UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MORTGAGE RESOLUTION SERVICING, LLC, 1ST FIDELITY LOAN SERVICING, LLC, and S & A CAPITAL PARTNERS, INC.,	:	No. 15-CV-00293 (LTS)(JCF)
Plaintiffs,	:	
- *v.* -	:	**REDACTED VERSION**
JPMORGAN CHASE BANK, N.A., CHASE HOME FINANCE, LLC, and JPMORGAN CHASE & CO.,	:	
Defendants.	:	

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO TRANSFER VENUE TO UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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Defendants JPMorgan Chase Bank, N.A. and JPMorgan Chase & Co. (collectively, "Chase") move pursuant to 28 U.S.C. § 1404(a) for an order transferring this case to the United States District Court for the District of Columbia.

PRELIMINARY STATEMENT

This case is one of two related actions that debt collector Laurence Schneider is pursuing against Chase. The first of the two actions is a False Claims Act action that Schneider filed in May 2013 (the "Schneider FCA Action"). [redacted] Although Schneider originally filed the Schneider FCA Action in the District of South Carolina, at his request the case was later transferred to the District of Columbia and assigned to Judge Rosemary M. Collyer, the judge who presided over the National Mortgage Settlement.

This action, in turn, is a private action (the "Schneider Private Action") filed in December 2014 on behalf of three corporate entities owned and operated by Schneider (the "Schneider Entities"). The Schneider Entities are in the business of purchasing distressed mortgage debt and attempting to collect the debt from homeowners. According to the operative Second Amended Complaint ("SAC") in the Schneider Private Action, [redacted] Specifically, the SAC accuses Chase of "dumping" defective mortgage loans on the Schneider Entities as part of a "pattern of racketeering" designed to evade the requirements of the NMS and HAMP.

Although the Schneider Private Action and the Schneider FCA Action differ in certain respects, they plainly present a large degree of factual and legal overlap. [redacted]

[redacted]

In light of these common questions of law and fact, this action should be transferred to the District of Columbia so that the two related cases can be coordinated before a single court. Transfer to the District of Columbia will protect both the parties and the federal judiciary from the burdens of duplicative litigation and the risks of inconsistent legal rulings. It will also facilitate the assignment of both actions to Judge Collyer, the leading expert in the federal judiciary on the complex NMS consent judgments at issue in these cases. Moreover, transfer to the District of Columbia will impose no inconvenience on Schneider, since he himself moved to transfer the Schneider FCA Action to that District for the avowed purpose of permitting its assignment to Judge Collyer.

For these reasons, as more fully set forth below, Chase's motion to transfer should be granted.

BACKGROUND

A. Regulatory Framework

[redacted]

1. The National Mortgage Settlement

The NMS arose out of a complaint filed in March 2012 by the United States and forty-nine states against the largest financial institutions in the country, including Chase. *See* Maya Decl. Ex. A (NMS Compl.). The plaintiffs alleged that the defendants had violated various state and federal laws as a result of "the issuance of improper mortgages, premature and unauthorized foreclosures, violation of service members' and other homeowners' rights and protections, the use of false and deceptive affidavits and other documents, and the waste and abuse of taxpayer funds." *Id.* ¶ 2.

Less than a month after the complaint was filed, the parties reached a settlement, which Judge Collyer approved in the form of a separate consent judgment for each defendant. *See* Maya Decl. Ex. B (Consent Judgment for Chase). Each consent judgment provided that the defendant would comply with a detailed set of mortgage servicing standards and would grant a fixed amount of "consumer relief" by forgiving or modifying the terms of consumer mortgage loans. *See id.* ¶¶ 2-5. The terms of the consent judgments were so voluminous and complex that the parties agreed to the appointment of an independent monitor and several accounting firms to verify that the settlements were properly implemented. *See id.* ¶ 7.

Judge Collyer retained jurisdiction to enforce each NMS settlement, *id.* ¶ 13, and the parties agreed that the settlements would be enforceable solely in the United State District Court for the District of Columbia, *id*. at Ex. E, § J(2).

