

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

**In re: Iowa Student Loan Liquidity
Corporation Litigation**

MDL Docket No.: MDL-_____

McDonald v. Iowa Student Loan Liquidity
Corporation (NDIA No. 1:23-cv-00111)

Gibson v. Iowa Student Loan Liquidity
Corporation (NDIA No. 2:23-cv-01036)

Zambrano v. Iowa Student Loan Liquidity
Corporation (SDIA No. 3:23-cv-00086)

Mason v. Iowa Student Loan Liquidity
Corporation (SDIA No. 4:23-cv-00515)

**BRIEF IN SUPPORT OF JOINT MOTION
FOR TRANSFER OF ACTIONS PURSUANT TO 28 U.S.C. § 1407**

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs Amanda McDonald, Cassandra Gibson, Liliana Zambrano, and Jantzen Mason each filed individual actions in Iowa state district courts in November 2023. Each lawsuit presents very similar (although not strictly identical) claims premised as an original action in equity, recognized under Iowa law, challenging on jurisdictional grounds confessions of judgment entered against each Plaintiff in favor of the common Defendant, Iowa Student Loan Liquidity Corporation (“ISLLC”), pursuant to Iowa Code Chapter 676.

The core declaratory and injunctive relief sought by each Plaintiff includes rendering each respective confession of judgment void and unenforceable. Each Plaintiff also seeks actual, compensatory, and punitive damages arising from their allegations of ISLLC’s use of allegedly unlawful and unconstitutional consumer practices, under both 42 U.S.C. § 1983 and Iowa’s Private

Right of Action for Consumer Fraud Act at Iowa Code Chapter 714H. Each Plaintiff also seeks declaratory relief holding Iowa Code Chapter 676 unconstitutional under the U.S. and Iowa Constitutions, both facially and as applied to the facts of each case.

ISLLC removed all four cases to federal district court on December 20, 2023. ISLLC's notice of removal asserted federal district court jurisdiction was proper pursuant to each Plaintiff's claims arising under the Fourteenth Amendment to the U.S Constitution and 42 U.S.C. § 1983. Owing to their respective counties of filing, McDonald's and Gibson's actions were removed to the federal district court for the Northern District of Iowa and Zambrano's and Mason's actions were removed to the federal district court for the Southern District of Iowa.

On February 21, 2024, Zambrano's and Mason's actions came before the district court (SDIA) for a combined trial scheduling conference. That court adopted a set of deadlines for amending pleadings, adding parties, expert disclosure, and other procedural milestones that incorporated, in significant part, the requests and recommendations of the parties. On February 28, 2024, McDonald's and Gibson's actions came before the district court (NDIA) for a combined trial scheduling conference. That court declined the parties' joint recommendation to mirror the timeline adopted in the SDIA actions and instead established a set of wholly distinct deadlines.

ARGUMENT

The instant joint motion seeks centralization of all four above-captioned matters in the Southern District of Iowa for consolidated proceedings. The four actions present one or more common questions of fact and consolidation would advance the parties' and the judiciary's shared interests in convenience and efficiency.

I. Multidistrict Consolidation is Available in and Appropriate for the Above-Captioned Matters.

28 U.S.C. § 1407(a) 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. Such transfers shall be made by the judicial panel on multidistrict litigation authorized by this section upon its determination that transfers for such proceedings will be for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions. Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated: *Provided, however*, That the panel may separate any claim, cross-claim, counter-claim, or third-party claim and remand any of such claims before the remainder of the action is remanded.

The instant motion for consolidation concerns four civil actions, currently pending in two different districts. The four civil actions all raise identical causes of action, arising from very similar factual allegations concerning the common Defendant's collection of student loans through the use of confessions of judgment. Apart from the amounts at issue, each individual Plaintiff's factual assertions are identical. Accordingly, these four actions present common questions of fact and may be transferred for interdistrict consolidation per the terms of § 1407(a).

