IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

CHRISTINA ACHEY, on Behalf of Herself and All Others Similarly Situated,	)	Case No. 13-cv-7675
Plaintiff,	)	Judge Harry D. Leinenweber
v.	)	
BMO HARRIS BANK, N.A.,	)	
Defendant.	)	

PLAINTIFF'S OPPOSITION TO DEFENDANT
BMO HARRIS BANK, N.A.'S MOTION TO TRANSFER

Plaintiff Christina Achey ("Plaintiff") respectfully submits this Response in Opposition to Defendant's Motion to Transfer ("Motion to Transfer") (Doc. 24) filed by Defendant BMO Harris Bank, N.A. (hereinafter, "Defendant" or "BMO").

INTRODUCTION

BMO, which is headquartered in this District, bears a substantial burden to show that convenience and efficiency of the Parties "strongly favors" transfer to New York. To attempt to meet that burden, it decries the supposed hardship of litigating in nine courts, which would purportedly require duplicative and onerous discovery, inefficient motion practice, and debilitating costs for everyone involved. But at the same time, BMO has sought to compel arbitration in these cases (Doc. 27), arguing that the cases should be litigated in distinct arbitrations for each plaintiff rather than in a single forum.

In any event, there is no basis for transfer. Applying the private and public factors that courts in this District use to decide transfer motions, it is clear that BMO cannot meet its burden to justify transfer. In fact, BMO primarily addresses judicial economy—while glossing over the other enumerated factors.

BMO argues that the instant matter is "nearly identical" (Doc. 26, p. 1) to other lawsuits it faces in eight other states.[1] Therefore, according to BMO, this case (the "*Achey* Action") should be transferred to the Eastern District of New York in the "interests of justice" and "for the convenience of parties and witnesses" pursuant to 28 U.S.C. § 1404(a). (Doc. 26, p. 2.)

[1] The eight other cases are: *Moss v. BMO Harris Bank, N.A.*, Case No. 13-cv-5438 (E.D.N.Y.); *Graham v. BMO Harris Bank, N.A.*, Case No. 13-cv-1460 (D. Conn.); *Parm v. BMO Harris Bank, N.A.*, Case No. 13-CV-3326-JEC (N.D. Ga.); *Dillon v. BMO Harris Bank, N.A.*, Case No. 13-cv-897 (M.D.N.C.); *Booth v. BMO Harris Bank, N.A.*, Case No. 13-cv-5968 (E.D. Pa.); *Elder v. BMO Harris Bank, N.A.*, Case No. 13-cv-3043 (D. Md.); *Gunson* v. BMO Harris Bank, N.A., Case No. 13-cv-62321 (S.D. Fla.); *Riley v. BMO Harris Bank, N.A.*, Case No. 13-cv-1677 (D.D.C.).

Distilled, BMO's argument is that because one case with similar allegations is already on file in the Eastern District of New York (the "*Moss* Action") all similar cases should be there too. But that argument is based upon two faulty premises. First, meaningful differences exist here between the *Moss* and *Achey* Actions, and further, among the *Moss* Action and the eight other actions filed against BMO. Most obviously, the *Moss* Action is brought by New York residents—*solely on behalf of a New York class* (Doc. 38, ¶ 109)—and in addition to asserting claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), is based on New York's civil usury statute (N.Y. Gen. Oblig. Law § 5-501) and deceptive acts and practices law (N.Y. Gen. Bus. Law § 349), and the New York common law of assumpsit and unjust enrichment. The *Achey* Action, on the other hand, is brought by a Pennsylvania resident—in part on behalf of a Pennsylvania subclass—and in addition to asserting claims under federal RICO, is based on Pennsylvania law, including aiding and abetting violations of the Pennsylvania Maxmium Interest Rates Statute (41 Pa. Stat. §§ 201 and 502), aiding and abetting violations of the Pennsylvania Consumer Credit Statute (7 Pa. Stat. §§ 6203 and 6213), and the Pennsylvania common law of assumpsit and unjust enrichment. In short, the only legal claims that overlap are the federal RICO claims asserted by different classes.

