UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CONSUMER FINANCIAL PROTECTION BUREAU, Plaintiff, v. CASHCALL, INC., WS FUNDING, LLC, DELBERT SERVICES CORP., and J. PAUL REDDAM, Defendants.	)	No. 1:13-cv-13167 (GAO)

MEMORANDUM IN SUPPORT OF DEFENDANTS' RENEWED MOTION TO TRANSFER VENUE TO THE CENTRAL DISTRICT OF CALIFORNIA OR, ALTERNATIVELY, TO DISMISS ALL CLAIMS AGAINST J. PAUL REDDAM FOR LACK OF PERSONAL JURISDICTION

Dated: April 11, 2014

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In response to the March 21, 2014 First Amended Complaint ("Amended Complaint" or "AC") of plaintiff Consumer Financial Protection Bureau ("Bureau"), defendants CashCall, Inc. ("CashCall"), WS Funding, LLC ("WS Funding"), Delbert Services Corp. ("Delbert") (collectively, "Entity Defendants"), and J. Paul Reddam ("Mr. Reddam") (together with Entity Defendants, "Defendants"), pursuant to Fed. R. Civ. P. 12(b)(2)–(3) and 28 U.S.C. § 1404(a), respectfully request that this Court transfer the action to the Central District of California or, in the alternative, dismiss the claims against Mr. Reddam for lack of personal jurisdiction.

PRELIMINARY STATEMENT

The Bureau's Amended Complaint alleges that the Entity Defendants made material misstatements and omissions in servicing consumer installment loans to residents of sixteen states ("Subject States"), in violation of the Consumer Financial Protection Act of 2010, *see* 12 U.S.C. §§ 5531(a), 5536(a).[1] In pursuing these claims here, the Bureau has made incompatible choices. On the one hand, it sued in Massachusetts, based on a miniscule percentage of the loans at issue having been made to Massachusetts residents. On the other hand, the Bureau named the Entity Defendants' California-resident owner, Mr. Reddam, as a defendant, despite his lack of relevant personal contacts with Massachusetts.

The Bureau's choice of forum thus carries a cost. Because suit against Mr. Reddam in this distant forum would offend due process, the claims against him must be dismissed should the case remain in Massachusetts. The more expeditious course, however, and the only one consistent with the Due Process Clause and the goals of venue, would be to transfer the case to

[1] The Subject States are Alabama, Arkansas, Arizona, Colorado, Illinois, Indiana, Kentucky, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, and Ohio.

the Central District of California, where venue and personal jurisdiction unquestionably exist over all Defendants.

Alternatively, the action should be transferred to the Central District of California for party and witness convenience and in the interest of justice. The chosen forum is practically alien to the litigation: no party resides or is located in Massachusetts; counsel for the parties are elsewhere; the pertinent business decisions were made elsewhere; incredibly few of the subject debts were owed by Massachusetts residents; all collection on these loans ceased over a year ago; and such residents' testimony will be of marginal relevance (if any) to resolution of the issues. By contrast: all Defendants reside or are located in California; the debt-collection conduct at issue occurred in California; key witnesses and documents are located in California; and even several of the Bureau's own attorneys in this matter are California-based (and are assigned to other cases in California).

The Amended Complaint was filed after Defendants submitted their initial venue and personal jurisdiction motion, *see* ECF No. 22, and was clearly reframed in an attempt to address the jurisdictional infirmities of the Bureau's initial complaint. But the Bureau's efforts fall far short. Instead of showing personal jurisdiction over Mr. Reddam, the Bureau throws a smattering of new—but unavailing—allegations against the wall in the hope that one or more will stick. And rather than strengthen the case for venue, the Amended Complaint actually weakens it significantly by doubling the number of identified Subject States from eight (in the initial complaint) to sixteen (in the Amended Complaint), further diluting the action's almost nonexistent connection to Massachusetts.

Aimed at linking Mr. Reddam to Massachusetts, the Bureau's latest efforts only confirm the impropriety of suit in this forum. Thus, whether to remedy a defect in personal jurisdiction

or to promote the convenience of parties and witnesses, this Court should transfer the action to the Central District of California. Otherwise, the Court must dismiss the claims against Mr. Reddam. Either way, the Bureau's choice of venue and defendants cannot stand.

STATEMENT OF FACTS

A. The Amended Complaint's Allegations

This represents the first lawsuit by the Bureau in its publicized quest to regulate on-reservation lending conduct by Indian tribes and tribal members. The unsecured consumer installment loans at issue here were originated by, and purchased from, non-party Western Sky Financial, LLC ("Western Sky"), a tribal-member-owned company operating on the Cheyenne River Indian Reservation within the exterior boundaries of South Dakota. *See* AC ¶ 19. Post-origination, the loans were purchased by WS Funding and serviced by CashCall and Delbert. *See id.* ¶ 21.

