

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: PROSPECT MORTGAGE, LLC, FAIR LABOR
STANDARDS ACT (FLSA) AND WAGE AND HOUR
LITIGATION**

MDL No. 2486

ORDER DENYING TRANSFER

Before the Panel:* Pursuant to 28 U.S.C. § 1407, defendant Prospect Mortgage, LLC (Prospect), moves to centralize this litigation in the Northern District of Illinois. This litigation currently consists of thirty-seven actions pending in thirty-seven districts, as listed on Schedule A.¹ Each of the more than 240 plaintiffs in these actions alleges that he or she was employed by Prospect as a mortgage loan officer and was improperly classified as an exempt employee under the Federal Labor Standards Act (FLSA) and analogous state wage and hour laws. Plaintiffs all seek unpaid minimum wages and overtime compensation.

All of the plaintiffs in the actions on the motion oppose centralization. Alternatively, they support centralization in the Eastern District of California before the Honorable Lawrence K. Karlton, who is presiding over the wage and hour lawsuit that preceded the present actions. *See Sliger v. Prospect Mortg., LLC*, C.A. No. 2:11-00465 (E.D. Cal.).

On the basis of the papers filed and hearing session held, we conclude that Section 1407 centralization will not serve the convenience of the parties and witnesses or further the just and efficient conduct of this litigation. These actions undisputably share some factual questions arising out of allegations that Prospect misclassified the plaintiffs as exempt from the minimum wage and overtime compensation requirements of the FLSA and analogous state wage and hour laws. Individualized factual disputes, however, will predominate in this litigation, which is likely to focus on the applicability of certain exemptions to individual plaintiffs, such as the “outside sales” exemption. *See* 29 C.F.R. § 541.500(a). Discovery and motion practice as to these issues will be overwhelmingly plaintiff-specific. Indeed, the parties acknowledge that the substantial differences among individual actions were a reason that the parties stipulated to decertification of the *Sliger* collective action.

* Judge Marjorie O. Rendell took no part in the decision of this matter.

¹ Prospect notified the Panel of two related actions—each a petition to compel arbitration—pending in the Central and Northern Districts of California. Both actions have since been closed.

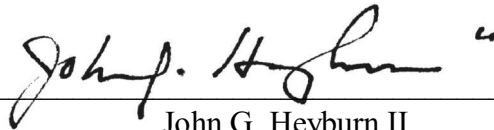
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Thus, any efficiency benefits from centralization will be minimal. These are not class actions, so there is no risk of conflicting class certification rulings. The proceedings themselves will not be particularly complex—notably, the Eastern District of Virginia action has already progressed to trial, and Prospect’s counsel stated during oral argument that these actions will require only two or three day trials per plaintiff.

Even if these actions require further common discovery of Prospect, centralization is not necessary. There may be thirty-seven actions on this motion, but there are only two counsel—one plaintiffs’ counsel and one defense counsel. We have no doubt that, where so few counsel are involved in a litigation, discovery can be coordinated by the parties efficiently without centralization. *See In re Dollar Tree Stores, Inc., Fair Labor Stds. Act (FLSA) & Wage & Hour Litig.*, 829 F. Supp. 2d 1376, 1377 (J.P.M.L. 2011) (“The cases here are not particularly complex. And, informal cooperation to avoid duplicative proceedings is appropriate where most plaintiffs share counsel.”).

IT IS THEREFORE ORDERED that the motion, pursuant to 28 U.S.C. § 1407, for centralization of these actions is denied.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II
Chairman