A transfer of this action would burden a New York jury with parsing through, and passing judgment on, at a minimum, two separate sets of state laws, and if BMO were to have its way, up to nine different sets of state laws. That outcome does not offer any concrete "efficiencies," particularly given that coordination of the discovery between the two actions can be achieved without transfer. Moreover, none of the public and private factors that courts in this District employ to evaluate Section 1404(a) motions weighs even marginally in favor of transfer.

Plaintiff's decision to file in Illinois is entitled to great deference, and she should be allowed to litigate her claims here. Significantly, BMO is headquartered in Illinois, with its main offices located in Chicago. (Doc. 1, ¶ 12.) Transferring the case to the Eastern District of New York would merely increase the burden to both parties, without any attendant justification. Plaintiff's choice of venue should be left undisturbed.

ARGUMENT

I. TRANSFER IS NOT WARRANTED, SINCE ANY JUDICIAL INEFFICIENCY IS SPECULATIVE

As a preliminary matter, because transfer is only appropriate in the interest of justice and expediency, courts have held that a transfer decision should not be made until it is clear which parties and witnesses will be involved so that the most convenient forum corresponding to their location can be selected. *See, e.g., Structural Pres. Sys., LLC v. Andrews*, 931 F. Supp. 2d 667, 676-77 (D. Md. 2013); *Advanced Fresh Concepts Franchise Corp. v. Lwin Family Co.*, 03 C 2255, 2004 WL 792840, at *1 (N.D. Ill. Jan. 21, 2004). At this stage in these proceedings, it is impossible to make such an assessment rendering BMO's motion, at best, premature. Nowhere does BMO represent that any of its own witnesses or relevant documents are located in the Eastern District of New York. Indeed, because ***BMO is headquartered in the Northern District of Illinois***, it is highly likely that all of BMO's witnesses and/or relevant documents are actually here.

Judicial efficiencies cannot be gauged at this early stage of the litigation, and to the extent they can be considered, the known differences in the cases weigh against transfer.[2]

[2] BMO's argument that it risks inconsistent results with regard to its opening motions rings particularly hollow when it simultaneously seeks to compel individual arbitration of Plaintiff's claims. (Doc. 29, p. 4 n.3.)

II. SIGNIFICANT DIFFERENCES IN LEGAL ISSUES EXIST BETWEEN THE ACTIONS

When faced with a motion to transfer, "[a] prime factor to be considered is whether the issues in both actions are substantially the same and whether their determination rests upon the same factual matters." *Air Line Pilots Ass'n v. Eastern Air Lines*, 672 F. Supp. 525, 526 (D.D.C. 1987) (quoting *Nat'l Union Fire Ins. v. R.H. Weber Exploration*, 605 F. Supp. 1299, 1303 (S.D.N.Y.1985)). "However, the fact that 'related' matters are being heard elsewhere is not in itself conclusive as the propriety of a § 1404(a) transfer." *Landmark Props. v. Cope*, No. 87 C 860, 1987 WL 10871, *2 (N.D. Ill. May 8, 1987) (denying motion to transfer). "To the contrary, this factor, standing alone, is entitled to little weight." *Id.*

BMO's entire argument rests on the false assertion that the *Moss* and *Achey* Actions—and further, the seven other actions it faces in other states—are "nearly verbatim" (Doc. 26, p. 4) and "nearly identical" (Doc. 26, pp. 1, 11) such that transfer to the same venue is necessary in the interests of expediency and justice. BMO completely ignores the fact that many of Plaintiff's legal claims here are distinctly a function of Pennsylvania law. While BMO is correct that each action contains claims that it violated RICO, 18 U.S.C. § 1962(c) and (d), (Doc. 26, pp. 3, 4, 8, 9), it disregards the distinctly different state law claims presented in the two lawsuits. Although BMO discounts the importance of these claims, its characterization is unwarranted and incorrect, as these claims are integral to each individual lawsuit.

