UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. QUICKEN LOANS INC., Defendant.	)	Civil Action No. 15-0613 (RBW)

UNITED STATES' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO QUICKEN LOANS' RENEWED MOTION TO TRANSFER

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By and through its undersigned counsel, the United States of America ("United States" or "Government") respectfully submits this opposition to Quicken Loans Inc.'s ("Quicken Loans'") renewed motion to transfer this action to the United States District Court for the Eastern District of Michigan ("EDMI") (R.25) ("Renewed Motion"). For the reasons set forth herein, Quicken Loans' Renewed Motion lacks merit and the Court should not transfer this action.

PRELIMINARY STATEMENT

Quicken Loans' attempt to deprive the United States of its chosen venue by filing a preemptive suit and invoking the first filed rule has now been rejected by the EDMI, which found Quicken Loans' preemptive suit to be devoid of legal merit, dismissing it with prejudice.[1] Not surprisingly, although Quicken Loans largely premised its original transfer request on the pendency of its preemptive suit, its renewed motion barely mentions that suit and instead seeks a transfer of this action based on contentions that the EDMI is more convenient to it and its witnesses. Unlike Quicken Loans, this Court should not ignore Quicken Loans' failed preemptive suit, which was an improper example of forum-shopping and served to delay the current action. Rather, the Court should find that Quicken Loans' actions deprive it of the right to further seek a transfer to EDMI or, at a minimum, constitute a factor weighing against such a transfer.

In any event, the applicable Section 1404(a) factors clearly warrant denial of Quicken Loans' request to transfer this action to EDMI. The United States, in filing this suit in the United States District Court for the District of Columbia, made a reasoned choice of forum based on Quicken Loans' actions at issue and the burden to potential witnesses, including numerous public officials with primary responsibility for one of the country's most important housing programs. This suit alleges a nationwide scheme in which Quicken Loans caused the submission of hundreds

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1 Quicken Loans recently filed a notice of appeal in that proceeding.

of false claims that were processed and paid by a federal agency located in this district. This district is a convenient forum because, as past experience in similar cases has shown, while witnesses will hail from across the country, a very large number of potential witnesses are located in or near this district. Prior litigation confirms the United States' expectation that an overwhelming number of the United States' witnesses will be from the D.C. area. In light of the substantial connection this case has to this district, the plaintiff's choice of forum here is afforded strong deference as a matter of law.

At bottom, none of Quicken Loans' arguments satisfy its significant burden to overcome the deference afforded to the United States' choice of a forum with substantial connections to this case, which is the paramount consideration under Section 1404(a). Quicken Loans' Renewed Motion should be denied.

PROCEDURAL BACKGROUND

On April 27, 2012, the Department of Justice, in conjunction with Department of Housing and Urban Development ("HUD"), and the Office of Inspector General for HUD ("HUD-OIG"), through issuance of HUD-OIG subpoenas to Quicken Loans, began an investigation into Quicken Loans' origination and underwriting of single family residential mortgages insured by the FHA. Declaration of Christopher Reimer of May 14, 2015 ("1st Reimer Decl.") ¶ 6, enclosed herewith as Exhibit 1 ("Opp. Ex. 1"). That investigation resulted in the United States filing this action on April 23, 2015, against Quicken Loans in this Court. *See generally* Complaint (R.1) ("Compl.") at 1.

I. QUICKEN LOANS FILED A PREEMPTIVE SUIT.

As part of the United States' investigation, the United States repeatedly reached out to Quicken Loans to obtain its view of the facts and to explore the potential for a settlement. Indeed, in one last attempt to explore a negotiated resolution before filing an FCA suit, on April 17, 2015,

in a telephone call with Quicken Loans' counsel and Quicken Loans' senior executives, the United States informed Quicken Loans that, if settlement discussions did not progress, the United States intended to file suit the following week. 1st Reimer Decl. ¶ 10, Opp. Ex. 1; *see also* Preemptive Suit Dismissal Opinion at 4, Opp. Ex. 2. Within hours after that call, and without any prior discussion with, or notice to, the United States, on April 17, 2015, Quicken Loans filed a suit in the EDMI, *Quicken Loans, Inc. v. United States*, Civ. A. No. 15-11408 (E.D. Mich.) (the "Preemptive Suit"). That suit asserted a host of unmeritorious claims[2] and requested as relief that the EDMI halt the Government's investigation and prosecution of Quicken Loans and declare that it never made a materially false statement. Preemptive Suit at 43-44 (Prayer for Relief), Opp. Ex. 3. The United States promptly moved to dismiss the Preemptive Suit on May 27, 2015. *Quicken Loans, Inc. v. United States*, Civ. A. No. 15-11408 (E.D. Mich.), R.15 (Gov't Mot. to Dismiss).

II. QUICKEN LOANS' PREEMPTIVE SUIT CAUSED THIS MATTER TO BE STAYED.

Soon after filing its Preemptive Suit, on April 29, 2015, Quicken Loans moved to transfer this action to the EDMI based on the first-filed rule. Def.'s Memo in Supp. Mot. Stay or Transfer ("Def.'s Init. Transfer Br.") (R.4-1) at 1-2. In so doing, Quicken Loans remarkably contended that the United States had engaged in forum shopping and argued to the Court that the EDMI should decide "on how the duplication [caused by the Preemptive Suit] should be resolved," *id.* at 2, including "which forum" should hear this dispute. *Id.* at 11, 13 (the EDMI should "address first where the overlapping disputes between the parties should be adjudicated").

[2] The Preemptive Suit included claims brought under the Administrative Procedures Act, the Procedural Due Process Clause, and under the Declaratory Judgment Act based on allegations of non-breach of contract. *See* Preemptive Suit Dismissal Opinion at 4, Opp. Ex. 2.

After expedited briefing, and discussions between this Court and the EDMI regarding the judicial management of the then-pending parallel actions, the Court held oral argument on May 29, 2015. Hearing Tr. of 5/29/2015 (R.19) at 1, 3. The Court reasoned that depending on how the EDMI ruled on the United States' dispositive motion, "it could have some impact on the issue as to whether [this Court] would transfer the case to [the EDMI] or whether [this Court] would keep [the] case here." *Id.* at 4. As a result, and despite the Court's general reluctance to "see matters delayed," *id.* at 17, the Court stayed this proceeding pending the EDMI's resolution of the Government's motion to dismiss the Preemptive Suit. *Id.* at 23; *see also* Order of 5/29/2015 (R.18).

III. THE EDMI REJECTED THE PREEMPTIVE SUIT

After briefing and another unsuccessful attempt to settle the parties' disputes, on December 31, 2015, the EDMI granted the United States' dispositive motion and dismissed the Preemptive Suit with prejudice. Preemptive Suit Dismissal Opinion at 24, Opp. Ex. 2.[3] The EDMI dismissed the bulk of Quicken Loans' claims as being legally devoid of merit and refused in its discretion to hear Quicken Loans' non-breach of contract claim under the Declaratory Judgment Act. *See generally id.* As to the latter, the Court reviewed a series of factors to determine whether it should hear Quicken Loans' claim, including "[w]hether the declaratory remedy is being used merely for the purpose of 'procedural fencing' or 'to provide an arena for res judicata[.]'" *Id.* at 19. The EDMI found that this factor "weigh[ed] in favor of declining to entertain declaratory relief." *Id.* at 19. Specifically, the EDMI reasoned:

> That factor is meant to preclude jurisdiction for "declaratory plaintiffs who file their suits mere days or weeks before the coercive suits filed by a 'natural plaintiff' and who seem to have done so for the purpose of acquiring a favorable forum."

[3] Also available at *Quicken Loans, Inc. v. United States*, --- F. Supp. 3d ---, 2015 WL 9583391 (E.D. Mich. Dec. 31, 2015).

> [*AmSouth Bank v. Dale*, 386 F.3d 763, 788 (6th Cir. 2004).] "The question is . . . whether the declaratory plaintiff has filed in an attempt to get her choice of forum by filing first." *Id.* at 789. Given the procedural posture of this case, it certainly appears as though Quicken's complaint was filed for the purpose of acquiring a favorable forum; Quicken filed its lawsuit less than a week before the looming FCA enforcement action was filed. And Quicken's complaint actually acknowledged that the threat of the Government bringing an enforcement action prompted the filing of the instant action. [Preemptive Suit] ¶ 23 ("[I]n the face of the DOJ and HUD-OIG's repeated threats of an improper and heavy-handed False Claims Act lawsuit designed to injure the company's reputation, Quicken Loans had no other option than to file this lawsuit."). Thus, the procedural-fencing factor weighs against the Court exercising jurisdiction.

Id. at 21-22. The EDMI also determined that "there is a far superior alternative remedy -- the FCA action" -- to Quicken Loans' non-breach claim, that Quicken Loans' proposal to review every loan "would be a staggering waste of judicial resources," and that "the FCA creates the precise procedure Quicken has acknowledged would be appropriate for resolving the issue." *Id.* at 20-21.

Quicken Loans' Preemptive Suit and request for a stay in this action caused an almost nine-month delay of this enforcement proceeding. After receiving notice of the EDMI's dismissal of the Preemptive Suit, this Court entered certain orders to govern proceedings in this action, including denying Quicken Loans' initial motion to transfer without prejudice and directing the parties to exchange initial disclosures under Federal Rule of Civil Procedure ("Rule") 26(a)(1).[4]

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[4] The parties exchanged initial disclosures on February 26, 2016. The United States complied with the Rules, including the requirement to identify potential witnesses by name. *See generally* Gov't Init. Disclosures, Opp. Ex. 4. Quicken Loans did not identify by name a single HUD or FHA employee, or third party, in its initial disclosures (despite making the actions of FHA and HUD officials the centerpiece of the defense it previewed in its Preemptive Suit). *See* Def.'s Init. Disclosures at 1-3, Opp. Ex. 5; Preemptive Suit ¶¶ 66-76, Opp. Ex. 3.

In response to the United States' inquiry about Quicken Loans' disclosures, Quicken Loans has maintained that, after a reasonable inquiry into the allegations set forth in the Complaint, it is unable to identify a single HUD, FHA, or third-party witness by name that it may use to support its defenses in this action. That said, although Quicken Loans has not identified any HUD employee by name, it has (i) categorically incorporated the United States' disclosed witnesses as potential witnesses it may use, (ii) identified as a category of potential witnesses, "[t]hird parties with knowledge of relevant industry standards and experience with FHA programs," and (iii)

See Minute Orders of 1/9/2016, 2/16/2016. Recently, the parties held their pre-discovery conference pursuant to Rule 26(f) and Local Civil Rule 16.3 (*see* Joint Local Rule 16.3 Report (R.27)) and have exchanged document requests.

ARGUMENT

This Court should not transfer this action to the EDMI. Quicken Loans' unsuccessful filing of the Preemptive Suit -- which was the basis for "significant portions" Quicken Loans' initial transfer request (Minute Order of 1/19/2016) -- factors conclusively or, at the very least, heavily against transferring this action to the forum requested by Quicken Loans. Moreover, a transfer under Section 1404(a) of Title 28 is inappropriate because the United States' chosen forum, the District of Columbia, has a strong connection to this dispute, and Quicken Loans has not met its heavy burden to overcome the substantial deference afforded to the plaintiff's chosen venue.

I. QUICKEN LOANS' MOTION TO TRANSFER SHOULD BE DENIED BASED ON ITS FAILED PREEMPTIVE SUIT

It has now been judicially determined that Quicken Loans engaged in inappropriate forum shopping when it filed its preemptive lawsuit. Quicken Loans' failed action presents a reason, by itself, to deny Quicken Loans' request to transfer this action. As other courts have recognized, in such circumstances the public policy against wasteful preemptive actions warrants denying a party's subsequent request to transfer. For example, in *Newmount USA Ltd. v. American Home Assurance Co.*, Civ. A. No. 09-0033, 2009 WL 1764517, at *6 (E.D. Wash. June 21, 2009),

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disclosed "communications between Quicken Loans and HUD relevant to Quicken Loans' defenses," as potential documents it may rely upon. Def.'s Init. Disclosures at 3, Opp. Ex. 5.

The United States has informed Quicken Loans that it reserves its rights to object to the addition of any witness that is not timely disclosed in accordance with Rule 26(a)(1) and will rely on Quicken Loans' disclosures (or lack thereof) to guide discovery. *See* Email from Buffone of 3/3/2016, Opp. Ex. 6.

defendants preemptively filed a declaratory judgment action in New York state court before plaintiffs commenced their case in Washington. *Id.* at *1. Defendants then moved to dismiss or transfer plaintiffs' second-filed case on venue grounds under both the first-filed rule and Section 1404(a). *Id.* at *2. Before the court ruled on the venue issue, the New York court dismissed one of the plaintiffs from defendants' preemptive suit. *Id.*

In considering defendants' venue motion under the Section 1404(a) public factors, the *Newmount* court reasoned that "[b]y far, the most significant factor here is the public factor concerning judicial efficiency and the court's responsibility to discourage duplicative and piecemeal litigation." *Id.* at *5. The court went on to state that it could "not ignore the circumstances under which the New York declaratory judgment action was filed," finding certain claims in that action "anticipatory." It then concluded that this public interest factor weighed against defendants' venue arguments, finding:

> a system that permits a party to gain from anticipatory filing increases the burden on all courts as parties rush to file suits in their home districts rather than attempting to resolve conflict. . . . The importance of discouraging anticipatory litigation is widely recognized.

Id. at *6. Based in large part on this holding, the court denied defendants' venue motion. *Id.*

Newmount is not alone in weighing an anticipatory filing against the preemptive filer when evaluating public interests in a venue dispute.[5] Additionally, numerous other courts have noted the strong public interest in eradicating preemptive suits as forum shopping devices. *See, e.g.,*

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[5] *See, e.g., Spanx, Inc. v. Times Three Clothier, LLC*, Civ. A. No. 13-0710, 2013 WL 5636684, at *5 (N.D. Ga. Oct. 15, 2013) (where a plaintiff was the preemptive filer, "[t]he Court notes that the facts here show that [plaintiff] engaged in a preemptive filing for the purpose of securing what it perceived as a more favorable litigation forum. This was done even though [plaintiff] represented that it was interested in [defendant] considering its settlement proposal. A transfer has the natural effect of discouraging the kind of litigation advantage-taking in which [plaintiff] engaged.").

Michael Miller Fabrics, LLC v. Studio Imports Ltd., Civ. A. No. 12-3858, 2012 WL 2065294, at *6 (S.D.N.Y. Jun. 7, 2012) ("allowing anticipatory filers to secure the benefit of a chosen venue would discourage parties from attempting to resolve their disputes without resorting to litigation"); *Research Automation, Inc. v. Schrader-Bridgeport Int'l, Inc.,* 626 F.3d 973, 980 (7th Cir. 2010) ("This type of [preemptive strike] behavior only exacerbates the risk of wasteful litigation."); *EEOC v. Univ. of Pa.*, 850 F.2d 969, 978 (3d Cir. 1988) (true defendant's race to the courthouse "created a lamentable spectacle, which was tantamount to the blowing of a starter's whistle in a foot race").

Additionally, Quicken Loans' actions have already caused unreasonable delay and expense. At Quicken Loans' request, and faced with competing lawsuits, this Court stayed this action. As a result, Quicken Loans is scheduled to file a response to the United States complaint almost a year after the date contemplated by the Rules, and the parties' Rule 26(f) conference occurred six months after the contemplated date.

In sum, the Court should not reward Quicken Loans' filing of a meritless preemptive suit by granting it its favored forum when this district is an appropriate forum for the case to proceed. At a minimum, as discussed below, as a result of Quicken Loans' failed Preemptive Suit, this court should give no weight to Quicken Loans' requested forum in its balancing of the applicable Section 1404(a) factors.

II. THE GOVERNMENT'S LAWSUIT IS PROPERLY FILED IN THIS DISTRICT UNDER SECTION 1404(A)

The United States chose to bring this action in this district because of its strong connection to the nationwide misconduct perpetrated by Quicken Loans on the American taxpayers. This district has a strong connection to this case and the United States' choice of forum should be

honored. Quicken Loans' arguments in support of its request to transfer this suit to the EDMI rest on flawed logic and demonstrably inaccurate facts, and run contrary to the law.

On a motion to transfer under Section 1404(a), "[t]he moving party '[b]ears a heavy burden of establishing that plaintiffs' choice of forum is inappropriate.'" *Thayer / Patricof*, 196 F. Supp. 2d at 31 (quoting *Pain v. United Tech. Corp.*, 637 F.2d 775, 784 (D.C. Cir. 1980)); *see also Shapiro, Lifschitz & Schram, P.C. v. Hazard*, 24 F. Supp. 2d 66, 71 (D.D.C. 1998) (Harris, J.) (denying motion to transfer under § 1404, noting "[p]laintiff's choice of forum is due substantial deference" and "defendants have the heavy burden of establishing that plaintiff's choice of forum is inappropriate"). This is because "[t]he plaintiff's choice of a forum is 'a paramount consideration' in any determination of a transfer request." *Thayer / Patricof*, 196 F. Supp. 2d at 31 (quoting *Sheraton Operating Corp. v. Just Corporate Travel*, 984 F. Supp. 22, 25 (D.D.C. 1997) (denying motion to transfer under § 1404(a))). As the D.C. Circuit has put it, "[i]t is almost a truism that a plaintiff's choice of a forum will rarely be disturbed . . . unless the balance of convenience is strongly in favor of the defendant." *Gross v. Owen*, 221 F.2d 94, 95 (D.C. Cir. 1955) (quoted in *Bederson v. United States*, 756 F. Supp. 2d 38, 50 (D.D.C. 2010) (Kollar-Kotelly, J.) (denying motion to transfer under § 1404(a)).

This is especially so when a plaintiff's chosen forum has a "meaningful connection" to the controversy. *United States v. H&R Block, Inc.*, 789 F. Supp. 2d 74, 78-79 (D.D.C. 2011) (Howell, J.). In such circumstances, defendant's "weighty burden" to overcome the deference due to plaintiff's choice is a difficult one to meet. *Id.* (defendant failed to overcome deference due to United States' chosen forum when controversy had a "meaningful connection" to this district even though the convenience of the parties and witnesses weighed in favor of transfer and other factors were neutral); *United States ex rel. Westrick v. 2d Chance Body Armor, Inc.*, 771 F. Supp. 2d 42,

47 (D.D.C. 2011) (Roberts, C.J.) (in FCA case, denying motion to transfer to Michigan under § 1404(a), noting "[s]ince millions of dollars in allegedly false claims were submitted in the District of Columbia, this district has a significant interest in providing a forum for these allegations of fraud.").

Courts defer to a plaintiff's choice of forum because "the main purpose of section 1404(a) is to afford defendants protection where maintenance of the action in the plaintiff's choice of forum will make litigation *oppressively* expensive, inconvenient, difficult or harassing to defend." *Oceana v. Bureau of Ocean Energy Mgmt.*, 962 F. Supp. 2d 70, 73 (D.D.C. 2013) (Contreras, J.) (denying motion to transfer under § 1404(a)) (quoting *Starnes v. McGuire*, 512 F.2d 918, 927 (D.C. Cir. 1974) (*en banc*) (emphasis added)). Accordingly, it is not sufficient for the defendant to show the defendant's forum is more convenient to the defendant as "merely shifting the inconvenience from one party to the other is not a sufficient reason to transfer." *Holland v. ACL Transp. Servs. LLC*, 815 F. Supp. 2d 46, 58 (D.D.C. 2011) (Bates, J.) (denying motion to transfer venue under § 1404(a)).

To overcome the strong presumption favoring a plaintiff's choice of forum, a defendant bears the burden on two showings: (i) that plaintiff "originally could have brought the action in the proposed transferee district," which is not in dispute here; and (ii) "that considerations of convenience and the interest of justice weigh in favor of transfer to that district," which involves "several private- and public-interest factors." *Vasser v. McDonald*, --- F. Supp. 3d ---, 2014 WL 5581113, at *8 (D.D.C. Nov. 4, 2014) (Contreras, J.) (denying motion to transfer under § 1404(a)). "The private-interest considerations include: (1) the plaintiff's choice of forum; (2) the defendant's preferred forum; (3) the location where the claim arose; (4) the convenience of the parties; (5) the convenience of the witnesses; and (6) ease of access to sources of proof." *Id.* "The public-interest

considerations include: (1) the transferee's familiarity with the governing law; (2) the relative congestion of the courts of the transferor and potential transferee; and (3) the local interest in deciding local controversies at home." *Id.* At bottom, however, "the Court may not transfer a case 'from a plaintiff's chosen forum simply because another forum, in the court's view, may be superior to that chosen by the plaintiff." *Shapiro, Lifschitz*, 24 F. Supp. 2d at 70 (quoting *Pain v. United Techs. Corp.*, 637 F.2d 775, 783 (D.C. Cir. 1980), *overruled in part on other grounds by Piper Aircraft*, 454 U.S. at 241).

Here, Quicken Loans has failed to meet its burden to overcome the strong deference to the United States' chosen forum. Indeed, the District of Columbia has strong ties to this case, this district is convenient to many of the witnesses, and no other factor favors transferring this action to the EDMI.

A. First Private Interest Factor: The United States' Choice of Forum is Entitled to Deference Because the Forum Has a Strong Connection to This Case.

This is not a case where a federal agency is tangentially involved in the underlying facts or where the involvement of officials in the District of Columbia merely consists of ultimate responsibility for the relevant agencies. The United States chose this forum because this district has a strong connection to the facts and witnesses in this case. The intimate involvement of FHA and HUD employees and officials in this district and the convenience of this forum to the parties guided the United States' decision to file here.

1. This Dispute Focuses on Quicken Loans' Interactions with HUD and FHA Officials Located in this District.

This case centers on Quicken Loans' continuous contacts with individuals in this district. Quicken Loans' misconduct involved homeowners and HUD officials all across the nation, but this case focuses on false statements and claims made by Quicken Loans and received by FHA and HUD officials in the District of Columbia, giving this district a strong connection to the

parties' dispute. The District of Columbia's connection with this suit pervades the insurance participation, underwriting, endorsement, and claim payment processes. It also has a strong connection to the policies and requirements of those processes, which authorities Quicken Loans knowingly ignored in improperly underwriting and endorsing its loans for FHA insurance.

a. Quicken Loans Applied to FHA and HUD Officials in this District to Become A DE Lender and Annually Certified its Compliance to Those Officials in this District, Which Are Issues In This Case.

In this action, the United States contends that Quicken Loans made false certifications in its initial application to become a participant in HUD's Direct Endorsement ("DE") and Lender Insurance ("LI") programs[6] and in annual certifications of its compliance with FHA program rules, which were required for it to endorse mortgages for FHA insurance and bind HUD to pay claims in the event of a default. Compl. at 28-56. Quicken Loans made these false certifications to FHA and HUD officials located in the District of Columbia and received authorization from those same officials to approve and confer FHA insurance on its mortgages. Compl. ¶¶ 21-22, 85, 103-06.

Specifically, before September 2009, lenders (such as Quicken Loans) mailed their certifications on a paper "V-Form" to HUD headquarters in the District of Columbia. *See* Mortgagee Letter 2009-25, Opp. Ex. 7 (noting change from paper mail to online process); FHA Connection Lender Approval Guide of 7/2004 at 2, Opp. Ex. 8 (explaining prior process, directing lenders to "[s]ubmit the signed form to HUD Headquarters for annual recertification"). After September 2009, lenders submitted their annual certifications online to HUD headquarters in the District of Columbia through FHA Connection, a system managed and administered by FHA staff

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[6] As noted in the Complaint, the DE program allows a lender to underwrite FHA-insured mortgage loans on HUD's behalf. The LI program allows a lender to endorse and pledge FHA insurance to a mortgage loan without any pre-lending involvement of HUD except the submission of the endorsement to HUD through its information systems. Compl. ¶¶ 38-40.

in this district. *See* Mortgagee Letter 2009-25, Opp. Ex. 7; HUD Major Info. Sys. List at 17, Opp. Ex. 9 (managed and administered by the Office of Single Family Program Development); Parshall Decl. ¶ 10, Opp. Ex. 10 (Office of Single Family Program Development is located in Washington, D.C.). Lenders were later required to submit annual certifications to HUD headquarters through Lender Electronic Assessment Portal or "LEAP" after May 27, 2014. Mortgagee Letter 2014-09, Opp. Ex. 11. LEAP is managed and administered by FHA staff in the District of Columbia. *See* LEAP System of Records Notice at 1, 6, Opp. Ex. 12.

The United States intends to introduce evidence at trial concerning the importance of these certifications to HUD and FHA staff located in the District of Columbia and how Quicken Loans' falsities therein allowed Quicken Loans to continue to endorse improperly loans for FHA insurance. The United States' presentation in this regard will focus on HUD and FHA information located in this district. *See, e.g.,* Gov't Init. Disclosures at 4, Opp. Ex. 4 (disclosing Elissa Saunders as witness); Dupré Decl. ¶ 5, Opp. Ex. 13 (identifying Saunders as head of Office of Single Family Program Development). Quicken Loans has likewise sought discovery from HUD and FHA relating to these materials, which are principally in the control of officials in the District of Columbia. *See, e.g.,* Def.'s 1st RFPs ¶¶ 14-16, Opp. Ex. 14 (requesting documents relating to applications and annual recertifications).

b. Quicken Loans Submitted Loan Level Certifications to HUD Officials in this District Through Systems Administered By Such Officials.

Also, in connection with obtaining FHA endorsement of loans, Quicken Loans submitted loan-level certifications that each FHA loan it underwrote complied with applicable program rules and underwriting guidelines. Compl. ¶¶ 87-89, 125-26, 139-42, 149-50, 173-74. These certifications were false. Compl. at 28-56. Each of the endorsements containing these certifications was submitted through systems administered by FHA staff in this district (Compl.

¶ 23), including the Single Family Computerized Homes Underwriting Management System (or "CHUMS"), which is administered and managed by HUD's Home Mortgage Insurance Division,[7] and FHA Connection, which is administered and managed by HUD's Office of Lender Activities and Program Compliance.[8] *See* HUD Lender Insurance ("LI") Guide at 28-34, Opp. Ex. 15 (describing steps to submit FHA certifications for loans made by LI Lenders); CHUMS System of Records Notice at 1-2, Opp. Ex. 16 (system used for FHA endorsement and insurance administered by FHA staff in Washington, D.C.); Dupré Decl. ¶ 6.d, Opp. Ex. 13 (describing FHA Connection). The United States intends to introduce at trial evidence concerning the importance of these certifications to HUD and FHA staff located in the District of Columbia and how Quicken Loans' falsities therein were material to decisions to pay FHA insurance. Quicken Loans has also already sought discovery relating to this topic in its first request for the production of documents. *See, e.g.,* Def.'s 1st RFPs ¶ 18, Opp. Ex. 14 (requesting documents relating to loan-level certifications).

c. Payments on Loans Improperly Insured By Quicken Loans Were Processed Through Systems Administered By Officials in this District.

When borrowers default on HUD endorsed loans, claims for FHA insurance are submitted to and either processed by FHA staff in the District of Columbia or electronic systems administered by FHA staff in the District of Columbia. Compl. ¶¶ 24, 92-95; Dupré Decl. ¶¶ 9-11, Opp. Ex. 13.

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[7] The Home Mortgage Insurance Division is led by Kevin Stevens, who is located in Washington, D.C. Dupré Decl. ¶ 5.b, Opp. Ex. 13. Stevens has been designated by the United States in its Initial Disclosures as a potential witness. *See* Gov't Init. Disclosures at 4, Opp. Ex. 4.

[8] The Office of Lender Activities and Program Compliance is led by Joy Hadley, who works in the District of Columbia. Dupré Decl. ¶ 6, Opp. Ex. 13. Hadley has been designated by the United States in its Initial Disclosures as a potential witness. *See* Gov't Init. Disclosures at 3, Opp. Ex. 4

Specifically, claims for FHA insurance are submitted through FHA Connection or HUD's Electronic Data Interchange. The former is administered by Joy Hadley (who works in D.C.) and the latter by Susan Betts (who also works in D.C.). Dupré Decl. ¶¶ 6.d, 11, Opp. Ex. 13. After receipt of an insurance claim, HUD's Single Family Post Insurance Division, a component of the Office of Financial Services located in Washington, D.C., manages the Claims Subsystem ("A43C" or "CLAIMS") of the Single Family Insurance System, the system used to process FHA insurance claims automatically. *See* CLAIMS/A43C System of Records Notice at 1, 6, Opp. Ex. 17 (system used to process FHA insurance claims administered in Washington, D.C.).

At trial the United States intends to offer evidence concerning the methods HUD and FHA employ to review and pay claims for insurance, including claims for insurance on the loans that Quicken Loans improperly underwrote and endorsed for FHA insurance. As such, the United States has designated the head of the Office of Financial Services (Kathleen Malone), who also serves as the administrator of CLAIMS, as a potential witness in this action. *See* Dupré Decl. ¶ 9, Opp. Ex. 13 (identifying Kathleen Malone as the Director of the Office of Financial Services); Gov't Init. Disclosures at 4, Opp. Ex. 4. Quicken Loans has already sought discovery of insurance claim information in this action. *See, e.g.,* Def.'s 1st RFPs ¶ 8, Opp. Ex. 13 (requesting documents concerning FHA insurance claims).

FHA and HUD staff in Washington, D.C., performed and oversaw multiple other aspects of the claims payment system for defaulted FHA loans. For example, insurance claims are sometimes suspended and reviewed for compliance. Dupré Decl. ¶ 9.b, Opp. Ex. 13. Decisions to suspend claims are made in this district. *Id.* HUD staff in D.C. conduct the subsequent review of a suspended claim. *Id.* And HUD officials in the District of Columbia ultimately determine whether to pay a suspended claim. *Id.* Further, HUD staff in this district are intimately involved

in processing specific types of claims, including conveyance claims and accelerated claim disposition claims. *Id.* ¶ 10. Lastly, HUD staff in this district are responsible for overseeing and handling administrative enforcement actions against non-compliant lenders. Dupré Decl. ¶ 6.b, Opp. Ex. 13 (discussing responsibilities of Mortgagee Review Board staff in Washington, D.C.).

d. The Policies and Requirements for Participating in the DE and LI Programs and for Underwriting and Endorsing Loans for FHA Insurance Are Generated and Reviewed by HUD Officials In This District.

The United States also intends to offer evidence at trial regarding the requirements for, and authorities governing, (i) being a DE and LI program participant; (ii) underwriting a borrower's eligibility for, and ability to repay an FHA-insured mortgage loan (including automated underwriting systems ("AUS") and the TOTAL Mortgage Scorecard); (iii) underwriting collateral for an FHA-insured mortgage loan, including the handling and review of appraisals; and (iv) a lender's quality control system (including self-reports and the provision of information to lenders). The evidence on these topics is predominantly located in the District of Columbia, and Quicken Loans has noted its relevance by already requesting information on these topics in its first document requests. For example:

- The Lender Approval and Recertification Division, a component of HUD's Office of Lender Activities and Program Compliance, is located in the District of Columbia and is led by Volky Garcia, who works in Washington, D.C., and was disclosed by the United States as a potential witness. *See* Dupré Decl. ¶ 6.c, Opp. Ex. 13; Gov't Init. Disclosures at 3, Opp. Ex. 4. That division is responsible for reviewing applications and recertifications to participate in FHA's lending programs. Dupré Decl. ¶ 6.c, Opp. Ex. 13. Quicken Loans has already sought

discovery on that division's materials. Def.'s 1st RFPs ¶¶ 14-16, Opp. Ex. 14 (requesting documents relating to applications and annual recertifications).

- HUD's Office of Policy, Development, and Research is located in the District of Columbia. *See* Dupré Decl. ¶ 7, Opp. Ex. 13. That office is responsible for administering and maintaining the TOTAL Mortgage Scorecard, a HUD developed AUS component, which lenders use to assess a borrower's creditworthiness for an FHA loan. Dupré Decl. ¶ 7, Opp. Ex. 13. William Reeder, the Director of PDR's Housing Finance Analysis Division, is the HUD official responsible for TOTAL. *Id.* Reeder works in Washington, D.C. and Quicken Loans has already sought discovery on his office's materials. Def.'s 1st RFPs ¶ 17, Opp. Ex. 14 (requesting TOTAL related documents); Dupré Decl. ¶ 7, Opp. Ex. 13.
- HUD's Home Valuation Policy Division, a component of the Office of Single Family Housing Program Development, is located in Washington, D.C., and all of its staff (including its director, Cheryl Walker), are located in this district. Dupré Decl. ¶ 5.a, Opp. Ex. 13. That division is responsible for establishing and drafting the rules and requirements that apply to Appraisals used in the endorsement of FHA insured mortgages. *Id.* Quicken Loans has already sought discovery on that division's materials, despite the request to stay discovery on appraisal-related issues. Def.'s 1st RFPs ¶ 34, Opp. Ex. 14.
- As noted above, HUD's Home Mortgage Insurance Division, a component of the Office of Single Family Housing Program Development, is located in Washington, D.C., and led by Kevin Stevens, who works in this district. Dupré Decl. ¶ 5.b, Opp. Ex. 13. Among its other responsibilities, that division is responsible for

establishing and drafting the credit policies and underwriting requirements for FHA insured mortgages. *Id.* Quicken Loans has already sought discovery on that division's materials. Def.'s 1st RFPs ¶¶ 22, 37, 43, 54, Opp. Ex. 14.

- HUD's Quality Assurance Division ("QAD"), a component of the Office of Lender Activities and Program Compliance, is directed by Justin Burch and led by other employees, all of whom work in the District of Columbia. Dupré Decl. ¶ 6.a, Opp. Ex. 13. QAD reviews program participants, including Quicken Loans, for compliance with program requirements. *Id.* QAD employees located in the District of Columbia identify lenders for review, identify loans for review, and oversee the reviews performed by staff located throughout the United States. *Id.* QAD staff in this district also establishes and drafts the rules and requirements concerning FHA approved lenders' quality control practices and programs. *Id.* Quicken Loans has already sought discovery on QAD's materials. Def.'s 1st RFPs ¶¶ 44-46, Opp. Ex. 14.

- In addition to its other responsibilities, HUD's Office of Lender Activities and Program Compliance, led by Washington, D.C.-based Joy Hadley, is also responsible for administering HUD's Neighborhood Watch Early Warning System, an online data system that provides certain information to lenders, including compare ratio information. Dupré Decl. ¶ 6.e, Opp. Ex. 13. Quicken Loans has already sought discovery on this system and compare ratio materials. Def.'s 1st RFPs ¶ 49, Opp. Ex. 14.

- HUD's Office of Financial Services, which is located in the District of Columbia and led by Kathleen Malone who works there, establishes the procedures for paying

claims for FHA mortgage insurance. Dupré Decl. ¶ 9, Opp. Ex. 13. Quicken Loans has already sought discovery on this topic. Def.'s 1st RFPs ¶ 8, Opp. Ex. 14.

2. Quicken Loans' Early Discovery Efforts and Stated Defenses Support the Strong Connection of this District to this Case.

Quicken Loans' case will also focus on information and witnesses in this district. As discussed above, Quicken Loans' early document requests in this action make clear that Quicken Loans will seek discovery of large amounts of information maintained in this district. *See supra* at 11-19. Moreover, Quicken Loans' Initial Disclosures and statements concerning its anticipated defenses also provide a link between this suit and this district, notwithstanding Quicken Loans' failure to identify a single witness by name other than its own employees. *See supra* at 5-6 n.4.

For example, although Quicken Loans did not identify any specific HUD employees, Quicken Loans categorically identified HUD employees and the fact witnesses the United States may use to support its allegations as witnesses it may use to support its defenses. Def.'s Init. Disclosures at 2-3, Opp. Ex. 5. As noted above, the HUD employees and fact witnesses the United States intends to use at trial predominately reside in the District of Columbia. *See supra* at 11-19. Indeed, the United States disclosed 25 witnesses that it may use to support its claims in this action. Gov't Init. Disclosures at 3-4, Opp. Ex. 4. By incorporating the United States' list in its disclosures, Quicken Loans has conceded this suit's connection with this district. Def.'s Init. Disclosures at 3, Opp. Ex. 5 (identifying as witnesses it may use to support its defenses, "[a]ll other fact or expert witnesses that the government intends to use to support the allegations in the Complaint, and other fact or expert witnesses relevant to the government's allegations or Quicken Loans' defenses in this lawsuit."); *see also* Open. Br. at 17 (Quicken Loans admitting: "Of course, some government employees with potentially relevant evidence may be located in D.C.").

Further, in the parties Rule 26(f) conference, Quicken Loans requested to increase the number of depositions to the 45 individual fact depositions proposed in the parties Joint Report, presumably to take numerous depositions of HUD officials in the District of Columbia. 2d Reimer Decl. ¶ 6, Opp. Ex. 18. Indeed, in testimony taken during the investigation, Quicken Loans identified contacts with numerous HUD officials located in the District of Columbia, whom it will presumably seek depose. For example, Ms. Bobbi MacPherson, Quicken Loans' FHA Product Manager, testified that her work on FHA loans for Quicken Loans regularly required her to talk with then-current HUD officials including Genger Charles, Karin Hill, Arlene Nunes, Joy Hadley, and Justin Burch, all of whom work (or worked) in the District of Columbia at HUD headquarters. MacPherson Tr. at 91-93, 107-08, Opp. Ex. 19; Parshall Decl. ¶¶ 18-24, Opp. Ex. 10.

The expectation that the majority of testimony will occur in this district is reinforced by the United States' experiences in other similar cases. For example, discovery in *United States v. Wells Fargo*, Civ. A. No. 12-7527 (S.D.N.Y.) -- an FCA suit related to underwriting and origination of loans insured by FHA -- had twenty-four (24) of thirty-one (31) depositions of FHA witnesses occur in the District of Columbia. 1st Reimer Decl. ¶ 14, Opp. Ex. 1.[9]

Lastly, Quicken Loans' Preemptive Suit revealed that its defenses in this case will focus on the activities of FHA and HUD personnel located in the District of Columbia. That suit showed that Quicken Loans disagrees with decisions made by HUD and FHA officials regarding the processes and criteria used for assessing a loan's compliance with applicable rules and regulations. Preemptive Suit ¶¶ 58-76, 89-94, Opp. Ex. 3. For example, Quicken Loans' Preemptive Suit

[9] Witnesses traveled to the District of Columbia from other locations for nine of the depositions as this District was the most convenient location for the parties. 1st Reimer Decl. ¶ 14, Opp. Ex. 1. Fourteen witnesses lived in the Washington, D.C., area. *Id.* Two witnesses testified twice as both an individual and an FHA representative for a Rule 30(b)(6) deposition. *Id.*

specifically identifies a Federal Register notice published by HUD's Office of the Assistant Secretary for Housing -- Federal Housing Commissioner (located in Washington, D.C.) soliciting comments on means to "improve the efficiency and effectiveness of FHA's quality assurance process" and directing comments to be submitted to HUD in this District. *See* 78 Fed. Reg. 41075-01 (Jul. 9, 2013). Quicken Loans thus argued in its Preemptive Suit that this case centers on the actions of HUD and FHA officials located in this District, but now unconvincingly argues here that this case has no connection to this District.

3. This District is A Convenient Venue for Other Potential Witnesses.

In addition to the specific witnesses set forth above that are located in Washington, D.C., this venue convenient to other witnesses. Quicken Loans is correct in its motion that individual loans are overseen by the four Homeownership Centers located in Philadelphia, Atlanta, Denver, and Santa Ana. Open. Br. at 14. As a national lender, Quicken Loans has significant loans overseen by all four of the homeownership centers. Significantly, however, none of those four homeownership centers are located near Detroit. Moreover, this District is geographically proximate to the Philadelphia Homeownership Center, which is the Homeownership Center responsible for Quicken Loans' principal lending region (*see infra* at 29 (heatmap)), making travel to this District by witnesses from Philadelphia more convenient than travel to the EDMI. *See* Google Maps, http://maps.google.com (Last visited May 12, 2015) (the District is 139 miles from Philadelphia; Detroit is 584 miles from Philadelphia). Additionally, Homeownership Center staff routinely travel to this district for business. Dupré Decl. ¶ 8, Opp. Ex. 13. The geographical convenience to this Homeownership Center combined with the obvious convenience to HUD and FHA headquarters staff makes this District a more convenient venue for potential witnesses in this case.

At bottom, the United States has alleged direct involvement by HUD and FHA officials in the processes in which Quicken Loans made its false statements and claims. Courts have found these kinds of connections with this district to justify the reasonable choice of venue in this district, and to warrant deference to that choice of venue. *See 2d Chance Body Armor*, 771 F. Supp. 2d at 47; *H&R Block*, 789 F. Supp. 2d at 79-80. Accordingly, this district, plaintiff's choice of forum, has a strong connection to this case. *Cf. Greater Yellowstone Coal. v. Bosworth*, 180 F. Supp. 2d 124, 128-29 (D.D.C. 2001) (Urbina, J.) (denying motion to transfer under § 1440(a) when plaintiff alleged that agency officials in the district were involved in decision making processes); *Oceana, Inc. v Pritzker*, --- F. Supp. 2d ---, 2013 WL 5801755, at *4 (D.D.C. Oct. 28, 2013) (Boasberg, J.) (denying motion to transfer under § 1404(a), concluding "This case, instead, involves a decision made at the headquarters of a federal agency with overwhelmingly regional -- and perhaps even national -- effects. Plaintiff's choice of forum thus deserves substantial deference and counsels against transfer.").

4. Quicken Loans' Arguments to the Contrary Are Misplaced.

Notwithstanding the foregoing considerations, Quicken Loans contends that the United States' choice of this venue is entitled to no deference. Quicken Loans is wrong.

First, Quicken Loans asks this Court to ignore HUD's and FHA's strong connection here by insisting that they are not parties to this suit, arguing that the United States is the only plaintiff. Open. Br. at 8. This is semantical gamesmanship. The United States brings this action to remedy the wrong perpetrated on one of its agencies, HUD, which is located in the District of Columbia. Compl. ¶ 1. Quicken Loans has acknowledged as much by serving Rule 34 document requests without a subpoena on the United States seeking the records of HUD and its component FHA. *See generally* Def.'s 1st RFPs at 3, Opp. Ex. 14. This is for a good reason; all of the United States'

documents and witnesses relevant to this case are maintained by HUD and its components, and as set forth above, that information is predominantly located in this district.[10]

Second, Quicken Loans argues that an agency's headquarters being located in the District of Columbia carries no weight in the choice of forum analysis. Open. Br. at 8-9. But Quicken Loans fails to appreciate that it is not HUD's headquarters but rather the involvement of HUD officials in this district that drove the United States to file here. The information maintained and decisions made by HUD officials in Washington, D.C. is what gives this case a strong connection to this district and what entitles the United States' chosen forum to appropriate deference. *See, e.g., Greater Yellowstone*, 180 F. Supp. 2d at 128-29 (denying motion to transfer where Government officials located in D.C. were involved in the underlying events).[11]

Third, Quicken Loans paints a misleading picture that the EDMI has a stronger connection to this case by using cherry-picked statistics and arguing that it insured more loans in the entire State of Michigan versus the relatively modest geographic boundaries of the Nation's Capital. Open. Br. at 10. Even assuming the number of loans is a more appropriate, much less decisive metric, than the location of witnesses, a more relevant comparison would be the number of FHA

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[10] Further, while the United States is not considered a resident of any state for certain legal purposes, it is well settled that the United States, the seat of the nation's government, lies here in the District of Columbia. 4 U.S.C. § 71 ("All that part of the territory of the United States included within the present limits of the District of Columbia shall be the permanent seat of government of the United States."); 4 U.S.C. § 72 ("All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law."). Consequently, while the United States may be no more a resident of New York than California (Open. Br. at 8 n.6), it is a resident of D.C. as a matter of law.

[11] Also, the principal case relied upon by Quicken Loans in this regard, *FHFA v. 1st Tenn. Bank N.A.*, 856 F. Supp. 2d 186, 192 (D.D.C. 2012) (Walton, J.), concerns an agency that unlike HUD and FHA, does not insure mortgage loans itself but instead regulates certain government sponsored entities and Federal Home Loan Banks, minimizing its connection to the facts underlying the cited case.

loans originated within 200 miles of D.C. and Detroit, respectively. Viewed from this perspective, even using the number of loans reveals that this district has a substantial connection to the loans endorsed by Quicken Loans for FHA insurance and that are at issue in this action:

City	Total Loans Originated within 200 miles	Total Loan Value Originated within 200 miles	Total Loans Resulting in Claims within 200 miles	Total Value of Claims within 200 miles
D.C.	13,417	$2,810,461,550	448	$93,441,906
Detroit	12,325	$1,576,256,368	559	$64,913,130

2d Reimer Decl. ¶ 8, Opp. Ex. 18

Fourth, Quicken Loans argues that this district lacks a connection to this case because all of the individuals named in the United States' Complaint are located in Detroit. Open. Br. at 14. The purpose of a complaint, especially one alleging fraud, is to provide particular notice to the defendant of what it did wrong -- not what evidence the plaintiff has in its own possession that it will use to present its claims at trial. *Cf. Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (Rule 8(a)(2) "requires only a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests[.]") (internal quotation and correction marks omitted). Consequently, it is unremarkable that the Complaint focuses on Quicken Loans' fraud instead of the witnesses and evidence that the United States will use to establish the topics identified above, among others.

Finally, Quicken Loans contends that the United States' choice of this district is entitled to no weight as the United States has brought other FCA mortgage fraud cases in other districts. Open. Br. at 11. In making this argument, Quicken Loans ignores the numerous, substantial mortgage fraud cases brought by the United States in this district. For example, the largest FCA case based on FHA fraud was brought in this Court against the largest financial institutions in the

nation, *e.g.*, Bank of America, Citibank, J.P. Morgan Chase, GMAC, and Wells Fargo.[12] *See United States v. Bank of Am. Corp.*, Civ. A. No. 12-0361 (RMC) (D.D.C.). In that case, as here, the United States asserted FCA claims based on the following allegation: "the Banks knowingly presented or caused to be presented to the United States false or fraudulent claims for payment or approval, including but not limited to improper claims for payment of FHA residential mortgage insurance or guarantees." *Id.* at R.1 (Compl.) ¶ 112. The United States has similarly brought suit against SunTrust Mortgage and HSBC in this district alleging FCA claims based on false claims for payment of FHA insurance. *See United States v. SunTrust Mortg., Inc.*, Civ. A. No. 14-1028 (RMC) (D.D.C.); *United States v. HSBC N. Am. Holdings, Inc.*, Civ. A. No. 16-0199 (RJL) (D.D.C.).

Also, in this district the United States has recently (i) commenced another, contested, FCA action against a mortgage lender; and (ii) intervened in a contested FCA action (filed before this suit) against another mortgage lender, based on allegations that these lenders falsely certified compliance with underwriting requirements applicable to FHA loans. *See United States v. TXL Mort. Corp.*, Civ. A. No. 15-1658 (JEB) (D.D.C.); *United States ex rel. Dougherty v. Guild Mort. Co.*, 13-1913 (RBW) (D.D.C.). The notion that the United States has somehow treated this case differently by choosing this forum is plainly contradicted by the facts.[13]

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[12] Quicken Loans cites the United States' case against Wells Fargo in the Southern District of New York as an example of the United States bringing mortgage fraud cases against defendants in their home venues. *See* Open. Br. at 2 n.1, 11. But Wells Fargo is headquartered in San Francisco, almost 3,000 miles away from the judicial district in which the United States brought its enforcement suit. By comparison, Detroit is only some 500 miles away from the District of Columbia.

[13] Similarly, Quicken Loans' argument that the United States consented to transfer in *United States v. Allied Home Mort. Capital Corp.*, Civ. A. No. 11-5443 (VM) (S.D.N.Y.) (filed Feb. 21, 2012), is misplaced. Allied Home, like Quicken Loans, filed an APA action related to the United States' FCA suit in Allied Home's home district. *See Allied Home Mort. Corp. v. HUD*, 11-3864 (S.D. Tex.) (filed Nov. 2, 2011). The United States moved to transfer and then dismiss Allied

B. Second Private Interest Factor: Quicken Loans' Preferred Venue Should Be Afforded No Weight Due to Its Forum Shopping.

As noted above, this Court should afford no weight to Quicken Loans' chosen forum. *See supra* at 6-8. Quicken Loans engaged in improper forum shopping by filing its preemptive action. While the United States submits that this failed action should estop Quicken Loans from now seeking a transfer, at a minimum its failed suit, and the delay and inconvenience that it caused, should be treated by the court as a factor that weighs against a transfer of this action. *Cf. Palmer-Tech Servs. v. Alltech, Inc.*, Civ. A. No. 14-1005, 2014 WL 1758452, at *2 (N.D. Ill. Apr. 30, 2014) (ruling for non-preemptive party in venue dispute, noting that preemptive party's "choice of forum is entitled to little weight" in analyzing a transfer motion); *Capital Source Fin., LLC v. Ohio Venture, LLC*, Civ. A. No. 10-1789, 2010 WL 4868103, at *3 (D. Md. Nov. 23, 2010) (same); *D2L Ltd. v. Blackboard, Inc.*, 671 F. Supp. 2d 768, 779 (D. Md. 2009) (same).

C. Third Private Interest Factor: The Facts Underlying This Matter Occurred Throughout the Nation, But Quicken Loans' Fraud on the Government Was Directed to Officials in the District of Columbia.

The third private-interest consideration is "the location where the claim arose." *Vasser*, 2014 WL 5581113, at *8. This inquiry focuses on where "the most significant events giving rise to the claims" occurred. *FTC v. Graco Inc.*, Civ. A. No. 11-2239 (RLW), 2012 WL 3584683, at *5 (D.D.C. Jan. 26, 2012). Although the events in this case occurred throughout the country, the most significant events occurred here -- namely, false statements made by Quicken Loans to HUD and FHA personnel in the District of Columbia. As such, this factor also weighs against a transfer.

Home's APA action. *Id.* at R.12, 56. Only after the United States' motions were denied (*id.* at R.65 (Memo. & Order of 8/8/2012)) did the United States consent to consolidating the actions. *Allied Home*, Civ. A. No. 11-5443 (VM) (S.D.N.Y.) at R.30 (Mot. to Transfer of 8/14/2012).

As noted above, Quicken Loans' false statements and claims were made to FHA and HUD through officials, including officials maintaining information systems, located in this district. The Quicken Loans executives overseeing its FHA business regularly transacted business with HUD and FHA officials located in the District of Columbia. Notably, Quicken Loans identifies no particular actions taken by Government officials relevant to this dispute in the EDMI. Consequently, if anything, this factor favors the United States' selection of venue.

D. Fourth and Fifth Private Interest Factors: The District of Columbia is a Convenient Forum for the Parties and Witnesses.

Quicken Loans argues that transfer is warranted because nearly all of its executives and officers are located in Detroit, and, thus, the District of Columbia is not a convenient forum for it or its witnesses. This argument is flawed and is an insufficient basis for transferring this action. Indeed, as noted above, this district has a strong connection to this case and is the most convenient forum for the United States.[14]

1. Quicken Loans Ignores the Convenience of This Forum For the United States' Witnesses.

As discussed above, the United States' witnesses are nearly all located in Washington, D.C. The United States acknowledges that there are witnesses located in EDMI, and in other districts around the country such as Atlanta, Philadelphia, Santa Ana, and Denver. Quicken Loans' own declarations confirm that its FHA underwriters are now found across the nation. But the diverse locations of potential witnesses does not make EDMI any more convenient than this district and certainly does not overcome the paramount deference afforded to the United States' chosen forum

[14] Quicken Loans notes that the U.S. Attorney's Office for the District of Colorado participated in the investigation of this matter. Open. Br. at 14 n.14. The United States' investigation, however, was led by attorneys in the Fraud Section of the Commercial Litigation Branch of the Department of Justice located in this district. 1st Reimer Decl. ¶ 3, Opp. Ex. 1.

given the significant involvement of witnesses in and around this district. Consequently, by seeking a transfer, Quicken Loans merely seeks to shift burdens of travel away from Quicken Loans itself and onto the United States. Courts have routinely rejected this rationale as a basis for transfer. *See 2d Chance Body Armor*, 771 F. Supp. 2d at 48 ("litigating in the transferee district must not merely shift inconvenience to the plaintiffs, but rather should lead to an overall increase in convenience for the parties"); *Nat'l Shopmen Pension Fund v. Stamford Iron & Steel Works, Inc.*, 999 F. Supp. 2d 229, 233-34 (D.D.C. 2013) (Kollar-Kotelly, J.) (denying transfer under § 1404(a), "appears that transferring this action to the District of Connecticut would merely shift the balance of inconvenience from [defendant] to the Plaintiffs . . . such a shift is insufficient to warrant a transfer to the defendant's favored venue.").[15]

2. Quicken Loans Ignores Its Own Connections to the District of Columbia.

Quicken Loans also ignores its own connections to the Washington, D.C., metropolitan area in seeking a transfer. For example, the counsel who represented Quicken Loans during the United States' investigation of this matter (and who continue to represent Quicken Loans in this action) are located here. 1st Reimer Decl. ¶ 8, Opp. Ex. 1. Also, as noted above, a greater number of FHA loans were originated in and around the D.C. area than the Detroit area. *Supra* at 24. In addition, a "heat map" showing the relative concentration of Quicken Loans' FHA-insured loans

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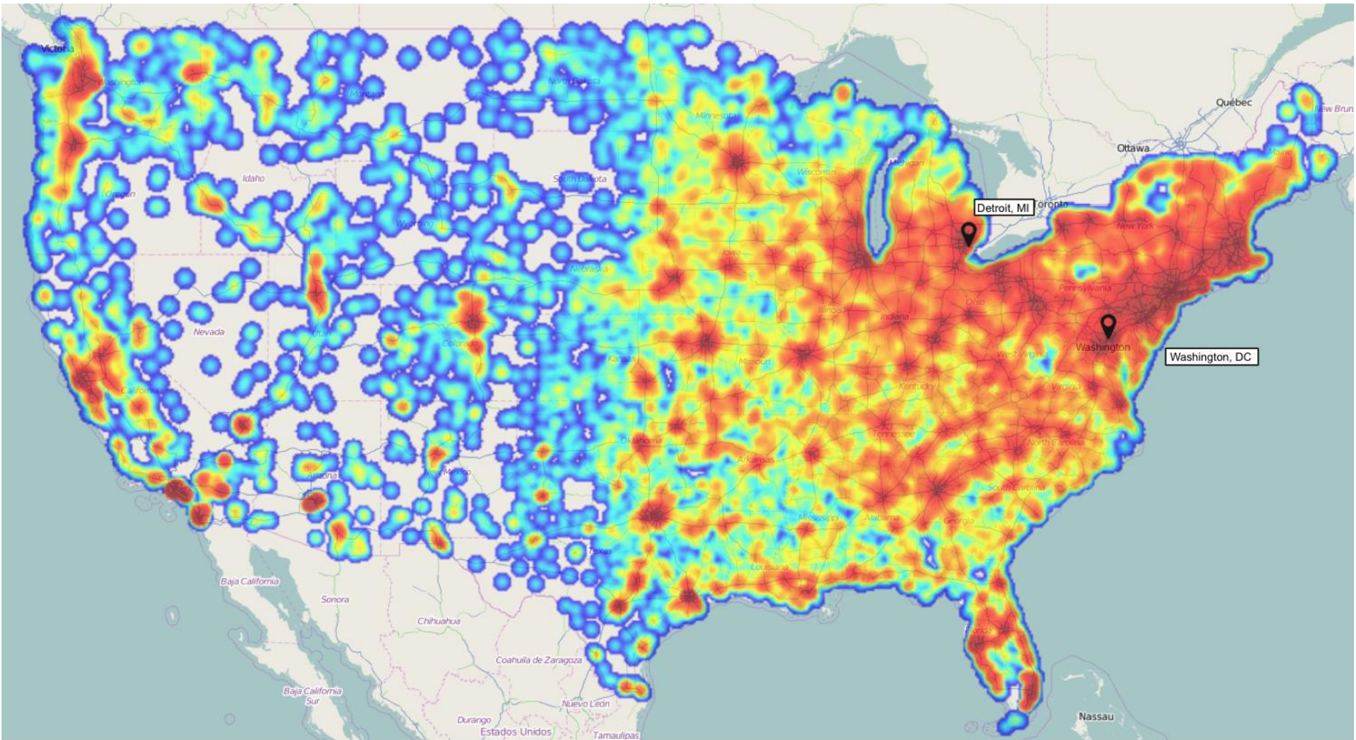
[15] Quicken Loans suggests that the "United States can readily litigate this action in Detroit." Open. Br. at 15. This is not the relevant question here. Rather, Quicken Loans bears the burden to show that its chosen forum is substantially more convenient such that the Court should override the paramount consideration in the venue analysis -- the plaintiff's chosen forum. *Supra* at 8-11. Even were this the question, Quicken Loans does not explain (because it cannot) how it, as a nationwide company with its primary litigation firm located in Washington, D.C., cannot readily litigate this action in this district.

across the nation plainly reveals the District of Columbia to fall squarely in Quicken Loans' principal lending region:



1st Reimer Decl. ¶ 15, Opp. Ex. 1.

Quicken Loans' executives also routinely travel to the District of Columbia on Quicken Loans business, with Quicken Loans' CEO, Bill Emerson, and other Quicken Loans executives attending numerous conferences and meetings, and providing Congressional testimony. News Articles re: Conferences & Congressional Testimony, Opp. Ex. 20 (noting Emerson's travel to D.C.); Email of 4/27/2011, Opp. Ex. 21 (noting MacPherson's travel to D.C.). Additionally, Quicken Loans sponsors one of the area's largest sports tournaments, which its executives routinely attend. *See* News Article re: Quicken Loans National at Congressional Country Club, Opp. Ex. 22.[16] The extent of Quicken Loans' connections to this district diminishes the force of

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[16] Quicken Loans mistakes the importance of its executives' frequent travel to this region. Open. Br. at 2. The United States does not contend that this frequent travel somehow connects this district to the events underlying the Government's claims. Rather, because Quicken Loans'

its contention that this district is inconvenient to Quicken Loans. *See, e.g., Harrison v. Illinois Cent. R. Co.*, Civ. A. No. 08-0748, 2008 WL 6154521, at *2 (S.D. Ill. May 28, 2008) (denying motion to transfer under § 1404(a) in part because defendant routinely traveled to plaintiff's chosen forum); *Couvrette v. Couvrette*, Civ. A. No. 12-2771, 2013 WL 2898531, at *4 (S.D. Cal. Jun. 13, 2013) (same); *Davenport v. Hansaworld USA*, Civ. A. No. 12-0233, 2013 WL 5406900, at *7 (S.D. Miss. Sept. 25, 2013) (denying motion to transfer, "it appears that interstate and international travel are a routine part of [defendant's] business, which further militates against its convenience concerns").

3. Quicken Loans Ignores the Diverse Geographic Scope of Its Alleged Fraud.

In seeking a transfer, Quicken Loans also does not explain how the EDMI is more convenient to witnesses located outside of the EDMI and the District of Columbia. It is clear that Quicken Loans is a national company and this case will necessarily involve witnesses across the United States. Quicken Loans, however, fails to explain how the EDMI will be more convenient to these witnesses.

Quicken Loans is a national mortgage lender with a broad national reach, touting itself as "the nation's second largest retail home mortgage lender and largest FHA lender." Quicken Loans Press Release re Preemptive Suit at 2, Opp. Ex. 23. Quicken Loans has extensive lending in all fifty states and the District of Columbia. *Id.* ("The company closed $140 billion of mortgage volume across all 50 states in 2013-2014."). Quicken Loans advertises itself nationally, including through billion-dollar March Madness competitions and sports arena sponsorship outside of the

executives routinely travel to this district, they will suffer no inconvenience by having this case docketed here or traveling to this district for trial. Quicken Loans offers nothing to rebut this logical effect of its executives conducting business in this district.

Detroit area. News Articles re Sponsorships, Opp. Ex. 24. Quicken Loans calls seven different cities, spread across the United States, "home." Internet Archive of Quicken Loans Website, Locations, of Apr. 7, 2015, https://web.archive.org/web/20150407084242/http://www.quickenloanscareers.com/locations/ (last visited Feb. 29, 2016), Opp. Ex. 25.[17] The United States thus expects that it will call witnesses from across the nation, such as borrowers, appraisers, and other persons relevant to specific loans. *See, e.g.,* Compl. ¶¶ 125-26, 139-42, 149-50, 173-74 (identifying examples of loans made for properties across the country); Gov't Init. Disclosures at 1-3, Opp. Ex. 4.

4. No Witnesses Will Be Beyond the Court's Subpoena Power For Trial Due to the FCA's Provision for Nationwide Service of Trial Subpoenas.

Lastly, this Court will not face a situation where the extra-district reach of its trial subpoenas would inhibit the trial of the case, as might be true in other types of cases. In the FCA, Congress recognized that trials might involve witnesses from across the country, and it dispensed with the geographical limit on Rule 45 trial subpoenas. Specifically, Section 3731(a) of Title 31 provides that "[a] subpona [sic] requiring the attendance of a witness at a trial or hearing conducted under section 3730 of this title [the FCA] may be served at any place in the United States." 31 U.S.C. § 3731(a). Consequently, no witness will be beyond the reach of the parties to testify at trial in this action by reason of it being tried in the District of Columbia.

[17] Perhaps for strategic reasons related to the Renewed Motion, Quicken Loans recently removed the listing of its "home cities" from its website. *Compare* Internet Archive of Quicken Loans Website, Locations, of Apr. 7, 2015, Opp. Ex. 26 *with* Current Quicken Loans Website, Locations, Opp. Ex. 25.

E. Sixth Private Interest Factor: Quicken Loans' Documents Are Electronic and the District is Otherwise a Convenient Forum.

Quicken Loans argues that transfer is appropriate because "the great bulk of relevant evidence is in Detroit." Open. Br. at 28-29. Quicken Loans, however, ignores recent law that "in the context of a motion for a transfer of forum, the location of documents, given modern technology, is less important in determining the convenience of the parties." *FC Inv. Grp. LC v. Lichtenstein*, 441 F. Supp. 2d 3, 14 (D.D.C. 2006) (Collyer, J.) (denying motion to transfer under § 1404(a), quoting *Thayer/Patricof*, 196 F. Supp. 2d at 36). Indeed, electronic documents "can easily be transported to Washington . . . [and] many will be provided through discovery to [defendant's] counsel[.]" *Thayer/Patricof*, 196 F. Supp. 2d at 36.