In its Amended Complaint, the Bureau alleges that the Entity Defendants' servicing of these loans, which carry interest rates commensurate with their high risk of default, violated *federal* consumer law insofar as assorted *state* laws, were they to apply, would render the loans void or uncollectible in whole or part. *See id.* ¶¶ 26–31, 60, 65, 69. The Amended Complaint identifies the sixteen Subject States, including Massachusetts, and sets forth provisions governing consumer loan licensure and interest-rate requirements in each. *See id.* ¶¶ 11–16.

The Bureau's imaginative theory—asserting federal law violations solely by virtue of alleged state law transgressions—suffers from numerous fatal legal flaws. Most prominently, the Bureau is barred by its own animating statute from imposing *any* state's interest rate cap on a consumer loan. Denying the Bureau "authority to impose usury limit[s]," the Consumer Financial Protection Act states that none of its provisions "shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or

made by a covered person to a consumer, unless explicitly authorized by law." 12 U.S.C. § 5517(o). Just as this limitation bars the Bureau from crafting a nationwide interest-rate ceiling for consumer loans, it also prohibits the Bureau from circumventing that bar by transforming alleged state usury infractions into federal violations.[2]

B. The Action's Lack of Connection to Massachusetts

The Bureau's Amended Complaint fails to identify a meaningful connection between this debt-collection lawsuit and Massachusetts. In particular, the Amended Complaint offers no support for why *this* lawsuit based on alleged nationwide consumer violations emanating from California was filed in *this* jurisdiction as opposed to any other. In fact, just 3.2% of Western Sky loans to borrowers in the Subject States were made to Massachusetts residents, and of all Western Sky loans ever serviced by CashCall or Delbert, only 1.2% were made to Massachusetts residents. Affidavit of Daniel Baren ("Baren Aff.") ¶ 6. No collection has occurred on those loans in more than a year. *Id.* ¶ 10; *see infra* note 5.

Nor does the Amended Complaint establish a meaningful connection between the forum, the claims, and Mr. Reddam. After acknowledging Mr. Reddam's California residence, and failing to allege his general presence in Massachusetts, the Bureau attempts to premise personal jurisdiction over Mr. Reddam on his role with, and the business activities of, the Entity Defendants. Specifically, the Amended Complaint recites Mr. Reddam's status as "the CEO, president, sole director, and sole owner of CashCall; the president, manager, sole member, and sole owner of WS Funding; and the director and sole owner of Delbert." AC ¶ 8. It avers that Mr. Reddam "actively managed the activities of CashCall and devised major company policies," *id.* ¶ 51, and it quotes Mr. Reddam's own statements to this effect, *see id.* ¶ 52. The Amended

[2] This and other defects in the Bureau's approach will be exposed in a motion to dismiss.

Complaint similarly alleges Mr. Reddam's status "as a control person for Delbert," *id.* ¶ 54, in which capacity he "signed Delbert's application for a [Massachusetts] debt-collection license," *id.* ¶ 53. It concludes by noting Mr. Reddam's "central role" in bringing about the arrangement by which the Entity Defendants purchased and serviced Western Sky loans, *id.* ¶ 55, including that he "signed[ ] the agreements between his companies and Western Sky," *id.* ¶ 56.

More important are several facts and much detail that the Amended Complaint omits.[3] Mr. Reddam has over 20 years' experience in the consumer and mortgage lending industries. Affidavit of J. Paul Reddam ("Reddam Aff.") ¶ 4. In 2003, he founded CashCall as an unsecured consumer installment lender. Baren Aff. ¶ 4. Since then, the company has grown into a diversified consumer and mortgage lender, at one point employing almost 2,000 people. *Id.* CashCall is incorporated and based in California, where the company's management, its corporate records, and the overwhelming majority of its employees reside. *Id.* ¶¶ 4–5.

Delbert was founded in 2008. Affidavit of Cesar Guzman ("Guzman Aff.") ¶ 4. Although incorporated and principally based in Nevada, Delbert maintains a California office, where the company's president and nearly three-fourths of its employees are located. *Id.* From 2010 to the present, Delbert has serviced a variety of consumer and mortgage loans for twenty-six separate clients, including CashCall. *Id.* ¶ 5.

Mr. Reddam resides in California. Reddam Aff. ¶ 1. He has never lived in, owned property in, or even stepped foot in Massachusetts. *Id.* ¶ 5 He possesses no ownership interest in any business enterprise that is based or incorporated in Massachusetts, nor does he sit on the board of directors of any Massachusetts-based company. *Id.*

[3] Of course, "consideration of materials outside the complaint is appropriate in ruling on a motion to dismiss for lack of personal jurisdiction." *Callahan v. Harvest Bd. Intern., Inc.*, 138 F. Supp. 2d 147, 152–53 (D. Mass. 2001).

