

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: FEDLOAN STUDENT
LOAN SERVICING LITIGATION**

MDL No. 2833

ORDER DENYING TRANSFER

Before the Panel:* Co-lead counsel for plaintiffs and executive committee members in MDL No. 2833 move under 28 U.S.C. § 1407(c) to transfer the actions listed on Schedule A (District of Columbia *Weingarten* and District of Utah *Christensen*) to the Eastern District of Pennsylvania for inclusion in MDL No. 2833. All parties in *Weingarten* filed a joint opposition to transfer of that action. Defendants in *Christensen*¹ filed a joint opposition to transfer of that action. Defendant the Utah Higher Education Assistance Agency alternatively requests that the Panel separate and remand the claims in *Christensen* against it. Nelnet Servicing, LLC, which was a defendant in *Christensen*, but was dismissed voluntarily on February 14, 2020, responds that because it was dismissed, it should not be subject to transfer to the MDL. The *Christensen* plaintiffs did not respond to the motion to transfer.²

When we granted centralization in MDL No. 2833, the subject cases involved allegations that common defendant Pennsylvania Higher Education Assistance Agency (PHEAA) harmed participants in Alternative Loan Repayment Programs by extending the duration of borrowers' student loans through various means and/or converting grants to interest bearing loans. *See In re FedLoan Student Loan Servicing Litig.*, 340 F. Supp. 3d 1377 (J.P.M.L. 2018). We included in the MDL one action (*Ford*) that, after the claims against PHEAA had been dismissed, named only Secretary DeVos and the Department of Education as defendants, because the claims against them "rel[ied] upon PHEAA's alleged misconduct and, therefore, it appear[ed] that *Ford* w[ould] involve overlapping discovery with the remaining actions." *Id.* at 1378. Plaintiffs in *Ford* alleged that the government defendants breached the terms of Teacher Education Assistance for College and Higher Education (TEACH) grant agreements by imposing hyper-technical reporting criteria for reporting plaintiffs' compliance with the terms of the grants, and by converting the grants to loans when plaintiffs were unable to comply.

* Judge Karen K. Caldwell took no part in the decision of this matter.

¹ Elisabeth DeVos, in her official capacity as Secretary of Education, the United States Department of Education, Pennsylvania Higher Education Assistance Agency PHEAA, Navient Corp., Navient Solutions, LLC, and the Utah Higher Education Assistance Agency.

² *See* Panel Rule 6.1(c) ("Failure to respond to a motion shall be treated as that party's acquiescence to it.").

-2-

After centralization, the MDL plaintiffs filed a consolidated amended complaint that significantly expands the allegations and claims against the government defendants. *See* Consol. Am. Compl., MDL No. 2833, ECF No. 49 (E.D. Pa. Nov. 12, 2019). In that amended pleading, plaintiffs allege that PHEAA fails to properly service Title IV loan programs, including the TEACH grant program; Income Driven Repayment (IDR) programs, which set borrowers' monthly student loan payments based on income and family size; and the Public Service Loan Forgiveness (PSLF) program, which provides enrolled borrowers who work in public service jobs with loan forgiveness after 120 qualified payments. Plaintiffs allege the government defendants: (1) penalize borrowers for technical mistakes on forms not approved by OMB; (2) fail to submit the required report on the TEACH grant program to the authorizing committees; (3) fail to adequately remedy TEACH grants improperly converted to loans; (4) fail to implement a common policies and procedures manual for the Direct Loan program; (5) arbitrarily withdrew the only existing policy memorandum providing guidance to Direct Loan servicers; (6) fail to use the enforcement tools available to hold PHEAA accountable for its failures to borrowers; (7) fail to maintain records transferred from prior loan servicers; (8) fail to comply with the Congressional mandate when administering the Temporary Expanded Public Service Loan Forgiveness (TEPSLF) program; and (9) fail to adhere to federal internal control standards. *See id.* at ¶¶ 493-568.