Here, Quicken Loans' counsel of record in this case, and the counsel that has been responsible for producing documents in electronic form in this matter for several years, is located in the District of Columbia. *See, e.g.,* Letter from Hefferon of 3/8/2013, Opp. Ex. 27; 1st Reimer Decl. ¶ 8, Opp. Ex. 1. Therefore, Quicken Loans will already presumably be making any document its produces available in this this district for its own attorneys. And Quicken Loans' files are nearly all electronic. *See id.* ("Much of the information requested in the Subpoena is preserved in Quicken Loans' databases and computer systems[.]"). As one of Quicken Loans' appraisal underwriters testified: "everything is paperless. I don't have any hard files." Young Tr. at 10, Opp. Ex. 28. Consequently, the physical location of Quicken Loans' documents, does not support a transfer. [18]

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[18] Quicken Loans' citation to *FTC v. Graco Inc.*, Civ. A. No. 11-2239 (RLW), 2012 WL 3584683, at *7 (D.D.C. Jan. 26, 2012), in support of its access to proof argument is misplaced. Open. Br. at 29 n.7. In that case, this District lacked any meaningful connection to the dispute when the FTC merely argued that the case was a nation-wide controversy and failed to identify any specific connection to the District. *Id.* at *6. Further, in *Graco*, the Court noted that "the location of documents is increasingly irrelevant in the age of electronic discovery." *Id.* at *7 (quoting *Fanning v. Capco Contractors, Inc.*, 711 F. Supp. 2d 65, 70 (D.D.C. 2010) (Kollar-Kotelly, J.) (denying motion to transfer, noting "the location of documents is increasingly irrelevant in the age of electronic discovery, when thousands of pages of documents can be easily

Quicken Loans also argues that its loan files are in Detroit. But those loan files are again electronic, easily accessible, and in any event, production of those materials will conclude shortly under the parties' proposed discovery schedule. *See* Jt. LCvR 16.3 Report (R.27) at 5 (loan file production will conclude by April 15, 2016). Additionally, although Quicken Loans will have additional documents to produce, a number of its documents already exist in this district as its Washington, D.C.-based counsel produced those documents to the Department of Justice during its investigation of this matter. Documents from third-parties in the possession of the United States are similarly located in the hands of Government counsel in this district. Quicken Loans has already sought discovery of these D.C.-based documents in this action. *See* Def.'s 1st RFPs ¶ 100, Opp. Ex. 14.

Further, Quicken Loans ignores the fact that the "great bulk" of the Government's documents are located in D.C. or reside on computer systems administered by officials in the District of Columbia -- documents on which Quicken Loans has already sought discovery. *Supra* at 11-19. Indeed, Quicken Loans' argument in this regard is just another variation on its attempt to focus only on its own convenience. As noted, courts have rejected such a myopic basis for seeking a transfer. *See 2d Chance Body Armor*, 771 F. Supp. 2d at 48; *Nat'l Shopmen*, 999 F. Supp. 2d at 233-34; *Int'l Painters & Allied Trades Indus. Pension Fund v. Painting Co.*, 569 F. Supp. 2d 113, 118-19 (D.D.C. 2008) (Urbina, J.) (denying motion to transfer under § 1404(a) when transfer would have merely shifted inconvenience to plaintiff).

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digitized and transported to any appropriate forum. Moreover, the physical location of witnesses is less important when testimony may be taken by deposition (including by deposition *de bene esse*) and presented to the Court at either the summary judgment stage or a bench trial. Witnesses may also testify in this Court at trial via live videoconference.")).

In sum, Quicken Loans has not met its burden to show that the private interest factors overcome the substantial deference owed to the United States' choice of forum.

F. <u>Public Factors Favor Keeping This Case in the District of Columbia.</u>

Public factors further offer no reason to disrupt the "paramount consideration" of the United States' chosen forum.

First, as discussed, Quicken Loans' failed lawsuit weighs heavily against any transfer for public policy reasons. *Supra* at 6-8.

Second, although this Court has a growing expertise in handling complex mortgage fraud cases (*see supra* at 24-25), the United States agrees that both the EDMI and this Court are presumed to be equally competent to decide questions of federal law. Open. Br. at 19. Consequently, this factor does not support Quicken Loans' Renewed Motion.

Third, a comparison of the relative congestion of dockets does nothing to favor the EDMI. As Quicken Loans concedes, the median filing-to-disposition period is better in this district (8.2 months) than the EDMI (8.6 months). Open. Br. at 19. Quicken Loans cites *Pueblo v. Nat'l Indian Gaming Comm'n*, 731 F. Supp. 2d 36, 40 n.2 (D.D.C. 2010) (Huvelle, J.), in arguing that the Court should rely not on how long it takes to dispose of cases and instead on the median time from filing to trial in making a decision regarding venue. Open. Br. at 19. The Court in *Pueblo*, however, expressly did not base its decision on that statistic, *id.* ("the Court finds such analysis unnecessary"), and instead flatly concluded "[i]n this district, 'potential speed of resolution' is examined by comparing the median filing times to disposition in the courts at issue." *Id.* As such, Quicken Loans' attempt to resort to an alternate statistic is without support.[19] Additionally, it is

[19] Notably, it was Quicken Loans that delayed this action by some 10 months due to its Preemptive Suit and it was Quicken Loans that proposed a lengthier discovery schedule in the parties' Rule 26(f) conference in response to a more compressed schedule initially offered by the United States. 2d Reimer Decl. ¶ 7, Opp. Ex. 18. Consequently, Quicken Loans cannot now

curious that Quicken Loans now seeks to transfer this case based on the respective speeds with which this district and the EDMI resolve cases as the nine-month delay caused by Quicken Loans' preemptive suit is longer than either district's average case.

Fourth, Quicken Loans' claim that this is a local controversy is mystifying. Far from a local matter, this case involves the issuance and endorsement of mortgages for properties across the country that adversely affects taxpayers throughout the nation. Quicken Loans' attempt to portray this as a local dispute is belied by the very press releases it issued in connection with its Preemptive Suit. *See* Quicken Loans Press Release re: Preemptive Suit at 2, Opp. Ex. 23 (Quicken Loans is "the nation's second largest retail home mortgage lender and largest FHA lender"). Moreover, contrary to its suggestions, this suit and Quicken Loans' mortgage lending practices have also been covered by papers local to this district[20] including the *Washington Post* and the *Washington Times.*[21] Further, any heightened coverage by Detroit newspapers cuts against transfer as it has the possibility of tainting the perspective juror pool. *Cf. United States v. Chapin*, 515

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seriously argue that it is concerned about resolving this matter in the most expeditious manner possible.

[20] The majority of articles in Detroit publications cited by Quicken Loans in its brief were precipitated by Quicken Loans' own executives' comments to the press. *See, e.g.,* Detroit Free Press, *Gilbert fires back at feds over loan allegations*, http://www.freep.com/story/money/business/2015/04/24/quicken-loans-lawsuit-followup/26301171/ (Apr. 25, 2015) (reporting on interview with Dan Gilbert, founder of Quicken Loans). Indeed, Detroit-based publications have often published profiles of Quicken Loans' executives based on exclusive interviews with them. *See, e.g.,* Detroit Free Press, *Five years in, and Dan Gilbert's just beginning*, http://www.freep.com/story/money/business/2015/08/15/quicken-bedrock-dan-gilbert-cavsdan-detroit-downtown-buildings-hudsons-apple-store-retail/31742621/ (Aug. 15, 2015).

[21] *See, e.g.,* Washington Times, *Quicken Loans sues government over mortgage investigation*, http://www.washingtontimes.com/news/2015/apr/20/quicken-loans-sues-government-over-mortgage-invest/ (Apr. 20, 2015); Washington Post, *Everything that's wrong with the Super Bowl's worst ad*, https://www.washingtonpost.com/news/wonk/wp/2016/02/08/everything-thats-wrong-with-the-super-bowls-worst-ad/ (Feb. 8, 2016).

F.2d 1274, 1288 (D.C. Cir. 1975) (addressing request to change venue, noting "firm precedent demands that the court take into account whether the publicity is sufficiently localized that potential jurors in another area would be free of any taint from exposure to the press"); *Vasquez v. Walker*, 359 Fed. Appx. 758, 760 (9th Cir. 2009) ("Evidence that the jury pool is tainted in a particular venue due to press coverage is evidence of an external influence on the jury."). At bottom, the nationwide nature of the conduct that underlies the United States' claims does not support a transfer.[22]

CONCLUSION

In sum, the Court should not reward Quicken Loans for the delay caused, and the judicial resources wasted, by its unmeritorious Preemptive Suit. For that reason alone, the Court should deny the Renewed Motion. But even if Quicken Loans had clean hands on this issue, it has failed to overcome the paramount consideration of the venue analysis -- namely, the United States' choice of forum. This district has a strong connection to this dispute, and Quicken Loans' Renewed Motion, if granted, would merely shift burdens from it to the United States. Accordingly, the Renewed Motion should be denied. A proposed order is enclosed herewith.

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[22] Quicken Loans' reliance on *Bergman v. U.S. Dep't of Transp.*, 710 F. Supp. 2d 65, 75-76 (D.D.C. 2010) (Sullivan, J.), which concerned a highway project physically located in the EDMI, is clearly distinguishable. Quicken Loans' misconduct here stemmed from transactions concerning real property located around the United States and the Government's claims arise from statements and claims made to HUD and FHA in the District of Columbia.

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Washington, DC

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