Mr. Reddam has no personal business dealings in Massachusetts. *Id.* ¶ 6. In particular, he made no decision whether to fund any Western Sky loan to a resident of Massachusetts (nor is he even alleged to have made any such decision). *Id.* ¶ 7. To his knowledge, he has never interacted with any Western Sky borrower (in Massachusetts or elsewhere) whose loan was serviced by CashCall or Delbert, nor has he personally collected or initiated, electronically or otherwise, any loan payment by such a borrower. *Id.* ¶ 6. Mr. Reddam is not personally involved in CashCall's or Delbert's servicing of loans, except to instruct CashCall and Delbert managers and supervisors to ensure that all applicable laws are obeyed. *Id.*

ARGUMENT

I. THE ACTION SHOULD BE TRANSFERRED TO THE CENTRAL DISTRICT OF CALIFORNIA

This Court should transfer the entire action to the Central District of California for two independently sufficient reasons. One, Massachusetts lacks personal jurisdiction over Mr. Reddam. Consequently, because the claims against Mr. Reddam are virtually identical to those asserted against the Entity Defendants, the Court should transfer the action to the Central District of California to obviate a re-filing against Mr. Reddam alone in California and piecemeal litigation on opposing shorelines. Two, given the insignificant connection between forum, Defendants, and controversy, along with the inefficiency of litigating in Massachusetts—undermined further by an inescapable inference of Bureau forum shopping—the Court should transfer the action to the Central District of California "[f]or the convenience of parties and witnesses" and "in the interest of justice." 28 U.S.C. § 1404(a).

A. Transfer is Warranted Because This Court Lacks Personal Jurisdiction Over Mr. Reddam

With exceptions not relevant here, a federal district court has personal jurisdiction over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where

the district court is located." Fed. R. Civ. P. 4(k)(1)(A). Accordingly, "notwithstanding that this is a federal question case," the "inquiry must focus on Massachusetts law concerning personal jurisdiction," including related constitutional constraints. *United Elec., Radio & Mach. Workers of Am. v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1086 (1st Cir. 1992).[4] Where, as here, a defendant is not domiciled or otherwise "at home" in the forum, *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014), the exercise of "specific" personal jurisdiction must both satisfy Massachusetts' long-arm statute and comport with due process, *see Morris v. UNUM Life Ins. Co. of Am.*, 66 Mass. App. Ct. 716, 721 (2006) (citing Mass. Gen. Laws. ch. 223A, § 3); *see also Phillips v. Prairie Eye Ctr.*, 530 F.3d 22, 26 (1st Cir. 2008) (collapsing statutory and constitutional questions).

The First Circuit employs "a tripartite test for the ascertainment of specific jurisdiction": (1) the claim "must directly arise out of, or relate to, the defendant's forum-state activities"; (2) the "in-state contacts must represent a purposeful availment of the privilege of conducting activities in the forum state"; and (3) "the exercise of jurisdiction must, in light of [certain] Gestalt factors, be reasonable." *163 Pleasant St. Corp.*, 960 F.2d at 1089. The Bureau bears "the ultimate burden" of establishing each of these requirements for every defendant. *Adams v. Adams*, 601 F.3d 1, 4 (1st Cir. 2010). The Amended Complaint falls well short of making the necessary showing as to Mr. Reddam.

1. Mr. Reddam Lacks the Required Personal Contacts with Massachusetts

Despite the Amended Complaint's attempt to link Mr. Reddam to Massachusetts, the fact remains that he lacks the required contacts with the Commonwealth. Lumping all Defendants together, the Bureau claims that personal jurisdiction exists "because the causes of action arise

[4] The Entity Defendants do not challenge personal jurisdiction over them in this lawsuit.

from Defendants' transacting business in this commonwealth, contracting to supply services in this commonwealth, or causing tortious injury in this commonwealth by an act or omission outside this commonwealth." AC ¶ 2. But Mr. Reddam is not alleged personally to have done any of these things. Suit against him in Massachusetts is thus impermissible.

The "proper lens" through which to view personal jurisdiction is "whether the *defendant's* actions connect him to the *forum*." *Walden v. Fiore*, 134 S. Ct. 1115, 1124 (2014) (emphasis in original). Critically, Massachusetts federal and state courts adhere to the general rule "that jurisdiction over a corporate officer may not be based on jurisdiction over the corporation itself." *Interface Grp.-Mass., LLC v. Rosen*, 256 F. Supp. 2d 103, 105 (D. Mass. 2003). Rather, personal jurisdiction over corporate officers and employees is assessed "on the basis of the nature and extent of their individual contacts with Massachusetts." *UNUM Life Ins. Co.*, 66 Mass. App. Ct. at 721; *see id.* at 721–22 (affirming finding of lack of personal jurisdiction over non-resident employees who allegedly "participated in a scheme" with corporation to injure plaintiff, but whose in-state contacts were "isolated"); *see also Escude Cruz v. Ortho Pharm. Corp.*, 619 F.2d 902, 906 (1st Cir. 1980) (noting non-imputation rule and requiring allegation that individuals "have transacted personal business within" forum or that they "have engaged in personal business activities using the corporate form as a shield"). Attempting to muster at least some individualized allegations, the Bureau pleads that Mr. Reddam (a) "devised major company policies" for CashCall and Delbert, AC ¶¶ 51–52; (b) previously declared to state regulators that he "coordinate[d] all marketing and advertising" for CashCall, *id.* ¶ 52; and (c) "personally signed Delbert's application" for a Massachusetts debt-collection license, *id.* ¶ 53. These scattershot contentions fail to establish personal jurisdiction.

