aggregate the claims against the small banks with the large bank exposure to create the $5 million amount in controversy otherwise absent in a properly-filed single action against the smaller bank. *See* 28 U.S.C. § 1332(d). This is no basis on which to found a proper multi-district case.

Like other smaller banks, Academy has filed a motion pursuant to Rule 12(b)(1), Fed. R. Civ. P., for this lack of subject matter jurisdiction. *Panda Accounting LLC v. Academy Bank, N.A.*, No. 20-cv-00985, *Doc. 17*. Such threshold matters should be resolved before transfer for multi-district consolidation is ripe for consideration. *See Doc. 166* at 6-7; *Doc. 171* at 14-15.

For the foregoing reasons, Academy submits that the Motion has failed to meet its burden to establish that common questions of fact exist among the actions, the transfer would be more convenient for the parties and witnesses, and the transfer would promote the just and efficient conduct of the actions. *See* 28 U.S.C. § 1407(a); *Doc. 166* at 11-19. The Motion for multi-district consolidation or coordination and transfer should be denied.

Separate Actions for Lenders

In the alternative, should the Panel nevertheless grant transfer, it should be limited to claims against the large banks that are truly subject to multi-district actions. *See Doc. 158* at 10; *Doc. 171* at 17. If the Court should conclude, however, that claims against Academy should be transferred, then Academy requests that separate multi-state actions be established for *each* lender defendant. If this structure is not employed, the single-action small bank defendants will be subjected to the inevitable enormous cost and delay attendant to the large bank litigation which is more arguably multi-district in nature. *See Doc. 158* at 10-12. Under those circumstances, claims against Academy should be separated from those against larger banks, MidFirst Bank and JP Morgan Chase Bank, N.A., that were misjoined as co-defendants with Academy. 28 U.S.C. § 1407(a).

Selection of Venue

In such event, Academy further requests that the Motion's request be granted for selection of the Northern District of Georgia for venue of any transferred action. *See Doc. 158* at 12-16; *Doc. 166* at 19-20; *Doc. 171* at 17-18.

CONCLUSION

The individual actions in the various districts should proceed in the venues in which they filed. They are not truly multi-district in nature, but only made to appear so by manipulation of the dockets by plaintiffs' counsel. The Motion fails to establish any of the requirements for transfer and should be denied.

WHEREFORE, Academy Bank, N.A., requests that the Panel deny all relief sought by the Motion.

June 17, 2020.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify pursuant to J.P.M.L. 4.1(a) that on June 17, 2020, I filed the foregoing document with this Panel's CM/ECF system, which served counsel of record for each of the parties to this putative MDL electronically.

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