2. The Home Affordable Modification Program

In 2009, the Treasury Department launched the Making Home Affordable Program ("MHA"), which was "part of the Government's broader strategy to help owners avoid foreclosure, stabilize the housing market, and improve the nation's economy." Maya Decl. Ex. C (SAC) ¶ 134. Under this program, the federal government provides incentive payments to

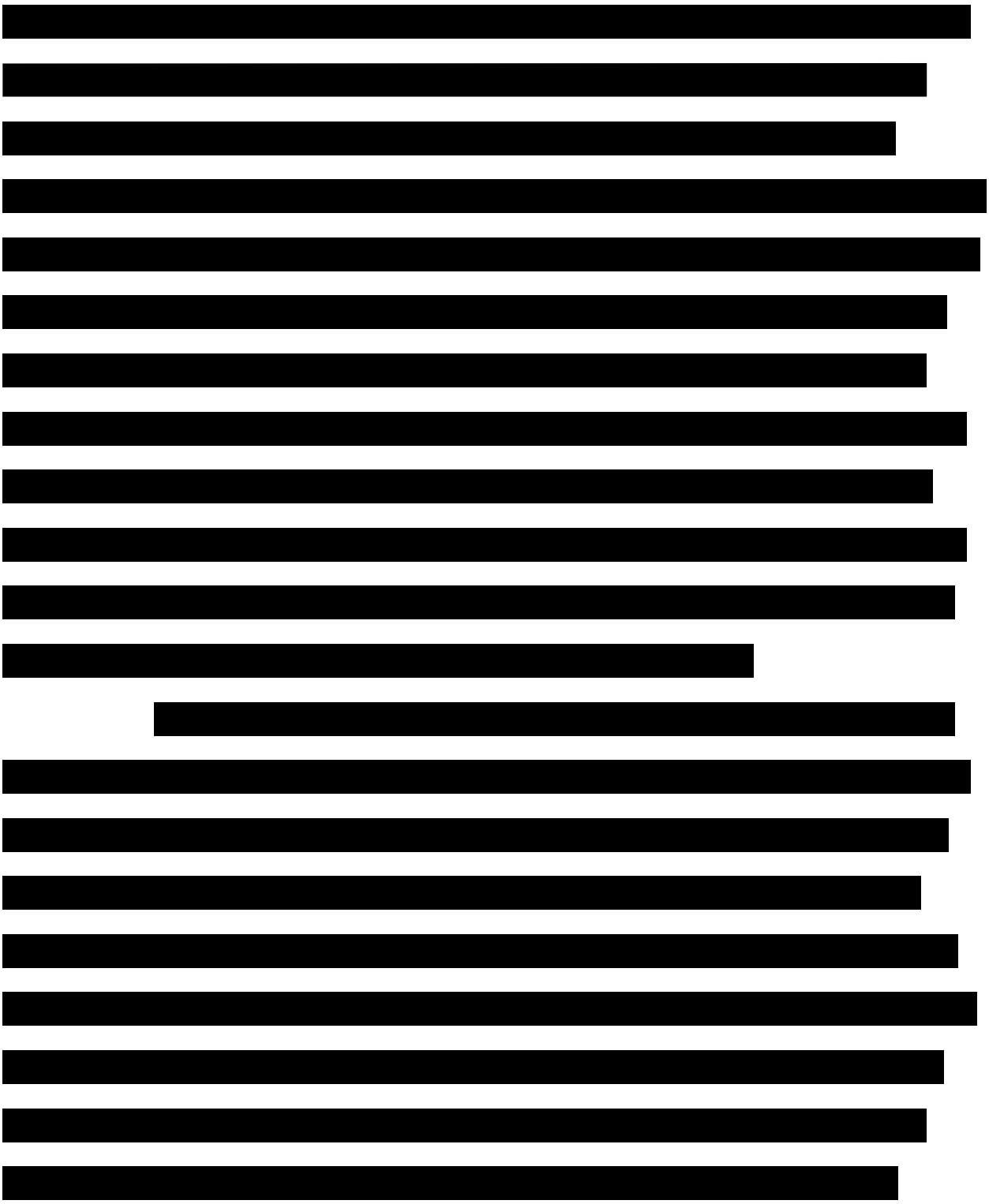
participating mortgage servicers that agree to modify the terms of qualified mortgage loans. *See* SAC ¶ 135; Maya Decl. Ex. E (Schneider FCA Action First Am. Compl. ("FCA Compl.")) ¶¶ 113-14.