First, even if Mr. Reddam set company policy for the Entity Defendants, this sort of managerial activity—undoubtedly common amongst virtually all corporate officers—is far from enough to support personal jurisdiction over Mr. Reddam individually. Basing personal jurisdiction on corporate decision-making alone essentially mandates the defense of suit in a forum "because of the position which the defendant holds with the corporation." *Yankee Grp., Inc. v. Yamashita*, 678 F. Supp. 20, 22 (D. Mass. 1988). It also eviscerates the rule that "[e]ach defendant's contacts with the forum State must be assessed individually." *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984) (holding that personal jurisdiction over magazine's founder, owner, and editor-in-chief did "not automatically follow from jurisdiction over the corporation which employs him"); *see also Gen. Signal Corp. v. Donallco Inc.*, 649 F.2d 169, 170 (2d Cir. 1981) (holding personal jurisdiction lacking over "California resident [who was] President and sole stockholder of" entity, despite existence of personal jurisdiction over entity); *Roy v. Roy*, 47 Mass. App. Ct. 921, 921 (1999) (affirming that even "being officer and director of a Massachusetts corporation" confers no personal jurisdiction with respect to "claim having nothing to do with" individual's Massachusetts contacts).

Each of CashCall, Delbert, and WS Funding has its own juridical identity, and Mr. Reddam himself is not alleged to have, for example, contacted borrowers, purchased loans, or serviced loans. To the contrary, he did not visit Massachusetts in connection with the Entity Defendants' business, aimed no discrete personal conduct at Massachusetts, made none of the relevant funding decisions, communicated with no Western Sky borrower in Massachusetts, and was not personally involved at all with the Entity Defendants' interactions with those same borrowers. *See supra* at 5–6; *see also Walden*, 124 S. Ct. at 1124 (rejecting claim of personal jurisdiction over non-resident who "never traveled to, conducted activities within, contacted

anyone in, or sent anything or anyone to" forum). Nor does Mr. Reddam's having signed unidentified "agreements between his companies and Western Sky" enhance the case for jurisdiction, AC ¶ 56, where "[t]here is no evidence that [any such] alleged contract was made in Massachusetts or called for significant performance in Massachusetts," *Roy*, 47 Mass. App. Ct. at 921 (citations omitted); *accord Roberts v. Legendary Marine Sales*, 447 Mass. 860, 864 (2006). In short, Mr. Reddam's executing, on behalf of California companies and while in California, contracts with a reservation-based South Dakota LLC cannot support the exercise of specific personal jurisdiction in Massachusetts over a non-party to those agreements.

Second, Mr. Reddam's statement in certain license applications that he has coordinated advertising activities for CashCall warrants no different conclusion. *See* AC ¶ 52. On its face, the statement refers to CashCall and not to Western Sky, the company that originated the loans at issue in this suit. Moreover, to the extent the targeted solicitation of business from Massachusetts consumers has been held to support personal jurisdiction for ensuing tort claims, it "was one part of a broader range of activities" by the same defendant "amount[ing] to the transaction of business in Massachusetts." *Tatro v. Manor Care, Inc.*, 416 Mass. 763, 769 (1994); *accord Nowak v. Tak How Inv., Ltd.*, 94 F.3d 708, 715–17 (1st Cir. 1996) (viewing solicitation of Massachusetts customers as single facet of "ongoing" and "substantial" course of dealing for jurisdictional purposes). But the Bureau does not now—and cannot ever—allege that Mr. Reddam personally solicited business from any Massachusetts borrower or that he otherwise engaged in any ongoing course of conduct directed at Massachusetts. Mr. Reddam has not even directed that an advertisement for a consumer loan be run in Massachusetts. Reddam Aff. ¶ 8. In any event, none of the loans at issue was the result of advertising by CashCall, rendering any allegation about CashCall advertising misplaced.

Third, that Mr. Reddam executed Delbert's application for a Massachusetts debt-collection license similarly fails to support suit here. *See* AC ¶¶ 52–54. Specific jurisdiction requires "a demonstrable nexus between a plaintiff's claims and a defendant's forum-based activities, such as when the litigation itself is founded directly on those activities." *Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 34 (1st Cir. 1998). Yet Delbert's Massachusetts license "is not the subject matter of this litigation, nor is the underlying cause of action related to the [license]." *Shaffer v. Heitner*, 433 U.S. 186, 213 (1977) (refusing to ground personal jurisdiction in forum-related property tangential to claim).

The Bureau alleges no injury caused by Delbert's successful applications for third-party debt-collection licenses, whether in Massachusetts or elsewhere. Rather, its claims are based on Defendants' allegedly misstating that Western Sky loans "did not have to comply with state licensing and usury laws" at all. AC ¶ 55; *see id.* ¶ 28 (recognizing that "Western Sky . . . did not hold a consumer-lending license in any state"). Delbert secured various state debt-collection licenses to service its portfolio of loans *exclusive* of those originated by Western Sky. Guzman Aff. ¶ 8. Further, the Bureau asserts debt-collection violations against CashCall, which, during the relevant period, held consumer lending licenses in just two of the Subject States—but not in Massachusetts. Baren Aff. ¶ 9. The presence or absence of a Massachusetts license for Delbert is beside the point, and that license in no way "give[s] birth" to the claims against Mr. Reddam. *Interface Grp.-Mass.*, 256 F. Supp. 2d at 108 (holding defendant's role as Chairman and CEO of entity insufficient to support personal jurisdiction over contractual claim in absence of nexus between defendant's "specific Massachusetts contacts" and alleged injury).

2. Forcing Mr. Reddam To Litigate Here Would Be Unreasonable

Requiring Mr. Reddam to litigate this action in Massachusetts would also be unreasonable. Personal jurisdiction must rest upon not only requisite forum contacts, but also constitutional reasonableness, an inquiry controlled by the "gestalt" factors:

> (1) the defendant's burden of appearing, (2) the forum state's interest in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the judicial system's interest in obtaining the most effective resolution of the controversy, and (5) the common interests of all sovereigns in promoting substantive social policies.

Ticketmaster-New York, Inc. v. Alioto, 26 F.3d 201, 209 (1st Cir. 1994). The scale is sliding: "the weaker the plaintiff's showing" of relevant forum-state contacts, "the less a defendant need show in terms of unreasonableness to defeat jurisdiction." *Id.* at 210; *accord Harlow v. Children's Hosp.*, 432 F.3d 50, 67 (1st Cir. 2005). Here, the gestalt factors cement the absence of personal jurisdiction over Mr. Reddam.

First, "[t]he burden associated with forcing a California resident to appear in a Massachusetts court is onerous in terms of distance," a concern "entitled to substantial weight in calibrating the jurisdictional scales." *Ticketmaster*, 26 F.3d at 210–11 (noting courts' obligation to "guard against harassment" by lawsuits far from defendant's place of residence or business).

Second, insofar as any state may have an interest in remediating alleged consumer harm, "the forum has a milder than usual interest" in this case. *Id.* at 211. Loans to Massachusetts residents accounted for 3.2% of total loans made by Western Sky to borrowers in the sixteen Subject States and just 1.2% of Western Sky loans to borrowers nationwide. Baren Aff. ¶ 6. Additionally, as a result of prior state proceedings, no Western Sky loan collection has occurred

at all in Massachusetts in over a year, sapping the forum state's interest in resolving duplicative federal claims based on the same, now-defunct loans. *Id.* ¶ 10.[5]

Third, there is no indication that "trying the case in Massachusetts would be more convenient for plaintiff than trying it in California." *Ticketmaster*, 26 F.3d at 211. Quite the opposite. Apart from its being a federal agency with nationwide litigation authority, the Bureau displays no prominent connection to Massachusetts. The Bureau so far has litigated this case through its enforcement attorneys in California, New York, and Washington, D.C.—but not in Massachusetts. These realities defeat any Bureau claim to forum convenience. *See Prairie Eye Ctr.*, 530 F.3d at 30 (holding exercise of specific jurisdiction unreasonable where, as here, plaintiff had no "ongoing connection to Massachusetts" and defendant's headquarters and witnesses were located elsewhere).

Fourth, the systemic interest in efficient resolution of the controversy has already been stymied by suit in Massachusetts, a risky choice that invited a predictable dispute over personal jurisdiction and venue, diverting the parties' and Court's resources. None of this would have occurred in California, where the Bureau has previously filed suit against California residents it

[5] To the extent the Bureau seeks equitable relief for alleged violation of Massachusetts' small loan laws, *see* AC ¶ 15 (citing Mass. Gen. Laws ch. 140, §§ 96, 110), the Massachusetts Supreme Court has squarely held such relief unavailable to State agencies, *see Commonwealth v. Stratton Fin. Co.*, 310 Mass. 469, 471, 472–74 (1941) (barring civil enforcement suit claiming, as here, that loans made in violation of §§ 96 and 110 "be declared void; and that the defendants be enjoined from collecting them"). Ignoring this holding, on April 4, 2013, the Massachusetts Division of Banks ("Division") issued an *ex parte* Cease Order directing CashCall and WS Funding to halt collections on Western Sky loans made to Massachusetts residents and to refund all payments received. The Cease Order is being challenged on appeal before the Massachusetts Superior Court. If that court affirms the Cease Order, then Massachusetts' interest will be fully (though wrongly) vindicated. Whether the order is affirmed or vacated, or the parties settle, the forum state itself will have no proverbial dog left in this fight. It is notable that the Division, in pursuing such relief, did not name Mr. Reddam as a defendant or otherwise attempt to claim that Massachusetts enjoyed personal jurisdiction over Mr. Reddam.

has accused of nationwide misconduct,[6] and where it may yet pursue all claims asserted in the Amended Complaint against all Defendants.