In *Weingarten*, an association and several individual plaintiffs allege that the Department of Education fails to evaluate PSLF applications in accordance with statutory and constitutional requirements. Specifically, they allege that the Department of Education fails to engage in reasoned decision-making when considering PSLF applications or provide an adequate explanation for its decisions, and it fails to implement a process that provides borrowers with notice and a meaningful opportunity to be heard on issues affecting their eligibility for PSLF.

In *Christensen*, plaintiffs, on behalf of themselves and a putative nationwide class, in addition to advancing similar claims as to the Department of Education, also bring claims against PHEAA and two additional loan servicer groups.³ Plaintiffs claim these loan servicers gave plaintiffs misleading information or omitted material information about the PSLF program, causing plaintiffs and putative class members to believe they were making qualifying PSLF payments, when in fact they were not.

After considering the parties' arguments, we are not persuaded that Section 1407 transfer of these actions to MDL No. 2833 would benefit either the actions or the MDL. The MDL actions involve allegations regarding the PSLF program, IDR plans, and the TEACH grant program. Plaintiffs' allegations in *Weingarten* and *Christensen*, by contrast, involve only the PSLF program. At the same time, *Christensen* also brings claims against two loan servicer groups that are not defendants in the MDL. And PHEAA, the common defendant in the initially centralized actions, is not the focus of either *Weingarten* or *Christensen*. In fact, *Weingarten* does not name PHEAA as a defendant.

³ A third additional loan servicer (Nelnet) has been dismissed from the case.

-3-

The Panel created this MDL to adjudicate claims concerning alleged misconduct by PHEAA regarding its servicing of TEACH grants, IDR plans, and the PSLF program. There will be some factual overlap between the MDL actions, and each of *Weingarten* and *Christensen*. But we are not persuaded that inclusion of these two actions that target different defendants and involve only one loan program would promote the just and efficient conduct of the litigation. The *Christensen* complaint names PHEAA as one of several loan servicer defendants that allegedly engaged in misconduct, and a considerable focus of the complaint is the Department of Education's alleged failures. Transfer of *Christensen* thus could lead to an expansion of MDL No. 2833 to include numerous additional cases asserting similar claims against other loan servicers. Including these new parties and allegations would greatly expand the scope of pretrial proceedings in the MDL. We do not wish to unnecessarily complicate the transferee judge's ability to efficiently manage this litigation, which was centralized almost two years ago. Notably, the parties who would be most affected by the burden of any overlap in discovery among these two actions and the MDL are defendants, and they oppose transfer. *See In re Student-Athlete Name & Likeness Litig.*, 763 F. Supp. 2d 1379, 1380 (J.P.M.L. 2011) ("We find most persuasive that, of all responding parties, those who would be most affected by centralization . . . do not believe that centralization would be beneficial.").

As the allegations common to *Christensen*, as well as *Weingarten*, and the MDL are limited, we find alternatives are available to the parties and the courts to informally coordinate pretrial proceedings in order to avoid duplicative proceedings. *See In re Eli Lilly & Co. (Cephalexin Monohydrate) Patent Litig.*, 446 F. Supp. 242, 244 (J.P.M.L. 1978).

IT IS THEREFORE ORDERED that the motion to transfer the actions listed on Schedule A to MDL No. 2833 is denied.

PANEL ON MULTIDISTRICT LITIGATION



Ellen Segal Huvelle
Acting Chair

R. David Proctor
Nathaniel M. Gorton
David C. Norton

Catherine D. Perry
Matthew F. Kennelly

**IN RE: FEDLOAN STUDENT
LOAN SERVICING LITIGATION**

MDL No. 2833

SCHEDULE A

District of District of Columbia

WEINGARTEN, ET AL. v. DEVOS, ET AL., C.A. No. 1:19 02056

District of Utah

CHRISTENSEN, ET AL. v. DEVOS, ET AL., C.A. No. 2:19 00509