The "cornerstone" of MHA is HAMP, SAC ¶ 135, which provides for modifications of first-lien mortgage loans for residential properties. To participate in HAMP, a mortgage servicer must enter into a Servicer Participation Agreement ("SPA") with the Treasury Department and must abide by certain servicing standards issued by Treasury. *See* SAC ¶ 135; FCA Compl. ¶¶ 119-20. Fannie Mae and Freddie Mac serve as Treasury's administrative and compliance agents for purposes of the MHA programs, including HAMP. *See* FCA Compl. ¶¶ 117, 133.

B. Schneider's Two Related Actions

[redacted]

[redacted]



C. Procedural History

1. The Schneider FCA Action

Schneider filed his FCA Action on May 6, 2013 in the United States District Court for the District of South Carolina. *See* Maya Decl. Ex. D (Schneider FCA Action Compl.). After the Department of Justice declined to exercise its statutory right to intervene and prosecute the case itself, the action was unsealed and Chase was served with process. *See* Maya Decl. Ex. F (Summons Return). Schneider then moved to transfer the action to the United States District Court for the District of Columbia, arguing that the case should be transferred because "the parties to the Consent Judgment . . . must seek to enforce the Consent Judgment before Judge Collyer." Maya Decl. Ex. H (Mem. in Supp. of Mot. to Transfer) at 3.

On June 19, 2014, Schneider's motion to transfer was granted and the case was transferred to the District of Columbia and assigned to Judge Collyer. *See* Maya Decl. Ex. I (Order filed June 19, 2014); Maya Decl. Ex. J (Notice of Designation of Related Civil Cases). On November 17, 2014, Schneider filed an amended complaint under seal. *See* Maya Decl. Ex. K (docket sheet from Schneider FCA Action). [redacted]

2. The Schneider Private Action

The Schneider Entities filed the original complaint in the Private Action in state court on December 24, 2014 and amended their complaint two days later. *See* Maya Decl. Ex. L (Notice of Removal) ¶¶ 1-2. After Chase removed the action to this Court on January 15, 2015, the Schneider Entities filed the operative SAC on March 31, 2015. *See* Maya Decl. Ex. K(docket

sheet from Schneider Private Action). The SAC asserts fourteen separate causes of action including breach of contract, fraud, tortious interference with contract, defamation, and civil RICO violations. SAC ¶¶ 150-261.

LEGAL STANDARD

An action may be transferred "[f]or the convenience of the parties and witnesses, in the interest of justice," to any district "where it might have been brought." 28 U.S.C. § 1404(a). When considering a motion to transfer, the court "conducts a two-pronged analysis: whether the action could have been brought in the transferee district and, if yes, whether transfer would be an appropriate exercise of the Court's discretion." *Robertson v. Cartinhour*, No. 10 Civ. 844 (LTS) (HBP), 2011 WL 5175597, at *3 (S.D.N.Y. Oct. 28, 2011) (Swain, J.).

The first prong of the two-part test is satisfied if the transferee court would have personal jurisdiction over the defendants and if venue would lie in that court. *Id.* Those requirements plainly are satisfied here: as Schneider acknowledged in moving to transfer his FCA Action to the District of Columbia, Chase is subject to personal jurisdiction in that forum, and venue is proper in that forum because Chase resides there for purposes of the federal venue statutes. *See* Maya Decl. Ex. H (Mem. in Supp. of Mot. to Transfer) at 4 (arguing that venue for Schneider FCA Action is proper in D.C.); 28 U.S.C. § 1391(b)(1) (civil action "may be brought in a judicial district in which any defendant resides"); 28 U.S.C. § 1391(c)(2) (for venue purposes, corporate defendant is resident of "any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question").