BMO's argument that the states' laws with regard to the non-federal claims are "substantially similar" (Doc. 26, p. 6), is superficial and unavailing. It does not purport to show (and does not show) that the statutory law or common law that has developed in the two states is identical. Further, *none* of these actions contains the exact same claims, and *each* will require the court to address different questions of state law. The claims against BMO in the various

actions for aiding and abetting violations of state civil and criminal usury statutes and laws establishing maximum rates for loans,[3] violating unfair trade practices and competition laws[4] (which Plaintiff here does not assert), and violating statutes specifically regulating payday lending and small loans[5] will involve questions of distinctly different statutory law. For example, the *Achey* Action contains claims against BMO under the Pennsylvania Maximum Interest Rates Statute, 41 Pa. Stat. §§ 201 and 502, which makes it unlawful to provide loans of $50,000 or less with effective interest rates exceeding 6% per annum (Compl. ¶¶ 111-12); as well as under the Pennsylvania Consumer Credit Statute, 7 Pa. Stat. §§ 6203 and 6213, which requires an entity providing loans of $25,000 or less to have a license and sets certain interest rate restrictions on short-term loans (Compl. ¶ 123).

In contrast, the New York Civil Usury Statute, New York General Obligations Law § 5-501, read in conjunction with section 14-a of the New York Banking Law, states that "the maximum rate of interest to be charged, taken, or received upon a loan or forbearance of any money, goods, or things in action is sixteen per centum per annum (16%)" (*Moss* Amended Compl. ¶33); and rather than a specific law regulating payday loan practices, New York has Gen. Bus. Law § 349, under which "it is unlawful to engage in any deceptive acts or practices in the conduct of any business, trade, or commerce in this State." (*Moss* Amended Compl. ¶194).

Therefore, the *Achey* and *Moss* Actions—and further, all nine actions pending against BMO—contain significant legal differences such that transferring any or all of them to the same

[3] *Compare Graham* Compl. 14th Claim; *Parm* Compl. 23rd Claim; *Booth* Compl. 8th Claim; *Elder* Compl. 11th Claim; *Dillon* Compl. 9th Claim; *Moss* Amended Compl. 8th Claim; *Gunson* Compl. 11th and 12th Claims; *Achey* Compl. 4th Claim; *Riley* Compl. 9th Claim.

[4] *Compare Graham* Compl. 16th Claim; *Dillon* Compl. 12th Claim; *Moss* Amended Compl. 10th Claim; *Gunson* Compl. 14th Claim.

[5] Compare *Graham* Compl. 15th Claim; *Parm* Compl. 21st and 22nd Claims; *Booth* Compl. 9th Claim; *Elder* Compl. 10th Claim; *Dillon* Compl. 10th and 11th Claims; *Gunson* Compl. 13th Claim; *Achey* Compl. 5th Claim; *Riley* Compl. 8th Claim.

venue would not be in the interests of expediency or justice. *See Landmark Props.*, 1987 WL 10871, at *3 (where "only overlap" between two "related" cases was one of several claims, transfer was not warranted).

III. TRANSFER UNDER SECTION 1404(a) IS NOT WARRANTED

Even if BMO were able to establish certain efficiencies at this early stage of the litigation, it is clear that it cannot meet its burden for transfer under Section 1404(a).

While BMO is correct that the *Achey* Action *could* have been brought in New York (Doc. 26, p. 6), it bears the burden of proving that this case *should* be transferred to the Eastern District of New York. "The burden is on the moving party to demonstrate that the balance of the factors weighs heavily in favor of transfer and that transfer would not merely shift inconvenience from one party to another." *Sunrise Bidders, Inc. v. GoDaddy Group, Inc.*, No. 09 C 2123, 2011 WL 1357516, at *4 (N.D. Ill. April 11, 2011) (citing *Graham v. UPS*, 519 F. Supp. 2d 801, 809 (N.D. Ill. 2007)). This burden is high: "Unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Id.*, at *2 (citing *In re Nat'l Presto Indus., Inc.*, 347 F.3d 662, 664 (7th Cir. 2003)). "Where the balance of convenience is a close call, merely shifting inconvenience from one party to another is not a sufficient basis for transfer." *Research Automation, Inc. v. Schrader-Bridgeport Int'l, Inc.*, 626 F.3d 973 (7th Cir. 2010).

