

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division
CASE NO.: 09-2106-MD-GOLD/GOODMAN**

IN RE:

**FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION**

MDL NO. 2106

This document relates to all actions.

Motion Requesting Court to Restrict Access to Docket Entry

Plaintiffs Avenue CLO Fund, et al. hereby request that the Court restrict access to docket entry number 386-16 (Plaintiffs' Second Supplemental Appendix Of Exhibits In Support Of Plaintiffs' Motion For Partial Summary Judgment And In Opposition To Bank Of America, N.A.'s Motion For Summary Judgment excluding attachments), which was inadvertently filed including the confidential attachments that remain under seal.

Date: Miami, Florida
December 9, 2013

By: /s/ Lorenz Michel Prüss
Lorenz Michel Prüss

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*Attorneys for Plaintiffs Avenue CLO Fund,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Motion Requesting Court to Restrict Access to Docket Entry** was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: December 9, 2013.

/s/ Lorenz Michel Prüss
Lorenz Michel Prüss

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION**

Avenue CLO Fund, Ltd., et al. v. Sumitomo Mitsui)
Banking Corporation, et al., S.D. Florida, C.A. No. 1:09-23835) MDL No. 2106
(D. Nevada C.A. No. 2:09-01047))

REMAND ORDER

Before the Panel:* Pursuant to Rule 10.2, defendant Bank of America, N.A. (BANA) moves to vacate the Panel’s order – issued at the suggestion of the transferee judge, the Honorable Alan S. Gold – conditionally remanding this action to the District of Nevada. Responding plaintiffs oppose the motion.¹

In its motion, BANA essentially raises the same argument that Judge Gold rejected in denying the bank’s motion seeking reconsideration of his Suggestion of Remand – *i.e.*, that pretrial proceedings in the MDL – including both fact and expert discovery regarding plaintiffs’ alleged damages – have not yet been completed. The judge stated: “[I] do not believe I have obtained any particular expertise from supervising the MDL that would render me more capable than the District of Nevada in presiding over damages discovery. To the contrary, I conclude the central purpose of the JPML referral has been achieved through my orders on motions to dismiss and motions for summary judgment, and it will promote the just and efficient conduct of this action to have any remaining damages discovery supervised by the judge trying the

* Judge Marjorie O. Rendell and Judge Lewis A. Kaplan took no part in the decision of this matter.

¹ Responding plaintiffs are: Avenue CLO IV, Ltd., Avenue CLO V, Ltd., Avenue CLO VI, Ltd., Battalion CLO 2007-I Ltd., Brigade Leveraged Capital Structures Fund, Ltd., Canpartners Investments IV, LLC, Caspian Alpha Long Credit Fund, L.P., Caspian Capital Partners, L.P., Caspian Select Credit Master Fund, Ltd., Genesis CLO 2007-1 Ltd., ING International Senior Bank Loans USD, ING International (II) - Senior Bank Loans Euro, ING International (II) - Senior Bank Loans USD, ING International -Senior Bank Loans Euro, ING Investment Management CLO I, Ltd., ING Investment Management CLO II, Ltd., ING Investment Management CLO III, Ltd., ING Investment Management CLO IV, Ltd., ING Investment Management CLO V, Ltd., ING Prime Rate Trust, ING Senior Income Fund, Mariner LDC, Monarch Master Funding Ltd., Scoggin Capital Management II LLC, Scoggin International Fund Ltd, Scoggin Worldwide Fund Ltd, Sola Ltd, Solus Core Opportunities Master Fund Ltd, Veer Cash Flow CLO, Ltd., Venture II CDO 2002, Limited, Venture III CDO Limited, Venture IV CDO Limited, Venture IX CDO Limited, Venture V CDO Limited, Venture VI CDO Limited, Venture VII CDO Limited, Venture VIII CDO Limited, Vista Leveraged Income Fund, Consol Plaintiffs Cantor Fitzgerald Securities, Olympic CLO I Ltd., SPCP Group, LLC, San Gabriel CLO I Ltd., Shasta CLO I Ltd., Sierra CLO II Ltd., Venor Capital Master Fund, Ltd., and Whitney CLO I Ltd.

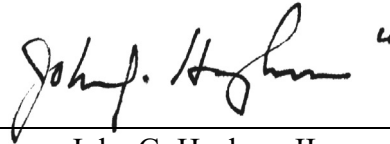
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case, in conjunction with trial-related issues and pleadings.”² *See* Order Den. Mot. Recons., at 2 (S.D. Fla. Sept. 9, 2013) (No. 1:09-md-02106) (ECF No. 366).