Fifth, the common interests of state sovereigns (if such exist) would be similarly vindicated by suit just about anywhere, insofar as the laws of many states are purportedly relevant to whether Defendants have engaged in federally actionable unfair, deceptive, or abusive conduct. *See* AC ¶¶ 26–31, 60, 65, 69. On the Bureau's theory, whatever court ultimately presides will have to sift through the lending laws of the sixteen states named in the Amended Complaint. Moreover, no federal forum has greater expertise than any other in construing federal statutes that are a matter of first impression, such as those at issue here.[7]

3. Transfer of the Action is the Most Efficient Outcome

Upon a ruling that it lacks personal jurisdiction over Mr. Reddam, the Court may (and here, respectfully, ought to) transfer the whole case to the Central District of California pursuant to 28 U.S.C. §§ 1406(a) and 1631. As a threshold matter, and as demonstrated above, this action could have been brought initially in that district, where all Defendants reside, are located, or are doing business. *See supra* at 5–6.

Moreover, although § 1406(a) by its terms "applies in cases where venue [is] improper," the statute "has also been interpreted to permit transfer for lack of personal jurisdiction." *Pedzewick v. Foe*, 963 F. Supp. 48, 50 (D. Mass. 1997) (citing *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 466–67 (1962)); *accord Cioffi v. Gilbert Enters.*, --- F. Supp. 2d ----, 2012 WL

[6] *See* Compl. ¶¶ 5–6, *CFPB v. Morgan Drexen*, No. 13-cv-1267 (JLS) (C.D. Cal.); Compl. ¶¶ 7–12, *CFPB v. Gordon*, No. 12-cv-6147 (RSWL) (C.D. Cal.); Compl. ¶¶ 9–12, *CFPB v. Jalan*, No. 12-cv-2088 (AG) (C.D. Cal.).

[7] No court has yet decided whether the Bureau may establish federally enforceable usury limits for consumer loans despite the express, contrary limitation at 12 U.S.C. § 5517(o). Nor has any court ruled on whether the statutory prohibition on "unfair, deceptive, or abusive act[s] or practice[s]," 12 U.S.C. § 5536(a)(1)(B), silently incorporates all fifty states' lending laws.

6195772, at *7 (D. Mass. 2012); *W. Inv. Total Return Fund Ltd. v. Bremner*, 762 F. Supp. 2d 339, 341 (D. Mass. 2011). Similarly, although it has yet to decide the question, the First Circuit has stated that it is "inclined" to construe the term "jurisdiction" in § 1631—"Transfer to cure want of jurisdiction"—to include personal jurisdiction, permitting transfer for lack of personal jurisdiction under that statute as well. *Cimon v. Gaffney*, 401 F.3d 1, 7 n.21 (1st Cir. 2005); *see also Bremner*, 762 F. Supp. 2d at 341 (canvassing authority before agreeing that § 1631 permits transfers to cure lack of personal jurisdiction).

Relevant here, the First Circuit favors transfer over dismissal of an improperly laid action. *See, e.g.*, *Subsalve USA Corp. v. Watson Mfg., Inc.*, 462 F.3d 41, 43 (1st Cir. 2006). In every case, however, a court must "consider the consequences of both transfer and dismissal in deciding which course of action to follow." *Britell v. United States*, 318 F.3d 70, 75–76 (1st Cir. 2003). Such examination here makes plain that "transfer, rather than dismissal, is the option of choice." *Id.* at 74. Dismissal of claims against Mr. Reddam—although welcome—invites a new proceeding against him in California, the type of "inordinately wasteful . . . double filing" and duplicative litigation that the transfer statutes are designed to prevent. *Id.* Further, although some courts have interpreted §§ 1406(a) and 1631 to permit transfer of fewer than all claims, a transfer to California of only the claims against Mr. Reddam would be no different from a dismissal followed by the Bureau's filing suit against Mr. Reddam alone in California. Either scenario would result in expensive and inefficient parallel lawsuits.[8]

[8] Further militating against severance, the transfer statutes reference an entire "case" (§ 1406) or "action" (§ 1631). *See, e.g.*, *Freund v. Fleetwood Enters., Inc*., 745 F. Supp. 753, 755 n.5 (D. Me. 1990) (expressing "grave doubts" that § 1406 allows transfer of "only part of a case brought against multiple defendants").