In this Circuit, "the defendant has the burden of showing that the transferee forum is 'clearly more convenient.'" *Toddy Gear, Inc. v. Cleer Gear LLC*, No. 13 C 1926, 2013 WL 6153052, at *3 (N.D. Ill. Nov. 22, 2013) (Leinenweber, J.) (citing *Heller Fin., Inc. v. Midwhey Powder Co., Inc.*, 883 F.2d 1286, 1293 (7th Cir. 1989)). "To determine whether transfer will serve the convenience of the parties and witnesses and promote the interests of justice, courts

consider both private and public interests." *Id.* (citation omitted). The private-interest considerations in determining whether a § 1404(a) transfer is appropriate are:

> (1) the plaintiff's choice of forum, (2) the situs of material events, (3) the relative ease of access to sources of proof in each forum including the courts' power to compel the appearance of unwilling witnesses and the costs of obtaining the attendance of witnesses, and (4) convenience to the parties, including their residences and their abilities to bear the expense of trial in a particular forum.

Id. And the public-interest considerations are:

> (1) the relation of the community to the issue of the litigation and the desirability of resolving controversies in their locale, (2) the court's familiarity with applicable law, and (3) the congestion of the respective court dockets and the prospects for earlier trial.

Id., at *4.

In the instant case, a balancing of these factors supports denial of the motion to transfer.

A. Judicial Economy Weighs Against Transfer.

BMO argues, essentially, that because one case has been filed against BMO in the Eastern District of New York, all cases must be litigated in New York in the interest of judicial economy. But transfer is not necessarily a more efficient outcome. Rather, the particular factors in this case make it a less efficient outcome.

Contrary to what Defendant claims, the mere existence of another similar case in a different forum does not necessitate transfer to that forum. *See Landmark Props.*, 1987 WL 10871, at *3 ("the mere pendency of a 'related' case is not alone sufficient to warrant a transfer"). In *Glazer v. Whirlpool Corp.*, No. 1:08-CV-1624, 2008 WL 4490117, at *2 (N.D. Ohio Oct. 1, 2008), for example, the court denied a requested transfer, despite the existence of an overlapping case in another district, stating: "[t]he Defendant merely desires the case to be transferred to the Northern District of Illinois because there are other similar cases currently

pending there. Virtually no other facts argue in favor of transferring venue to Illinois." *See also Benson v. JPMorgan Chase Bank, N.A.*, C-09-5272 EMC, 2010 WL 1445532, at *6 (N.D. Cal. Apr. 7, 2010) (denying a transfer motion even where an overlapping class action was ongoing in another district).

Further, the decisions that BMO cites as support that cases should be transferred to districts where related actions are pending (Doc. 26, pp. 7-8, 13), actually support the importance of balancing all of the relevant factors. *See, e.g., Morrow v. Vertical Doors Inc.*, CV09-0256-PHX-DGC, 2009 WL 1698560, at *6 (D. Ariz. June 17, 2009) ("Having considered each of the relevant factors, the Court concludes that, in the interests of justice, this case should be transferred to the Central District of California."); *Schiller-Pfeiffer, Inc. v. Country Home Products, Inc.*, No. 04–CV–1444, 2004 WL 2755585, at *10 (E.D. Pa. Dec. 1, 2004) (in transferring case, court took into account that Vermont court had already established personal jurisdiction over all parties whereas Pennsylvania court could not reach two defendants, as well as that witnesses, documents and the locus of operative facts were in Vermont); *Cent. Money Mortgage Co. [IMC], Inc. v. Holman*, 122 F. Supp. 2d 1345, 1347 (M.D. Fla. 2000) ("[T]he Court . . . has considered all circumstances of the case, including the interests of the parties and witnesses, and the interest of justice."); *Int'l Ins. Co. v. Denenberg, Tuffley & Jamieson*, 1992 WL 159133, at *4 (N.D. Ill. June 25, 1992) (Leinenweber, J.) (motion to transfer granted because, *inter alia*, two hostile witnesses necessary to defense were "not within the compulsory process of this court," and court was "reluctant to require defendant to put on its case through deposition testimony, particularly where the credibility of the witnesses may be at issue"); *Jolly v. Purdue Pharma L.P.*, 05-CV-1452H, 2005 WL 2439197, at *1 (S.D. Cal. Sept. 28, 2005) (in case where plaintiffs did not even oppose transfer, court still stated that "the Court should weigh

multiple factors to determine whether transfer would facilitate the interests of justice and fairness").