This motion therefore turns on the second prong of the two-part test: whether transfer would be an appropriate exercise of the Court's discretion. *Robertson*, 2011 WL 5175597, at *3. Courts considering that question look to a number of factors, including:

> (1) the convenience of witnesses; (2) the convenience of the parties; (3) the location of relevant documents and the relative ease of access to sources of proof; (4) the locus of operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties; (7) the forum's familiarity with the governing law; (8) the weight accorded the plaintiff's choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances.

Id. at *4. Among these factors, the "interests of justice" is particularly important. Under this factor, the existence of a related action "weighs heavily toward transfer," *APA Excelsior III L.P. v. Premiere Techs., Inc.*, 49 F. Supp. 2d 664, 668 (S.D.N.Y. 1999), and is such a "strong factor" that it "may be determinative," *Williams v. City of New York*, No. 03 Civ. 5342(RWS), 2006 WL 399456, at *3 (S.D.N.Y. Feb. 21, 2006).

ARGUMENT

I. THIS ACTION SHOULD BE TRANSFERRED TO THE DISTRICT OF COLUMBIA FOR COORDINATION WITH THE RELATED FCA ACTION.

This case should be transferred to the District of Columbia both to avoid duplicative litigation of common questions of law and fact and to take advantage of Judge Collyer's unique expertise in interpreting and applying the NMS.

As courts in this District have often observed, "[t]here is a strong policy favoring the litigation of related claims in the same tribunal in order that pretrial discovery can be conducted more efficiently, duplicitous litigation can be avoided, [] and inconsistent results can be avoided." *APA Excelsior*, 49 F. Supp. 2d at 668 (quoting *Savin v. CSX Corp.*, 657 F. Supp. 1210, 1214 (S.D.N.Y. 1987)). As a result, the existence of a related action "weighs heavily toward transfer," *id.*, and "cases have frequently been transferred to a forum in which other actions were pending from the same transactions." *Dahl v. HEM Pharm. Corp.*, 867 F. Supp. 194, 196 (S.D.N.Y. 1994). Transfer is especially appropriate where the related actions involve "the same facts, transactions, or occurrences," *Nieves v. Am. Airlines*, 700 F. Supp. 769, 773

(S.D.N.Y. 1988), or "hinge upon the same factual nuclei," *Berg v. First Am. Bankshares, Inc.*, 576 F. Supp. 1239, 1243 (S.D.N.Y. 1983).

This case provides a textbook example of the type of action that should be transferred pursuant to these principles. [redacted]

Litigating these common factual questions in two different courts and on two different discovery schedules would impose substantial burdens on both Chase and the federal judiciary. Indeed, the Schneider Entities anticipate such wide-ranging discovery into these common questions that they asked this Court to suspend the usual limit of ten depositions per side. Maya Decl. Ex. M (Preliminary Pre-Trial Statement) at 23. Chase should not be required to present numerous witnesses for duplicative depositions on the very same factual questions; nor should this Court be forced to waste time and effort on questions of fact and discovery issues that Schneider has already placed before another federal court. Under settled law, transfer should be granted to avoid this needless waste of judicial and party resources. *See APA Excelsior*, 49 F. Supp. 2d at 670 (where "both actions hinge on the same core of operative facts," transfer will "serve the interests of judicial economy and fairness by avoiding duplicative

litigation and the possibility of inconsistent rulings"); *Williams*, 2006 WL 399456, at *3 (pendency of related action favored transfer because, *inter alia*, "discovery requests . . . will likely overlap"); *River Road Int'l, L.P. v. Josephthal Lyon & Ross, Inc.*, 871 F. Supp. 210, 214 (S.D.N.Y. 1995) (transfer appropriate in related actions to facilitate coordinated discovery and to avoid duplicative discovery disputes).[1]

Transfer to the District of Columbia also is supported by the common legal questions that arise in both actions. [redacted] Transfer should be granted to avoid the prospect that two different federal judges will reach inconsistent conclusions on these common questions of law. *See, e.g., ITT World Commc'ns, Inc. v. F.C.C.*, 621 F.2d 1201, 1208 (2d Cir. 1980) ("[T]here is a policy of unifying related proceedings in a single court, and obtaining consistent results."); *APA Excelsior*, 49 F. Supp. 2d at 670 ("[T]ransfer will serve the interests of judicial economy and fairness by avoiding duplicative litigation and the possibility of inconsistent rulings."); *River Road Int'l, L.P.*, 871 F. Supp. at 214 ("The presence of related litigation in the transferee forum weighs heavily in favor of transfer, since litigation of related claims in the same tribunal . . . avoids duplicative litigation and inconsistent results." (internal quotation and citation omitted)).