Accordingly, a complete transfer is in the interests of justice. *See, e.g., Stars for Art Prod. FZ, LLC v. Dandana, LLC*, 806 F. Supp. 2d 437, 449 (D. Mass. 2011) (transferring case to district that "would have personal jurisdiction over all Defendants and be an appropriate venue," where Massachusetts lacked personal jurisdiction over some defendants).

B. Transfer is Also Warranted on *Forum Non Conveniens* Grounds

Alternatively, this Court can exercise its broad discretion to transfer the action "[f]or the convenience of parties and witnesses" and "in the interest of justice." 28 U.S.C. § 1404(a); *see Karmaloop, Inc. v. ODW Logistics, Inc.*, 931 F. Supp. 2d 288, 290 (D. Mass. 2013) (reiterating § 1404(a)'s conferral of "broad discretion in making transfer decisions").

The public and private interests guiding a *forum non conveniens* analysis favor such a transfer. *See Atari v. UPS*, 211 F. Supp. 2d 360, 362 (D. Mass. 2002) (listing factors set forth in *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981)). Private considerations include the convenience of parties and witnesses, the relative ease of access to proof, the ability to secure testimony of non-party witnesses, and any hurdles to proceeding expeditiously and inexpensively. *See id.* Public considerations include avoidance of unnecessary problems in conflicts of laws, the local interest in having localized controversies decided by local courts and juries, and any administrative difficulties flowing from court congestion. *See id.*

1. The Chosen Forum Bears an Insignificant Relationship to the Case

As an initial matter, "where the plaintiff is not bringing suit on its 'home turf,' plaintiff's choice of forum carries little weight." *Transamerica Corp. v. Trans-Am. Leasing Corp.*, 670 F. Supp. 1089, 1093 (D. Mass. 1987). The Bureau, through its counsel, litigates this action from California, New York, and the District of Columbia—but not Massachusetts. Among feasible locales, therefore, California "seems to be as convenient for plaintiff as Massachusetts," if not far more. *Id.*; *see also SEC v. Kasirer*, 2005 WL 645246, at *3 (N.D. Ill. 2005) (observing

that agency's burden of litigating from California office was "far less than the burden imposed on the individual defendants in litigating nearly two thousand miles from their home district").

A relatively meager connection to "the operative facts of the case" further limits a chosen forum's presumptive force. *Ondis v. Woonsocket*, 480 F. Supp. 2d 434, 437 (D. Mass. 2007) (quotation marks omitted). Whether or not that connection here is "substantial" within the meaning of 28 U.S.C. § 1391(b), *see Uffner v. La Reunion Francaise, S.A.*, 244 F.3d 38, 42–43 (1st Cir. 2001) (discussing substantiality requirement), it is too insubstantial to *require* suit in Massachusetts in the face of a valid transfer request. As already noted, Massachusetts accounted for only 3.2% of Western Sky loans to borrowers in the Subject States and 1.2% of Western Sky loans overall. Baren Aff. ¶ 6. All such loans are now defunct. *Id.* ¶ 10. Literally nothing more connects Massachusetts to the action. *Cf. Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 433–34 (2d Cir. 2005) (holding antitrust venue improper under § 1391(b)(2) where 6 of 176 (3.5%) of identified job applicants received rejection letters in district and alleged anti-competitive decisions were made elsewhere); *Johnson Creative Arts, Inc. v. Wool Masters, Inc.*, 743 F.2d 947, 955–56 (1st Cir. 1984) (holding Massachusetts venue improper under precursor to § 1391(b) for claim of infringing "sales throughout the country," of which "Massachusetts sales amounted to only six to fourteen percent," because "[v]irtually all of the decisions" by defendants occurred elsewhere).

The unnatural venue choice raises an inference of forum shopping. This appears to be the first Bureau action brought in Massachusetts. It is a curious choice for an initial foray into this forum. Not only has the Bureau elected to bring what amount to multiple state law claims in a federal court, but it has chosen an arbitrary group of sample states and an arbitrary state within

that group in which to sue. The chosen state is nowhere near and, indeed, thousands of miles away from Defendants' principal places of business.

Further, this action presents novel and important issues of agency authority, *see supra* note 7, and it may be the first of many intended Bureau actions relating to on-reservation lending. On March 19, 2014, months after filing the complaint in this case, the Bureau commenced an action in the Central District of California to enforce civil investigative demands issued against tribal-affiliated lenders. *See CFPB v. Great Plains Lending*, No. 14-cv-2090 (MWF) (C.D. Cal.). The Bureau's eagerness to commence that limited proceeding in California against entities based in Oklahoma and Louisiana makes it all the more baffling why the Bureau here avoided filing suit in California against California-based defendants. One logical conclusion is that the Bureau seeks to limit the negative consequences of a potential adverse ruling by proceeding in this forum as opposed to in the expansive Ninth Circuit, which encompasses far more Indian land than does the First Circuit. However, the venue provisions are not meant to "permit[ ] test cases far from the site of the actual controversy." *Clegg v. U.S. Treasury Dep't*, 70 F.R.D. 486, 490 (D. Mass. 1976) (quotation marks omitted); *see also Symbol Techs., Inc. v. Quantum Assocs., Inc.*, 2002 WL 225934, at *2–*3 (D. Mass. 2002) (transferring case to California, dispute's "center of gravity" and where plaintiff had offices, given "strong indication" that Massachusetts filing constituted "forum shopping").[9] Thus, while the Bureau may perceive Massachusetts as a relatively "safe" forum, that does not make it a convenient—much less a sensible—one.