Here, a weighing of the private and public factors considered in this District clearly establishes that transfer would not be in the interest of efficiency or justice. The *Moss* court and this Court will be deciding different legal issues, so a transfer of this action would merely shift this Court's burden to make findings under Pennsylvania law to the New York court. It would then burden a New York jury with parsing and passing judgment on two separate sets—and if BMO had its way, nine different sets—of state laws. That outcome is not "efficient."

BMO also argues that transfer is warranted because the cases "will require similar discovery" and "consolidating discovery before one district court would result in efficiencies for both the judiciary and the parties." (Doc. 26, p. 11.) But transfer is not necessary to accomplish this common-sense and practical coordination. Indeed, it will be to all Parties' benefit to coordinate discovery in the *Achey* and *Moss* Actions—as well as in the other actions against BMO—wherever possible. Plaintiff stands ready to coordinate as needed to achieve the efficiencies BMO seeks, for example, by coordinating discovery and cross noticing witnesses for depositions. *See* Manual for Complex Litigation § 20.14 (4th ed.) (describing myriad methods of coordination between courts in different districts to achieve efficiencies).

Therefore, consideration of trial efficiency and the interest of justice—essentially BMO's only argument in its transfer motion—actually weighs against transfer.

B. Consideration of the Private-Interest Factors under § 1404(a) Weighs Against Transfer.

1. Plaintiff's Choice of Forum is entitled to Substantial Deference

Plaintiff has chosen to sue in the District in which BMO's main offices are located. Plaintiff's choice of forum is entitled to significant deference, and "unless the balance strongly

favors transfer, the plaintiff's choice of forum should not be disturbed." *True Value Co. v. Ste. Lucie Rentals, Inc.*, No. 05 C 3035, 2005 WL 2848342, at *2 (N.D. Ill. Oct. 27, 2005) (Leinenweber, J.); *see also Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947) ("[U]nless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed."); *Pierce v. System Transport, Inc.*, No. 01 C 9205, 2002 WL 731136, at *1 (N.D. Ill. April 24, 2002) (Leinenweber, J.) ("plaintiff's choice of forum is generally given great deference and a movant must demonstrate that the transfer is 'clearly more convenient' for the parties") (citing *Coffey v. Van Dorn Iron Works*, 796 F.2d, 217 at 219-29 (7th Cir. 1986)).

Relying on *Jaramillo v. DineEquity, Inc.*, 664 F. Supp. 2d 908 (N.D. Ill. 2009) and *Byerson v. Equifax Info. Servs.*, 467 F. Supp. 2d 627 (E.D. Va. 2006), BMO asserts that "a plaintiff's forum choice 'is greatly discounted in class actions.'"[6] (Doc. 26, p. 12.) Unlike this

[6] The transferred class actions in BMO's string cite (Doc. 26, p. 10), all of which are from courts outside this Circuit, are distinguishable. The court in *Wheat v. California* transferred a case from the Northern District to the Central District of California where another case was pending on behalf of California parolees because the "the class definitions [were] substantially similar" and their "interests [were] fundamentally the same, i.e., avoidance of harm resulting from California parole revocation system." No. C 11–2026 SBA, 2013 WL 450370, at *5-6 (N.D. Cal. Feb. 5, 2013). Unlike the classes at issue in *Wheat*, the classes asserted here and in *Moss* are very different. And in transferring the action from New York to California in *Wyler-Wittenberg v. Metlife Home Loans, Inc.*, the court considered "the opt-in nature of a collective class" and that another case had already been transferred from Minnesota to California because "[e]ach of these cases contemplated a nationwide collective class." 899 F. Supp. 2d 235, 244 (E.D.N.Y. 2012).