Paul J. Barbadoro
Lewis A. Kaplan
Ellen Segal Huvelle

Charles R. Breyer
Sarah S. Vance

**IN RE: PROSPECT MORTGAGE, LLC, FAIR LABOR
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MDL No. 2486

SCHEDULE A

District of Arizona

James Barker, et al. v. Prospect Mortgage, LLC, C.A. No. 2:13-00822

Central District of California

Osric Brown, et al. v. Prospect Mortgage, LLC, C.A. No. 2:13-02850

Eastern District of California

Bonny Franklin, et al. v. Prospect Mortgage, LLC, C.A. No. 2:13-00790

Northern District of California

Javan Devore, et al. v. Prospect Mortgage, LLC, C.A. No. 3:13-01841

District of Colorado

Otto Miiller v. Prospect Mortgage, LLC, C.A. No. 1:13-01079

District of Connecticut

Shelley Adams, et al. v. Prospect Mortgage, LLC, C.A. No. 3:13-00581

District of Delaware

David Henson v. Prospect Mortgage, LLC, C.A. No. 1:13-00719

Middle District of Florida

Michael Graham, et al. v. Prospect Mortgage, LLC, C.A. No. 8:13-01050

Southern District of Florida

Byron Andrews, et al. v. Prospect Mortgage, LLC, C.A. No. 1:13-21453

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Northern District of Georgia

David Alexander, et al. v. Prospect Mortgage, LLC, C.A. No. 1:13-01312

District of Hawaii

John Dispirito, et al. v. Prospect Mortgage, LLC, C.A. No. 1:13-00192

District of Idaho

Judy Bauer, et al. v. Prospect Mortgage, LLC, C.A. No. 1:13-00190

Northern District of Illinois

Jeremy Allaway, et al. v. Prospect Mortgage, LLC, C.A. No. 1:13-03004

Southern District of Indiana

Judith Albertson, et al. v. Prospect Mortgage, LLC, C.A. No. 1:13-00653

Southern District of Iowa

Andrew Glenn, et al. v. Prospect Mortgage, LLC, C.A. No. 4:13-00184

Western District of Louisiana

Damon Cutty v. Prospect Mortgage, LLC, C.A. No. 5:13-00820

District of Maryland

Larry Cadenhead, et al. v Prospect Mortgage, LLC, C.A. No. 1:13-01186

District of Massachusetts

John Alves, et al. v. Prospect Mortgage, LLC, C.A. No.1:13-10985

Eastern District of Michigan

Laura Noble v. Prospect Mortgage, LLC, C.A. No. 5:13-11837

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District of Minnesota

Thomas Gallagher, et al. v. Prospect Mortgage, LLC, C.A. No. 0:13-00941

District of Nevada

Carlos Arias, et al. v. Prospect Mortgage, LLC, C.A. No. 2:13-00671

District of New Jersey

Matthew Zimmerman, et al v. Prospect Mortgage, LLC, C.A. No. 2:13-02585

District of New Mexico

Catherine Avants v. Prospect Mortgage, LLC, C.A. No. 1:13-00376

Eastern District of New York

Lisa Baez, et al. v. Prospect Mortgage, LLC, C.A. No. 1:13-02449

Northern District of New York

Sadiki Pierre, et al. v. Prospect Mortgage, LLC, C.A. No. 1:13-00453

Southern District of New York

Justin Couillard, et al. v. Prospect Mortgage, LLC, C.A. No. 1:13-02676

Western District of New York

Thomas Del Gaizo, et al. v. Prospect Mortgage, LLC, C.A. No. 6:13-06200

Eastern District of North Carolina

Van Fleming, et al. v. Prospect Mortgage, LLC, C.A. No. 4:13-00098

Middle District of North Carolina

Stacey Johnson, et al. v. Prospect Mortgage, LLC, C.A. No. 1:13-00331

Western District of North Carolina

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Joseph Keever, et al. v. Prospect Mortgage, LLC, C.A. No. 3:13-00241

Northern District of Ohio

Victor Chappell v. Prospect Mortgage, LLC, C.A. No. 1:13-00911

District of Oregon

Gregory Barnhart, et al. v. Prospect Mortgage, LLC, C.A. No. 3:13-00669

District of South Carolina

Richard Kaponer v. Prospect Mortgage, LLC, C.A. No. 9:13-01121

Northern District of Texas

Dorianne Blunt, et al. v. Prospect Mortgage, LLC, C.A. No. 3:13-01595

Western District of Texas

Brian Hoppie v. Prospect Mortgage, LLC, C.A. No. 3:13-00137

Eastern District of Virginia

Thomas Sehler, et al. v. Prospect Mortgage, LLC, C.A. No. 1:13-00473

Western District of Washington

Julie Cairone, et al. v. Prospect Mortgage, LLC, C.A. No. 2:13-00722