Judge Collyer's unmatched expertise in interpreting and applying the NMS settlements provides yet another reason for transfer. Each of those settlements vests the District

[1] At the status conference conducted on April 24, 2015, the Court suggested that the inefficiency that would result from overlapping discovery in the two actions potentially could be reduced through coordination between this Court and the District of Columbia court, without the transfer of this action to D.C. In this case, however, coordination across two separate courts would be unworkable because the Government—the real party in interest in the Schneider FCA Action, *see United States ex rel. Mergent Servs. v. Flaherty*, 540 F.3d 89, 93 (2d Cir. 2008)—is not a party to this action and therefore would not be subject to this Court's discovery orders.

of Columbia federal courts with exclusive jurisdiction over disputes arising thereunder. *See* Maya Decl. Ex. B (Consent Judgment) at Ex. E, § J(2). Based in part on these provisions, Judge Collyer has presided over numerous cases involving the NMS settlements. *See, e.g.*, *United States v. Bank of Am.*, No. 12-361 (RMC), 2015 WL 424240 (D.D.C. Feb. 2, 2015); *United States v. Bank of Am.*, 303 F.R.D. 114 (D.D.C. 2014); *United States v. Bank of Am.*, 922 F. Supp. 2d 1 (D.D.C. 2013). Moreover, Judge Collyer is now presiding over the Schneider FCA action at the express request and suggestion of Mr. Schneider. *See* Maya Decl. Ex. H (Mem. in Supp. of Mot. to Transfer) at 3. Judge Collyer's accumulated expertise in interpreting the NMS settlements is an additional reason why transfer to the District of Columbia would serve the interests of justice. *See, e.g., Robertson*, 2011 WL 5175597, at *4 (because of experience with related litigation, transferee court was "uniquely familiar with the facts and legal theories" asserted by parties); *Dahl*, 867 F. Supp. at 197 (transfer appropriate because, *inter alia*, transferee court was "intimately familiar" with case and its "factual complexities"); *Savin*, 657 F. Supp. at 1214 (transferee court's familiarity with factual background due to involvement in related litigation would "prove of substantial assistance to both parties."); *see also United States v. Carey*, 152 F. Supp. 2d 415, 421-22 (S.D.N.Y. 2001) (where action "originates with [a] Consent Decree . . . provid[ing] [a] [j]udge . . . with extensive supervisory powers," although some relevant conduct "may have occurred elsewhere, the heart of the events at issue lies with the Consent Decree").

For all these reasons, the interests of justice favor transfer of this action to the District of Columbia so that it may be coordinated with the FCA Action pending before Judge Collyer. *See, e.g.*, *Robertson*, 2011 WL 5175597, at *4-*5 (transferring action to forum where

related action was pending); *Williams*, 2006 WL 399456, at *3 (same); *APA Excelsior*, 49 F. Supp. 2d at 673 (same); *Nieves*, 700 F. Supp. at 774 (same); *Savin*, 657 F. Supp. at 1215 (same).

II. THE REMAINING TRANSFER FACTORS SUPPORT TRANSFER OF THIS ACTION TO THE DISTRICT OF COLUMBIA.

Chase respectfully submits that the pendency of a previously-filed, related action in the District of Columbia should be "determinative" of this motion. *Williams*, 2006 WL 399456, at *3. To the extent, however, that the Court considers the remaining factors that courts sometimes consider in ruling on motions to transfer, those factors likewise support a transfer to the District of Columbia.

A. The Convenience of the Parties and Witnesses Favor Transfer.

The convenience of the parties and non-party witnesses are among the factors that courts typically consider in evaluating motions to transfer. *See Robertson*, 2011 WL 5175597, at *4. Both these factors support a transfer to the District of Columbia.