Also distinguishable are: *Abbate v. Wells Fargo Bank, N.A.*, 09-62047-Civ., 2010 WL 3446878, at *5 (S.D. Fla. Aug. 31, 2010) (court transferred case because "all factors except Plaintiffs' choice of venue support the transfer of this case" including the location of "numerous potentially critical witnesses" and non-party witnesses who were otherwise likely outside of subpoena power, as well as "the bulk of relevant documents bearing on the alleged fraudulent activity"); *Fryda v. Takeda Pharm. N. Am., Inc.*, 1:11-cv-00339, 2011 WL 1434997, at *5 (N.D. Ohio Apr. 14, 2011) (in granting transfer from Ohio to Illinois, fact "that these centrally-relevant Illinois witnesses would not be subject to compulsory process in Ohio is critical"); *Wiley v. Gerber Prods. Co.*, 667 F. Supp. 2d 171, 173 (D. Mass. 2009) (transfer granted where "overwhelming similarities between the two cases"); *Balloveras v. Purdue Pharma Co.*, 04-20360-CIV-MORENO, 2004 WL 1202854, at *1 (S.D. Fla. May 19, 2004) (transfer granted

case, *Jaramillo*[7] and *Byerson*[8] appear to have involved nationwide classes only and no state subclasses. Significantly, other courts to have addressed the same issue do not strongly support this proposition. For example, in *In re Assicurazioni S.p.A. Holocaust Ins. Litig.*, the court noted "a resident's choice to sue in his or her home forum is generally entitled to great deference" and that "[t]his deference is not diminished by the class-action status" of the case. 228 F. Supp. 2d 348 (S.D.N.Y. 2002). Plaintiff has affirmatively chosen to file suit in the District housing BMO's main offices as opposed to her home forum, and her selection should not be disturbed.

2. The Situs of Material Events Does Not Weigh in Favor of Transfer

BMO does not claim that any of the operative facts occurred in New York. The payday loan transactions occurred online, accessed through Plaintiff's computer in Pennsylvania. The transactions were commenced by companies that were not located in Illinois or New York and were processed by BMO (headquartered in Illinois) through the ACH Network, which does not have a physical location. Achey's bank account, which BMO debited at the behest of the payday lenders, is located in Pennsylvania. Any strategic policy decisions regarding these transactions were likely made by BMO in Illinois. Under this scenario, Illinois is more likely the situs of at least certain material events than New York, weighing against transfer.

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from Florida to New York where "facts underlying the action occurred in the Southern District of New York" and 23 other related suits had already been MDL'd to New York).

While BMO identifies *Amazon.com v. Cendant Corp.*, as a "putative class action," it was not; nonetheless, it is distinguishable. 404 F. Supp. 2d 1256, 1260-61 (W.D. Wash. 2005) (Where the plaintiff, Amazon, had filed "notice of related action" in Delaware "involving substantially the same parties," court granted Cendant's request for transfer, noting, "[i]n patent infringement actions the preferred forum is 'that which is the center of gravity of the accused activity," and "the center of gravity in this case, based on the 'hub of activity' around the infringing websites, lies far to the east of Seattle, and weighs in favor of the Delaware forum.").

[7] In both the Illinois and Kansas actions, "the class of putative plaintiffs is all *nationwide* consumers of Applebee's WeightWatcher menu items." *Jaramillo*, 664 F. Supp. 2d at 914-15 (emphasis in original).

[8] "The class complaints are quite similar, involving the same provision of federal law and the same basic conduct by the same three defendants." *Byerson*, 467 F. Supp. 2d at 636.

3. The Relative Ease of Access to Sources of Proof, Including Documents and Witnesses, Does Not Weigh in Favor of Transfer

As Defendant notes, the majority of relevant documents are neither in this District nor in New York. They are likely scattered across the country. (Doc. 26, pp. 13-14.) Further, moving documents (most of which will be produced electronically) is even easier than moving witnesses. *See GoDaddy Group, Inc.*, 2011 WL 1357516, at *2 ("GoDaddy has failed to establish that it would be inconvenient or impractical to transfer documents to Illinois since electronic information can conveniently be accessed from, and stored in, any location."). Therefore, this factor does not weigh in favor of transfer.