The statute provides that such transfers "shall" be made by the panel where the panel has determined that the transfer promotes convenience, efficiency, and just conduct. As set forth below, the parties believe transfer to the Southern District of Iowa will substantially promote those interests to the benefit of all parties and the involved courts.

II. Multidistrict Consolidation in the Southern District of Iowa Would Promote Convenience, Efficiency, and Just Conduct.

The panel determines whether centralization is appropriate by applying the statutory criteria on a case-by-case basis. *In re Bear Creek Techs., Inc., ('722) Patent Litig.*, 858 F.Supp.2d 1375, 1379 (U.S.J.P.M.L. 2012). Examples of circumstances deemed to sufficiently promote the statutory criteria of convenience, efficiency, and just conduct include eliminating duplicative discovery, preventing inconsistent pretrial rulings between districts, and conserving party and judicial

resources. *E.g.*, *In re American Home Mortg. Securities Litigation*, 528 F.Supp.2d 1376, 1377 (U.S.J.P.M.L. 2007); *In re Mattel, Inc., Toy Lead Paint Products Liability Litigation*, 528 F.Supp.2d 1367, 1369 (U.S.J.P.M.L. 2007).

Similar concerns to those noted by the panel in its *American Home* and *Mattel* rulings are present in the four individual matters where consolidation is now being sought. First, Plaintiffs anticipate substantial discovery not only in the form of several years' worth of collection records for the four individual Plaintiffs but also records pertaining to the general collection practices of Defendant and other pattern evidence. Preliminary discussion between the parties has revealed that a significant portion of this data is held in a proprietary database, of which Defendant is a remote user, that prevents electronic transmission of the data in native format. Accessing this data will likely be tedious and time-consuming and may require manual screenshots, printed hard copies, site visits by Plaintiffs' counsel, or some combination thereof. Consolidation of the above-captioned matters would allow the parties the opportunity to complete this laborious, expensive process only once rather than four times.

Consolidation in the Southern District of Iowa would also give the parties and counsel greater flexibility and lower costs to participate in pretrial proceedings. Defendant, Defendant's counsel, and a plurality of Plaintiffs' counsel are located in Des Moines, Iowa within the Southern District of Iowa. Additionally, because Plaintiffs' claims in the four actions challenge the constitutionality of a state statute, the Iowa Attorney General may elect to intervene in the proceeding. 28 U.S.C. § 2403(b). The Iowa Attorney General's office is likewise located in Des Moines. Allowing consolidated pretrial proceedings at the Des Moines federal courthouse would obviate the need for any participants to travel to the Cedar Rapids, Iowa federal courthouse (a two-

hour, 130-mile trip one way from Des Moines) for essentially identical proceedings in the Northern District of Iowa.

Additionally, the potential for inconsistent pretrial rulings is of heightened importance in this case. To begin, the parties anticipate all four individual Plaintiffs raising jurisdictional issues in the form of motions to remand to state court pursuant to the *Rooker-Feldman* doctrine. In the event the Southern District of Iowa and the Northern District of Iowa were to reach different conclusions on this issue, the parties would be left with two cases remanded to state court and two cases remaining in federal court. Such an arrangement would only further complicate the parties' discovery and pretrial calendar and likely inhibit resolution of either set of cases owing to an increasingly labyrinthine combination of abstention and deference doctrines. Moreover, the claims in all four cases present issues of first impression concerning the constitutionality of Iowa Code Chapter 676, whether Defendant qualifies as a state actor under 42 U.S.C. § 1983, and the applicability of Iowa's Consumer Fraud Act to Defendant and its use of confessions of judgment. Defendant anticipates filing dispositive motions on these and other legal issues raised by Plaintiffs' claims. Multidistrict consolidation would prevent inconsistent rulings on these important issues of first impression. Finally, potentially contradictory discovery rulings would also present a headache-inducing scenario: should the district courts disagree on resolutions for any discovery disputes that may arise, the parties could find themselves in a situation where material is discoverable in two cases but unavailable (or even subject to a protective order) in two others. Multidistrict consolidation wholly avoids such risk of complication by preventing any combination of inconsistent rulings.