With respect to the convenience of the parties, Schneider essentially conceded that the District of Columbia would be a convenient forum for this litigation when he moved to transfer the Schneider FCA Action from the District of South Carolina to the District of Columbia. *See* Maya Decl. Ex. H (Mem. in Supp. of Mot. to Transfer). Indeed, Schneider's motion papers expressly argued that the District of Columbia would be a convenient forum for all parties, including himself. *Id.* at 5.

Having represented that the District of Columbia is a convenient forum for his FCA Action, Schneider cannot now argue that it is an inconvenient forum for his related Private Action. Moreover, if Schneider were permitted to litigate his Private Action in a different forum than his FCA Action, Chase and its witnesses would be put to the undue burden and expense of litigating overlapping cases in two different courts and on two different schedules. Indeed, even

the witnesses affiliated with the Schneider Entities would be subjected to far less burden and inconvenience if they were deposed only once under a coordinated discovery schedule applicable to both actions as opposed to being subjected to duplicative depositions in two actions.

Moreover, because of the substantial overlap in the factual basis of the Schneider Private Action and the Schneider FCA Action, it is likely that many witnesses would be required to testify at trial in both cases. To the extent that these witnesses reside outside of either New York or the District of Columbia, it would be far more convenient for them to travel only once to the District of Columbia than to be required to travel separately to the District of Columbia and to New York. This is especially true for the non-party witnesses, whose convenience is of paramount concern. *See CYI, Inc. v. Ja-Ru, Inc.*, 913 F. Supp. 2d 16, 22 (S.D.N.Y. 2012).

Schneider asserted in his motion to transfer the Schneider FCA Action from South Carolina to the District of Columbia that the non-party witnesses could include Joseph A. Smith, the NMS Monitor. *See* Maya Decl. Ex. H (Mem. in Supp. of Mot. to Transfer) at 5. Other non-party witnesses potentially could include representatives of Fannie Mae and Freddie Mac who administer the HAMP program for the Treasury Department. None of these witnesses are located in New York, and Fannie Mae and Freddie Mac are located in and around the District of Columbia. *See* Maya Decl. Ex. K (docket sheet from Schneider FCA Action showing Monitor's location in Raleigh, North Carolina); Fannie Mae, Our Locations, http://www.fanniemae.com/portal/about-us/careers/locations.html (last visited May 20, 2015); Freddie Mac, Corporate Office Locations, http://www.freddiemac.com/corporate/about/where_to_reach_us/ (last visited May 20, 2015).

The convenience of the party witnesses also supports transfer. Like the non-party witnesses, it would be more convenient for the party witnesses who reside outside of New York

or the District of Columbia to make one trip to testify at trial instead of two separate trips to New York and D.C. For Schneider himself and employees of the Schneider Entities, it would be no less convenient to travel from Florida to the District of Columbia than to travel from Florida to New York. Similarly, with respect to Chase's employee witnesses, who are located in, among other places, Arizona, *see* Boyle Decl. ¶¶ 3-5, there would be no meaningful difference between litigation in New York and litigation in the District of Columbia.

B. The Locus of Operative Facts Is in the District of Columbia.

The locus of operative facts in this action also favors transfer to the District of Columbia. *See Robertson*, 2011 WL 5175597, at *4. As discussed above, this action revolves in part around allegations that Chase violated (1) the NMS Consent Judgment, which was entered by Judge Collyer in the District of Columbia, and (2) the requirements of the federal HAMP program, which is administered and enforced by Fannie Mae and Freddie Mac in the Washington, DC area. [redacted] Moreover, none of the key conduct or events took place in New York. *See* Boyle Decl. ¶¶ 3-6 (Chase witnesses located in Arizona and Texas). Under these circumstances, the locus of operative fact supports transfer to the District of Columbia. *See Carey*, 152 F. Supp. 2d at 421-22 (where action "originates with [a] Consent Decree . . . provid[ing] [a] [j]udge . . . with extensive supervisory powers," although some relevant conduct "may have occurred elsewhere, the heart of the events at issue lies with the Consent Decree").