As far as witnesses, BMO asserts that "transfer would better serve the convenience of any non-party witnesses because they would only have to travel to one District rather than two (or nine)." (Doc. 26, p. 13.) However, even though "[t]he convenience of witnesses is often viewed as the most important factor in the transfer balance," BMO has made no showing whatsoever as to the identities, location, or expected relevance of its witnesses. *Rose v. Franchetti*, 713 F. Supp. 1203, 1213 (N.D. Ill. 1989) (*aff'd*, 979 F. 2d 81 (7th Cir. 1992)). Indeed, "[t]he party seeking transfer must clearly specify the key witnesses to be called and make a general statement of their testimony." *Vandeveld v. Christoph*, 877 F. Supp. 1160, 1167-68 (N.D. Ill. 1995).

Further, the bulk of the crucial witnesses are likely to be BMO employees who can be compelled to (and are properly incentivized to) testify at trial. *See, e.g., Relational, LLC v. TDMK, LLC*, No. 07 C4449, 2008 WL 2704757, at *2 (N.D. Ill. July 7, 2008) (Leinenweber, J.) ("The potential record-keeping witnesses identified by Plaintiff appear to be employees of Relational whose inconvenience is entitled to little weight."); *Digan v. Euro-American Brands, LLC*, No. 10-cv-799, 2010 WL 3385476, at *5 (N.D. Ill. Aug. 19, 2010) ("Courts are less concerned about the burden that appearing at trial might impose on witnesses who are either

employees of parties or paid experts; it is presumed that such witnesses will appear voluntarily.") (citation omitted). In fact, given that BMO's main offices are in Chicago (Compl., ¶ 12), its employee witnesses are more likely to reside within this District than in the Eastern District of New York. Thus, the potential inconvenience of Defendant's witnesses does not weigh in favor of transfer.

And while BMO states that it is not aware of any unwilling witnesses that could be served in this District but not New York (Doc. 26, p. 14), Plaintiff is likewise not aware of any unwilling witnesses who could be served in New York but not Illinois. In addition, as discussed previously, efforts to consolidate discovery will cut down or eliminate the need for witnesses to travel. This is particularly true for any non-party witnesses. Therefore, this factor does not help BMO meet its burden.

4. The Convenience of the Parties Does Not Weigh in Favor of Transfer

"The movant…has the burden of establishing, by reference to particular circumstances, that the transferee forum is clearly more convenient." *Coffey*, 796 F.2d at 219-20. *See also Toddy Gear, Inc.*, 2013 WL 6153052, at *3. Yet BMO simply asserts without substantiation that "it would be more convenient for BMO Harris to have this case (and others) join *Moss* in the same District." (Doc. 26, p. 13.) This assertion rings particularly hollow when BMO is headquartered in this forum, a fact that is noticeably absent from BMO's briefing.

BMO has made no showing whatsoever that New York would be a more convenient forum, let alone a clear showing. But even if it had, "[w]here the balance of convenience is a close call, merely shifting inconvenience from one party to another is not a sufficient basis for transfer." *Research Automation, Inc.*, 626 F.3d at 978. *See also Toddy Gear, Inc.*, 2013 WL 6153052, at *4 ("[W]hen the inconvenience of the alternative venues is comparable there is no

basis for a change of venue; the tie is awarded to the plaintiff."). Significantly, the *Moss* Action is venued in the Central Islip division of the Eastern District of New York. Central Islip is a small hamlet within the town of Islip in Suffolk County, New York—almost 50 miles from Manhattan. And despite its assertion, litigating in the very District that houses BMO's main offices could not possibly be more inconvenient for it than the Eastern District of New York would be. This factor does not help BMO meet its burden.