III. The Number of Actions and Geographic Proximity of the Districts Do Not Outweigh the Gains in Efficiency and Convenience.

The parties recognize, as they must, that consolidation across districts is not a matter of right and that the panel possesses wide discretion to grant or deny such requests. *In re Uber Technologies, Inc., Passenger Sexual Assault Litigation*, 2024 WL 41889, at *1 (U.S.J.P.M.L. Jan. 4, 2024). The panel has, on occasion, denied motions for centralization where relatively few individual actions are involved, if the actions are pending in adjacent districts within the same state, or if the questions presented are not “sufficiently complex.” *E.g., In re: CableNet Services Unlimited, Inc., Fair Labor Standards Act (FLSA) Litigation*, 716 F.Supp.2d 1363 (Mem) (U.S.J.P.M.L. 2010); *In re: UPS Supply Chain Solutions, Inc., Fair Labor Standards Act (FLSA) Litigation*, 729 F.Supp.2d 1356 (U.S.J.P.M.L. 2010). Although the parties seek centralization of only four actions in Iowa’s two federal districts, the questions presented and posture of the cases render the circumstances before the panel readily distinguishable from instances where centralization was denied. Plaintiffs here have raised first-of-their-kind facial and as-applied constitutional challenges to a state statute, a marked contrast in complexity and novelty from more routine statutory claims where the panel has denied centralization. *Cf. e.g., In re Equinox Fitness Wage & Hour Emp’t Practices Litig.*, 764 F.Supp.2d 1347, 1348 (U.S.J.P.M.L. 2011) (denying centralization of actions brought by plaintiffs seeking relief under California’s wage and hour statute). Even where the underlying actions involve more standard claims, the panel has recognized the importance of selecting “the most efficient route for the litigation.” *Uber Technologies, Inc.*, 2024 WL 41889, at *2.

Further, the parties have already attempted to seek alternatives to Section 1407 transfer that might be created by coordination or deference between the involved district courts and found them unavailable. *Cf. e.g., In re Eli Lilly & Co. (Cephalexin Monohydrate) Patent Litigation*, 446 F.Supp. 242 (Mem), 244 (U.S.J.P.M.L. 1978) (denying centralization where the panel determined “any

party could seek orders from the three courts directing the parties to coordinate their pretrial efforts”). Here, when urged by the parties to adopt the pretrial scheduling deadlines established in the Southern District of Iowa so as to maximize efficiency and convenience, the Northern District of Iowa declined the joint request and instead set deadlines that were different than those established in the Southern District of Iowa cases. Under these circumstances, the parties anticipate similar difficulties coordinating on more contentious matters. This would surely heighten the risk of inconsistent substantive rulings.

CONCLUSION

For the reasons stated above, the parties request the panel grant their joint motion to transfer the above-captioned actions to the Southern District of Iowa pursuant to 28 U.S.C. § 1407 for centralized and consolidated pretrial proceedings.

Respectfully submitted,

/s/ Patrick Bigsby

Patrick Bigsby (AT0013028)

Iowa Legal Aid

317 7th Ave. SE, Ste. 404

Cedar Rapids, IA 52401

319-364-6108

pbigsby@iowalaw.org

Counsel for Plaintiffs:

Amanda McDonald, Cassandra Gibson, Jantzen Mason, and Liliana Zambrano

/s/ Jason M. Craig

Jason M. Craig (AT0001707)

Ahlers & Cooney, P.C

100 Court Avenue, Suite 600

Des Moines, Iowa 50309-2231

Telephone: (515) 243-7611

Facsimile: (515) 243-2149

jcraig@ahlerslaw.com

Counsel for Defendant:

Iowa Student Loan Liquidity Corporation