After considering all argument of counsel, we will deny BANA’s motion. In assessing the question of Section 1407 remand, we assign great weight to the transferee judge’s determination that remand of a particular action (or actions) is appropriate, given that he or she supervises the day-to-day pretrial proceedings.³ We find no reason not to accord such weight to Judge Gold’s considered Suggestion here. We adopt the reasoning quoted above.

IT IS THEREFORE ORDERED that pursuant to 28 U.S.C. § 1407, this action is remanded to the District of Nevada.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II
Chairman

Paul J. Barbadoro
Sarah S. Vance

Charles R. Breyer
Ellen Segal Huvelle

² As the judge correctly noted, Section 1407 does not require that all pretrial proceedings be completed prior to remand. *See* 28 U.S.C. § 1407(a) (“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”) (emphasis added).

³ *See, e.g., In re: Columbia/HCA Healthcare Qui Tam Litig. (No. II)*, 560 F. Supp. 2d 1349, 1350 (J.P.M.L. 2008) (“In considering the question of remand, the Panel has consistently given great weight to the transferee judge’s determination that remand of a particular action at a particular time is appropriate because the transferee judge, after all, supervises the day-to-day pretrial proceedings.”) (quoting *In re Holiday Magic Sec. & Antitrust Litig.*, 433 F. Supp. 1125, 1126 (J.P.M.L. 1977)); *see also In re: Light Cigarettes Mktg. & Sales Practices Litig.*, 856 F. Supp. 2d 1330 (J.P.M.L. 2012) (denying motion to vacate conditional remand order filed upon issuance of transferee judge’s suggestion of remand).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/GOODMAN

IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION

MDL No. 2106

This document relates to all actions.

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JOINT NOTICE OF FILING STIPULATION
RE INCLUSION OF RECENT TRANSACTIONS IN CASE

PLEASE TAKE NOTICE that attached is a stipulation agreed to by and between Plaintiffs and Defendant Bank of America, N.A. (“BANA”) regarding the inclusion in the Avenue Action of all of Plaintiffs’ claims against BANA arising out of the facts stated in the Second Amended Complaint and associated with all of the Term Loan notes Plaintiffs own, including the Additional Interests.

Dated: January 2, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **JOINT NOTICE OF FILING STIPULATION RE INCLUSION OF RECENT TRANSACTIONS IN CASE** was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: January 2, 2014.

/s/ Lorenz M. Prüss

Lorenz M. Prüss, Esq.

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/GOODMAN**

**IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION**

MDL No. 2106

This document relates to all actions.

STIPULATION RE INCLUSION OF ADDITIONAL TRANSACTIONS IN CASE

Whereas this action was originally styled as *Avenue CLO Fund, Ltd., et al. v. Bank of America, et al.* case, and filed in the United States District Court for the District of Nevada (District of Nevada Case No. 09-CV-01047) on June 9, 2009 (“Avenue Action”);

Whereas on December 2, 2009, the United States Panel on Multidistrict Litigation (“JPML”) transferred this case to the United States District Court for the Southern District of Florida;

Whereas on January 4, 2010, the JPML transferred a related action styled as *ACP Master, Ltd., et al. v. Bank of America, N.A., et al.*, filed in the United States Court for the Southern District of New York on September 21, 2009 (S.D.N.Y. Case No. 09-CV-8064) (“Aurelius Action”) to the United States Court for the Southern District of Florida to be consolidated with the Avenue Action;

Whereas on April 19, 2011, the Aurelius Action was dismissed without prejudice pursuant to a stipulation providing that the Aurelius plaintiffs, whose interests had been acquired

by the Avenue plaintiffs, could pursue their claims against Bank of America, N.A. (“BANA”) in the Avenue Action [D.E. 238];

Whereas since the filing of the Second Amended Complaint [D.E.15] and the dismissal of the Aurelius Action, certain Plaintiffs have purchased additional interests in Term Loans and continue to do so (“Additional Interests”);

Whereas on August 6, 2013, certain of these Plaintiffs filed a lawsuit against Bank of America, N.A. in the Supreme Court of the State of New York, captioned *Brigade Leveraged Capital Structures Fund Ltd. v. Bank of America, N.A.*, Index No. 652744/2013 (“New York Action”), asserting claims which are identical to the claims in the Avenue Action, except that the claims are associated with those Plaintiffs’ Additional Interests;

Whereas upon entry of this Stipulation, the Plaintiffs will dismiss the New York Action, without prejudice;

Whereas, in the absence of this stipulation, the other Plaintiffs with Additional Interests will similarly file subsequent litigation asserting claims against BANA associated with their Additional Interests;

Whereas Plaintiffs and BANA desire to avoid multiple identical cases associated with different Term Loan notes owned by the Plaintiffs;


NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the undersigned counsel for Plaintiffs and BANA that all of Plaintiffs’ claims against BANA arising out of the facts stated in the Second Amended Complaint and associated with all of the Term Loan notes Plaintiffs own, including the Additional Interests, are included and being asserted in the Avenue Action. BANA and the Plaintiffs agree that, for purposes of calculating any statute of limitations or similar provision, claims based on Plaintiffs’ Additional Interests were or will

be asserted against BANA no later than the earlier of: (1) the date the New York Action was filed (to the extent the claims were asserted in that action); or (2) the date the transaction documents evidencing the Plaintiffs' purchase of the Additional Interests were or will be produced to BANA.