[9] Of course, the very idea for a consumer financial protection bureau was born in Massachusetts as the signature proposal of then Professor and now Senator Elizabeth Warren, and her role in its formation was a very public part of her campaign for the Senate. The impact of that campaign may also have been a part of why the Bureau selected Massachusetts.

2. Transfer to California Will Promote Party and Witness Convenience

Although § 1404(a) mentions "the convenience of parties," a dominant "purpose of statutorily specified venue is to protect the *defendant* against the risk that a plaintiff will select an unfair or inconvenient place of trial." *Leroy v. Great W. United Corp.*, 443 U.S. 173, 183–84 (1979) (commenting that plaintiff's venue choice is not "unfettered"). Here, the Bureau has not merely chosen a forum that is alien to all parties, but one that is *on the opposite end of the country* from all Defendants. No countervailing benefit justifies this grave inconvenience, especially where, as here, all conceivable party witnesses live and work in California. *See* Baren Aff. ¶ 8; Guzman Aff. ¶ 7; *see also Transamerica Corp.*, 670 F. Supp. at 1093.

Further, while the Bureau may intend to call Massachusetts borrowers as witnesses, these witnesses will be no more vital (if necessary at all) than a witness from any other Subject State. Indeed, if this case survives a motion to dismiss, its outcome will hinge on application of legal principles to undisputed contractual language and to the implementation of defendants' loan servicing practices, while depending much less (if at all) on the testimony of any borrowers. *See Johnson v. N.Y. Life Ins. Co.*, 2013 WL 1003432, at *2 (D. Mass. 2013) (according minimal weight to existence of Massachusetts witnesses in transfer analysis given focus on defendants' practices occurring and policies developed elsewhere). In sum, whatever the burden of the Bureau's calling borrower witnesses from nearer to California, "it would be far more costly for Defendant[s] to proceed with this action in Massachusetts." *Malekniaz v. N.Y. Univ.*, 2006 WL 2521406, at *3 (D. Mass. 2006) (transferring case under § 1404(a) where nearly all prospective party witnesses were defendant's employees located in transferee district).

3. Transfer to California Will Promote Judicial Efficiency

Transfer "would bring about an earlier resolution of the matter than would [occur in] the overburdened Massachusetts court." *Ashmore v. Ne. Petroleum Div.*, 925 F. Supp. 36, 39–40

(D. Me. 1996). Civil cases in this district average twenty-nine months from filing to trial, as compared with two-thirds that long in the Central District of California.[10] This quicker resolution will not sacrifice local competence because, on the Bureau's theory, either district court will have to apply the often nuanced lending laws of at least fifteen other states. *See Princess House v. Lindsey*, 136 F.R.D. 16, 23 (D. Mass. 1991) (deeming "fact that Massachusetts law govern[ed] one claim of several" insufficient to deter transfer).

Finally, where, as here, allegations of personal jurisdiction over a defendant are "problematic," a transfer avoids needlessly having to decide a constitutional issue. *Blue Mako, Inc. v. Minidis*, 472 F. Supp. 2d 690, 702 (M.D.N.C. 2006) (basing transfer in part on lack of evidentiary support for imputing forum contacts of closely held corporation to principal); *see also Leroy*, 443 U.S. at 181 (bypassing unsettled personal jurisdiction question in favor of venue analysis); *Mathis v. Geo Grp., Inc.*, 535 F. Supp. 2d 83, 86 (D.D.C. 2008) (same).

II. ALTERNATIVELY, THE CLAIMS AGAINST MR. REDDAM MUST BE DISMISSED FOR LACK OF PERSONAL JURISDICTION

If the Court were to hold that it lacks personal jurisdiction over Mr. Reddam, but were disinclined to transfer the action on that (or any other) basis, then the claims against Mr. Reddam must be dismissed for the reasons advanced in Part I.A.1–2.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court transfer the action to the Central District of California or, alternatively, dismiss the claims against Mr. Reddam for lack of personal jurisdiction.

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[10] *See* U.S. Courts, Federal Court Management Statistics (Dec. 2013), http://www.uscourts.gov/viewer.aspx?doc=/uscourts/Statistics/FederalCourtManagementStatistics/2013/district-fcms-profiles-december-2013.pdf&page=1 (visited April 7, 2014).

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