C. The Location of Relevant Documents, the Availability of Compulsory Process, and the Forum's Familiarity with Governing Law Support Transfer or Are Neutral.

Three additional factors—the location of relevant documents, the availability of compulsory process, and the forum's familiarity with governing law, *see Robertson*, 2011 WL 5175597, at *4—either favor transfer or are neutral.

With respect to the location of documents, this factor carries little or no weight because the documents in this case will be exchanged electronically. *See, e.g.*, *Rindfleisch v. Gentiva Health Sys., Inc.*, 752 F. Supp. 2d 246, 258 (S.D.N.Y. 2010) (location of documents not "particularly significant given the technological age in which we live, where there is widespread use of . . . electronic document production").

With respect to the forum's familiarity with governing law, the decisive consideration is that Judge Collyer—the judge who presided over entry of the NMS settlements—possesses unparalleled expertise with respect to the interpretation and application of those voluminous and complex settlements. *See Robertson*, 2011 WL 5175597, at *4; *Dahl*, 867 F. Supp. at 197; *Savin*, 657 F. Supp. at 1214. Furthermore, the fact that New York common law applies to one or more of plaintiffs' claims "is to be accorded little weight on a motion to transfer venue . . . because federal courts are deemed capable of applying the substantive law of other states." *Aguiar v. Natbony*, No. 10 Civ. 6531 (PGG), 2011 WL 1873590, at *10 (S.D.N.Y. May 16, 2011) (internal quotation and citation omitted).

With respect to the availability of compulsory process, Chase is unaware of any non-party witness who would be available for trial in New York but not in the District of Columbia. The Fannie Mae and Freddie Mac employees involved in administering the HAMP program, by contrast, will be within the subpoena range of the court only if the action is transferred to the District of Columbia. *See* Fed. R. Civ. P. 45(c)(1) (subpoena may command person to testify only within 100 miles or, under certain circumstances, within state).

D. Plaintiffs' Choice of Forum Is Entitled to Little Weight.

Although a plaintiff's choice of forum is sometimes given weight in evaluating a motion to transfer, that factor deserves no weight where, as here, the plaintiff does not reside in

the chosen forum and has elected to litigate related claims in the transferee forum. *See* SAC ¶¶ 7-9 (Schneider Entities all reside in Florida); FAC Compl. ¶ 42 (Schneider resides in Florida); *Keitt v. New York City*, 882 F. Supp. 2d 412, 459 (S.D.N.Y. 2011) ("A plaintiff's choice of forum is accorded less deference . . . where plaintiff does not reside in the chosen forum and the operative facts did not occur there."); *McCain v. Racing*, No. 07 Civ. 5729 (JSR), 2007 WL 2435170, at *3 (S.D.N.Y. Aug. 27, 2007) ("plaintiff's choice of forum is entitled to less deference" where plaintiff does not reside in forum and has chosen to litigate related claims in transferee forum).

It makes no difference that the Schneider Entities allege that Chase breached a contract containing a New York forum selection clause. *See* Maya Decl. Ex. O (Mortgage Loan Purchase Agreement ("MLPA")) § 15. The law is clear that a forum selection clause does not defeat a district court's "discretion to transfer the action in the interest of justice." *APA Excelsior*, 49 F. Supp. 2d at 671-73. Indeed, the court in *APA Excelsior* transferred an action despite a forum selection clause that expressly provided that the parties to the clause would "not attempt to deny or defeat . . . personal jurisdiction or venue [in New York] by motion or other request for leave." *Id.* It follows a fortiori that the clause at issue here—which contains no similar waiver of the right to move for a transfer of venue—will not defeat a transfer motion bolstered by the federal judiciary's strong interest in avoiding piecemeal litigation of related disputes. *See id.*; *see also Savin*, 657 F. Supp. at 1214-15 (transferring action notwithstanding forum selection clause in favor of New York; finding that even though New York would be "a slightly more convenient forum than Pittsburgh," any inconvenience resulting from transfer was outweighed by advantages of litigating related cases in single forum).

CONCLUSION

For the foregoing reasons, this case should be transferred to the United States District Court for the District of Columbia.

Dated: May 22, 2015

Respectfully submitted,

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