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

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| **IN RE WELLS FARGO PAYCHECK PROTECTION PLAN LITIGATION** | §<br>§<br>§<br>§<br>§ | **MDL DOCKET NO: 2954** |

**PLAINTIFF'S REPLY MOTION IN SUPPORT OF THE TRANSFER OF ACTIONS TO THE SOUTHERN DISTRICT OF TEXAS PURSUANT TO 28 U.S.C. § 1407 FOR COORDINATION OR CONSOLIDATION**

Plaintiff DNM Contracting, Inc. ("DNM" or "Movant") in the Southern District of Texas, respectfully submits this reply in support of Movant's Motion to Transfer and Consolidate all Related Actions to the United States District Court for the Southern District of Texas, pursuant to 28 U.S.C. § 1407 and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation ("JPML"), as well as any tag-along actions or other cases that may be filed asserting related or similar claims, for centralization of the actions for coordinated or consolidated pretrial proceedings.

Under 28 U.S.C. § 1407(a), this Panel may transfer and consolidate civil actions when "one or more common questions of fact are pending in different districts." Movant explained in its opening brief that each of the Related Actions' arises within the context of Wells Fargo's administration of funds provided under the federal Paycheck Protection Program ("PPP") that were intended for small businesses. To date, there are already five (5) putative nationwide class actions (collectively "Related Actions") pending in various different districts including: California, Texas, Colorado, and Florida. The Related Actions all involve common questions of fact and assert substantially similar claims and legal theories against Wells Fargo Bank ("Defendants").

## I. BACKGROUND FACTS ALLEGED IN THE RELATED ACTIONS

Defendants assert that individual factual issues predominate over alleged common fact questions. However, each Plaintiff in the Related Actions contends Defendants violated state laws and their fiduciary duties when they failed to implement and follow the Small Business Administration's ("SBA") rules and regulations requiring, among other things, that applications be processed on a "first-come, first-served" basis. Specifically, all actions allege that Defendants intentionally or negligently engaged in wrongful conduct in approving (or denying) applications for loans available through the federal Paycheck Protection Program ("PPP"), including favoring or prioritizing applications in processing time or order.[1]

Each of the Related Actions seek relief for losses incurred by the wrongful conduct by Defendants, including monetary damages and penalties, injunctive relief, as well as punitive damages and declaratory relief. Each action also seeks certification of nationwide or state classes of PPP applicants that were harmed by Defendants' wrongful conduct. Moreover, each of the Related Actions is at the same procedural posture. Each Related Action was filed within the past sixty days. No answer or dispositive motion has been filed in any Related Action. Therefore, Movants seeks the transfer and assignment of the Related Actions, which all seek a finding that Bank of America violated state laws and their fiduciary duties when they failed to implement and follow the SBA rules and regulations, as well as any actions subsequently filed involving similar facts or claims.

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[1] Parties have stipulated to remove certain cases that have separate factual issues. Specifically, the parties have stipulated that *Full Compliance LLC, et al. v. Wells Fargo Bank N.A., et al.*, 20-cv-22339 (S.D. Fla.) and *Ma v. Wells Fargo & Co., et al.*, 3:20-cv-03697 (N.D. Cal.) should be removed from the Schedule of Actions in this matter.

## II. ARGUMENT

### A. The Related Actions Are Appropriate for Transfer and Pretrial Coordination under 28 U.S.C. § 1407.

Title 28, section 1407(a) of the United States Code provides, "when civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings." 28 U.S.C. § 1407(a). The MDL Panel "shall" make such transfers when in furtherance of "the convenience of the parties and witnesses" and when transfer "will promote the just and efficient conduct of such actions." *Id*. Because of the number of current and anticipated cases and the existence of common questions of fact, Movant contends that the requirements for transfer under section 1407 are easily met here. The potential differences among the plaintiffs regarding their specific injuries and any other case-specific issues do not nullify the common questions of fact. Indeed, any differences regarding facts and state laws can be resolved through a consolidated master complaint.

Despite Wells Fargo's assertions to the contrary. The remaining cases in the Schedule of Actions share a "common factual core." Each of the Related Actions allege that Wells Fargo Bank intentionally or negligently engaged in wrongful conduct in approving (or denying) applications for loans available through the PPP, including favoring or prioritizing applications in processing order or time. Liability in each case will be determined by common evidence of Wells Fargo's requirements for the PPP program and how Wells Fargo conducted the program.[2] Because of the common Defendant (Wells Fargo), identical issues of fact, and the number of current and anticipated claims, transfer and consolidation is most convenient for the parties and potential witness common to these actions.

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[2] Consolidation will also prevent Wells Fargo from taking different positions in each case.

B. The United States District Court for the Southern District of Texas is the Appropriate Forum for this Litigation.

Transfer and consolidation to the Southern District of Texas will promote the effective resolution of pretrial issues and the convenience of the parties and witnesses in all of the Related Actions. The Southern District of Texas provides a central location in either Houston, Texas, a city which is easily accessible by flight, and a courthouse that has the capabilities of handling these litigation cases. The Southern District of Texas is a neutral forum that provides an accessible, metropolitan location that is a convenient forum for consolidation. *See*, e.g., *In re Circular Thermostat Antitrust Litig*., 370 F. Supp. 2d 1355, 1357 (J.P.M.L. 2005). Notwithstanding the foregoing, Movant does not oppose transfer to either the Central District or Northern District of California.

## III. CONCLUSION

Transfer and consolidation for pre-trial proceedings of all pending and subsequently filed Related Actions will promote the just and efficient conduct of these actions by allowing national coordination of discovery and other pre-trial efforts, will prevent duplicative and potentially conflicting pre-trial rulings, will reduce the costs of litigation, and allow cases to proceed more efficiently to trial. For all of the foregoing reasons, Movant respectfully requests the Panel enter an Order that the Related Actions be consolidated and transferred to the United States District Court for the Southern District of Texas.

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