D. Consideration of the Public-Interest Factors Under § 1404(a) Weighs Against Transfer.

1. The Relation of the Community to the Issue of the Litigation Weighs Against Transfer

Public policy considerations prompt courts to hear cases that affect the local community. "Courts will consider, among other factors, the relationship of each community to the controversy, and the respective desirability of resolving controversies in each locale." *GoDaddy Group, Inc.*, 2011 WL 1357516, at *4. When a case affects the rights and interests of citizens of a particular state or locality, conducting a trial in that state or locality is one way for the courts to show respect to those citizens' interests. *Adams v. Bell*, 711 F.2d 161, 167 n.34 (D.C. Cir. 1983). In *Jaramillo*, cited extensively by BMO (Doc. 26, pp. 7, 9, 12), the court concluded that "the District of Kansas has a stronger connection to the dispute than does the Northern District of Illinois" because the defendant, whose "menu items are available across the country," is "headquartered in Kansas" and its "actions will be the subject of this case." 664 F. Supp. 2d at 914. Here, Plaintiff is the victim of usurious payday loans that would not be possible without the assistance of banks like BMO, one of a small number of financial institutions willing to provide illegal payday lenders debit and credit services by acting as an Originating Depository Financial Institution in the ACH Network. Just as in *Jaramillo*, given that BMO is headquartered within

this District, the community has a strong public interest in having the case decided here. This factor weighs against transfer.

2. The Court's Familiarity with Applicable Law Does Not Favor Transfer

Plaintiff has alleged federal claims, as well as claims arising under Pennsylvania law. Presumably, this Court and the Eastern District of New York would be similarly situated with respect to familiarity with the law at issue. Accordingly, this factor does not weigh in favor of transfer.

3. Relative Court Congestion and Prospects for Earlier Trial Do Not Favor Transfer

Court congestion is arguably an issue that every district court faces, and "[t]he Northern District of Illinois is more than capable of providing swift, efficient justice." *Pierce*, 2002 WL 731136, at *3. The two districts at issue here appear to share similar docket congestion. Supporting this conclusion, the median number of months from filing to disposition for civil cases is 6.7 months in this District and 8.7 months in the Eastern District of New York. Similarly, the median number of months from filing to trial for civil cases is 32.2 months in this District and 32.0 months in the Eastern District of New York. *See* http://www.uscourts.gov/fcmstat/index.html. As this factor is not implicated, it weighs against transfer.

CONCLUSION

Meaningful differences exist between the *Achey* and *Moss* Actions, and BMO has failed to show that any of the private or public interest factors this District considers in Section 1404(a) motions weigh in BMO's favor. BMO has therefore failed to carry its burden of showing that the factors "strongly favor" a change of venue. For all the reasons addressed above, the Court should deny Defendant's Motion to Transfer.

Dated: March 14, 2014

Respectfully submitted,

/s/ Jason H. Alperstein
Jeffrey M. Ostrow
ostrow@kolawyers.com
Jason H. Alperstein
alperstein@kolawyers.com
KOPELOWITZ OSTROW P.A.
200 S.W. 1st Avenue, 12th Floor
Fort Lauderdale, Florida 33301
Tel: (954) 525-4100
Fax: (954) 525-4300

CHITWOOD HARLEY HARNES LLP
Darren T. Kaplan *(admitted pro hac vice)*
1350 Broadway, Suite 908
New York, NY 10018
Tel: (917) 595-3600
Fax: (404) 876-4476
dkaplan@chitwoodlaw.com

STUEVE SIEGEL HANSON LLP
Norman E. Siegel *(admitted pro hac vice)*
460 Nichols Road, Suite 200
Kansas City, MO 64112
Tel: (816) 714-7100
Fax: (816) 714-7101
siegel@stuevesiegel.com

TYCKO & ZAVAREEI LLP
Hassan A. Zavareei *(admitted pro hac vice)*
2000 L Street, N.W.
Suite 808
Washington, D.C. 20036
Tel: (202) 973-0900
Fax: (202) 973-0950
hzavareei@tzlegal.com

Counsel for Plaintiff and the Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of March, 2014, a true and correct copy of the foregoing document was served via the Court's CM/ECF system upon all counsel of record.

KOPELOWITZ OSTROW P.A.

By: */s/ Jason H. Alperstein*
Jason H. Alperstein
Fla. Bar No.: 064205
alperstein@kolawyers.com
200 S.W. 1st Avenue, 12th Floor
Fort Lauderdale, Florida 33301
Tel: (954) 525-4100
Fax: (954) 525-4300