Other than as specifically stated above, this stipulation is without prejudice to and shall not preclude any BANA defense as to liability or damages, all of which are expressly preserved.

Dated: December 31, 2013

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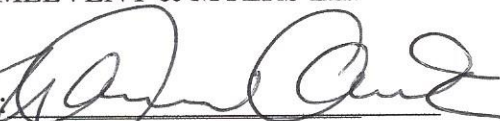
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Attorneys for Bank of America, N.A.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 09-MD-02106-CIV-GOLD/GOODMAN**

**IN RE: FONTAINEBLEAU LAS VEGAS
CONTRACT LITIGATION**

MDL No. 2106

This document relates to all actions.

STIPULATION RE DESIGNATION OF RECORD ON REMAND

Whereas this action was originally styled as *Avenue CLO Fund, Ltd., et al. v. Bank of America, et al.*, and filed in the United States District Court for the District of Nevada (District of Nevada Case No. 09-CV-01047) on June 9, 2009 (“Avenue Action”);

Whereas on December 2, 2009, the United States Judicial Panel on Multidistrict Litigation (“JPML”) transferred this case to the United States District Court for the Southern District of Florida (becoming S.D. Fla. Case No. 09-cv-23835) and coordinated it with an action styled as *Fontainebleau Las Vegas, LLC v. Bank of America, N.A., et al* (S.D. Fla. Case No. 09-cv-21879) (“Trustee Action”);

Whereas on January 4, 2010, the JPML transferred a related action styled as *ACP Master, Ltd., et al. v. Bank of America, N.A., et al.*, filed in the United States Court for the Southern District of New York on September 21, 2009 (S.D.N.Y. Case No. 09-CV-8064) (“Aurelius Action”) to the United States Court for the Southern District of Florida (becoming S.D. Fla. Case No. 10-cv-20236) to be consolidated with the Avenue Action and the Trustee Action;

Whereas on September 20, 2010, final judgment was entered dismissing the Trustee Action [D.E. 141];¹

Whereas on April 19, 2011, the Aurelius Action was dismissed without prejudice pursuant to a stipulation providing that the Aurelius plaintiffs, whose interests had been acquired by the Avenue plaintiffs, could pursue their claims against Bank of America, N.A. (“BANA”) in the Avenue Action [D.E. 238];

Whereas on December 13, 2013, the JPML issued a Remand Order, remanding the Avenue Action to the District of Nevada [D.E. 392];

Whereas Plaintiffs and BANA are required to designate the record to be remanded to the District of Nevada;

Whereas Plaintiffs and BANA desire to designate the entire record of the coordinated proceedings with the exception of documents that relate solely to the Trustee Action;

Whereas Plaintiffs and BANA desire to include any documents that were filed in the underlying dockets for the Avenue Action and the Aurelius Action that were not filed on the master MDL docket;

Whereas Plaintiffs and BANA desire that any and all documents that were filed under seal in connection with the MDL be sent to the District of Nevada;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the undersigned counsel for Plaintiffs and BANA that the record to be remanded shall contain:

¹ All docket entry numbers refer to entries on the master docket of Case No. 09-md-2106.

1. All documents filed on the master docket, Case No. 09-md-2106, except the following docket entries, which relate solely to the Trustee Action: 3, 77, 92, 104, 135, 139, 141, 168, 169.

2. The following docket entries on the underlying docket for the Avenue Action, Case No. 09-cv-23835, that are not on the master docket: 77, 112, 115 - 126, 130, 134, 135, 145.

3. The following docket entries on the underlying docket for the Aurelius Action, Case No. 10-cv-20236, that are not on the master docket: 1 - 27, 29 - 31, 45, 53, 60 - 65, 67 - 70, 73.

4. All documents filed under seal in the MDL, Case No. 09-md-2106, including those identified by the following docket entry numbers on the master docket: 254 - 261, 267 - 283, 288 - 299, 302 - 309, 311 - 317, 320 - 324, 332 - 334, 367.

Date: January 13, 2014

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January 13, 2014

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **STIPULATION RE DESIGNATION OF RECORD ON REMAND** was filed with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically the Notice of Electronic Filing.

Dated: January 13, 2014.

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