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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ANDREW GORDILLO, et al., and on behalf )  
of a class of others similarly situated, )  
  
Plaintiff, )  
  
v. )  
  
BANK OF AMERICA, N.A., a Delaware )  
corporation, )  
  
Defendant. )  
\_\_\_\_\_ )

1:09-cv-01954 AWI GSA

ORDER RE DEFENDANT’S MOTION FOR  
STAY OF ALL PROCEEDINGS

(Document 22)

**INTRODUCTION**

On December 22, 2009, Defendant Bank of America, N.A. (“B of A”), a Delaware corporation, moved for a stay of the instant proceedings. (Doc. 22.) On December 30, 2009, Plaintiff Andrew Gordillo filed a response to the motion. (Doc. 28.) On January 12, 2009, this Court took the matter under submission, without oral argument, pursuant to Local Rule 230(g). (Doc. 29.)

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1 **DISCUSSION**

2 ***The Parties' Positions***

3 B of A seeks a stay of the instant proceedings as counsel has filed an Application and  
4 Motion to Transfer all similar actions with the Judicial Panel on Multidistrict Litigation  
5 (“MDL”), pursuant to Title 28 of the United States Code section 1407.

6 Currently, a total of twelve similar cases are pending in eight federal district courts across  
7 the country alleging the same or substantially similar claims and factual allegations against B of  
8 A, generally claiming that B of A required all call center employees to work prior to and after  
9 clocking in and out for their shifts without pay. B of A states that “plaintiffs in each of the  
10 pending cases assert that the alleged violations resulted from overreaching common corporate  
11 policies and practices allegedly used by Defendant nationwide.” (Doc. 22 at 2.) All plaintiffs  
12 seek payment for unpaid overtime wages, as well as penalties provided for under federal and/or  
13 state law. (Doc. 22 at 2-3.)

14 On December 10, 2009, counsel for B of A filed the aforementioned application and  
15 motion requesting that the twelve pending federal cases be coordinated in and transferred to a  
16 single judicial district. The application and motion includes the instant matter. Plaintiffs had  
17 until December 30, 2009, to file any response thereto,<sup>1</sup> and B of A was to file any reply no later  
18 than January 8, 2010. (Doc. 22 at 3.)

19 Because the Court retains jurisdiction over the matter in spite of the pending MDL  
20 application and motion to transfer, B of A seeks a stay of this action “until such time as the MDL  
21 Panel has ruled on the pending” application. (Doc. 22 at 4.) Doing so would eliminate the risk  
22 of duplicate litigation, including discovery and law and motion matters, argues B of A, and  
23 would serve the interests of judicial economy. (Doc. 22 at 5.) Moreover, B of A argues a stay  
24 would benefit the parties to this litigation. More particularly, B of A “would be forced into the  
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26 <sup>1</sup>The Court acknowledges receipt of courtesy copies of responses to the application and  
27 motion provided to it on behalf of five plaintiff groups.

1 patently disadvantageous position of developing and presenting defenses to similar claims in  
2 eight separate district courts . . . [and] duplicative discovery.” (Doc. 22 at 6.) B of A asserts  
3 Plaintiff will not be prejudiced as the litigation only recently commenced, and as a result, the  
4 case is in its infancy regarding discovery. Additionally, B of A points out that “there are no  
5 looming deadlines for class certification motions” and thus Plaintiff will not suffer harm or  
6 prejudice as a result of any stay. (Doc. 22 at 7.)

7 On December 30, 2009, Plaintiff filed a response to the motion wherein he indicates that  
8 in exchange for his agreement to stay the case pending a ruling from the MDL Panel, B of A has  
9 agreed that he may continue to file the consent to join form for any person who desires to opt-in  
10 to the litigation. (Doc. 28.) Thus, Plaintiff does not oppose the instant motion.

11 *Analysis*

12 Granting a motion to stay is within the sound discretion of the Court. “A district court has  
13 the inherent power to stay its proceedings. This power to stay is ‘incidental to the power inherent  
14 in every court to control the disposition of the causes on its docket with economy of time and  
15 effort for itself, for counsel, and for litigants.’” *Rivers v. Walt Disney Co.*, 980 F.Supp. 1358,  
16 1360 (C.D.Cal.1997) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed.  
17 153 (1936)). When considering a motion to stay, the court weighs a series of competing  
18 interests:

19 the possible damage which may result from the granting of a stay, the hardship or  
20 inequity which a party may suffer in being required to go forward, and the orderly  
21 course of justice measured in terms of the simplifying or complicating of issues,  
proof, and questions of law which could be expected to result from a stay.

22 *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.1962) (citing *Landis*, 299 U.S. at 254-55). Other  
23 courts have articulated and interpreted this third factor as a question of judicial economy. *See*  
24 *Rivers*, 980 F.Supp. at 1360.

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1 Here, the parties have agreed to a stay of the proceedings pending the decision by the  
2 MDL Panel. The Court notes the stay would not impose a hardship or inequity, and would serve  
3 the interests of judicial economy.

4 Moreover, the decision to issue a stay is consistent with the rulings of “a majority of  
5 courts [that] have concluded that it is often appropriate to stay preliminary pretrial proceedings  
6 while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial  
7 resources that are conserved.” *Rivers v. Walt Disney Co.*, at 1362 (citing *American Seafood*,  
8 1992 WL 102762, at \*6 (citing *Arthur-Magna, Inc. v. Del-Val Fin. Corp.*, 1991 WL 13725  
9 (D.N.J.1991)); *Portnoy v. Zenith Labs.*, 1987 WL 10236, at \*1 (D.D.C.1987)).

10 **CONCLUSION AND ORDER**

11 For the foregoing reasons, this Court shall stay this action in its entirety until the Judicial  
12 Panel on Multidistrict Litigation has ruled on the pending Application and Motion for Transfer to  
13 a single judicial district. All deadlines in these matters are VACATED until after the MDL  
14 Panel's ruling is issued. Should the MDL Panel deny the pending motion, Defendant shall  
15 immediately notify the Court by filing a status report.

16  
17 IT IS SO ORDERED.

18 **Dated: January 13, 2010**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE