IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA *Ex rel.*, Michael J. Fisher, Brian Bullock and Michael Fisher, Individually and Brian Bullock, Individually,	§ § § §	
Plaintiffs,	§	CASE NO. 4:12-CV-461
vs.	§	JUDGE AMOS MAZZANT
HOMEWARD RESIDENTIAL, INC. f/k/a American Home Mortgage Servicing, Inc. ("AHMSI") and OCWEN FINANCIAL CORPORATION,	§ § § §	
Defendants.	§	

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UNITED STATES OF AMERICA *Ex rel.*, Michael J. Fisher and Brian Bullock, and Michael Fisher, Individually, and Brian Bullock, Individually,	§ § § §	
Plaintiffs,	§	CASE NO. 4:12-CV-543
vs.	§	JUDGE AMOS MAZZANT
OCWEN LOAN SERVICING, LLC and OCWEN FINANCIAL CORPORATION,	§ §	
Defendants.	§	

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DEFENDANTS' MOTION TO CONSOLIDATE FOR TRIAL AND MEMORANDUM IN SUPPORT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Rules

Defendants Ocwen Financial Corporation ("OFC"), Ocwen Loan Servicing ("OLS"), and Homeward Residential, Inc. ("Homeward") (collectively, "Defendants") respectfully move to consolidate for trial *United States ex rel. Michael J. Fisher v. Homeward Residential, Inc., et al.*, Civil No. 4:12-cv-461 (the "*Homeward* case") with *United States ex rel. Michael J. Fisher v. Ocwen Loan Servicing, LLC, et al.*, Civil No. 4:12-cv-543 (the "*OLS* case") and, in support of this motion, would respectfully show the Court as follows:

INTRODUCTION

Defendants respectfully submit that trying the *OLS* case in May 2016 and the *Homeward* case in June 2016 would cause this Court to try substantially the same case twice. Consolidation, on the other hand, would conserve judicial and party resources, and reduce the burden on the jurors of this District. These actions have the same Relators, share a common defendant (OFC), have the same lawyers, are predicated on the same legal theories and causes of action, and have the same defenses. The pretrial issues, legal theories, defenses and jury charge will be identical, and the witnesses and exhibits will significantly overlap. While there are undoubtedly some variations in the specific alleged conduct of OLS and Homeward, they are alleged to have defrauded the same government programs based on similar conduct, and the defenses each defendant will assert are essentially the same. The potential for jury confusion is low and, in any event, outweighed by the efficiencies of consolidation. Consolidation for trial under Rule 42 is therefore warranted.

Relators' recent motion to extend dates in the scheduling orders [*OLS* Dkt. # 289; *Homeward* Dkt # 222] renders consolidation even more appropriate, because (i) if that motion is granted, several discovery tasks will bump up on the eve of the *OLS* case May 16 trial date; and (ii) the Court could alleviate that congestion by trying both cases on the *Homeward* case June 28 trial date, and using the latter case's corresponding pretrial deadlines. In the alternative, if the

cases are not consolidated for trial, the cases should be consolidated for pretrial purposes, with the *Homeward* case proceeding to trial first because it is the first-filed case and will take less time and fewer judicial resources to try.

PROCEDURAL BACKGROUND

Over the past two years, the parties in the *OLS* and *Homeward* cases have taken differing positions regarding whether these cases should be consolidated and, if so, to what extent.

The *Homeward* case was filed under seal on July 25, 2012 [*Homeward* Dkt. # 1] and was assigned to Chief Judge Clark and then Magistrate Judge Mazzant. The United States declined to intervene, and on June 4, 2014, the Homeward complaint was unsealed and served. [*Homeward* Dkt. # 27]. The *Homeward* case was originally scheduled for a Final Pretrial conference on December 9, 2015, with trial to commence "between January 11, 2016 and January 29, 2016." [*Homeward* Dkt. # 84].

The *OLS* case was filed under seal on August 20, 2012 [*OLS* Dkt. # 1], and was assigned to Judge Schell and Magistrate Judge Bush. The United States declined to intervene, and on April 7, 2014, the OLS complaint was unsealed and served. [*OLS* Dkt. # 19] The *OLS* case was originally set for a Final Pretrial conference and Trial Scheduling on November 2, 2015. [*OLS* Dkt. # 67].

In December 2012, while the *Homeward* and *OLS* cases were under seal, Homeward's parent company was purchased by OLS's parent company OFC. After the cases were unsealed, Relator Fisher initially pointed to OFC's common ownership of OLS and Homeward as a basis for consolidation. On August 6, 2014, Relator Fisher noted OFC's purchase of Homeward and represented to Judge Schell in the *OLS* case that "**Relator has filed a similar, separate suit against [Homeward] in the Eastern District of Texas and intends to seek leave, ultimately,**

for consolidation to this case." Second Amended Complaint ¶¶ 8 and 135 [*OLS* Dkt # 29] (emphasis added).

A few months later, Relator Fisher abandoned that position. When the parties in the *Homeward* and *OLS* cases submitted their Joint Rule 26(f) reports in December 2014 [*OLS* Dkt. # 63, *Homeward* Dkt. # 67], Defendants noted that the cases "were filed by the same Relators and assert nearly identical claims under the FCA" and that they were "contemplating filing a motion to transfer" the *OLS* case to Judge Clark so that "both cases are heard by the same judge." [*OLS* Dkt. # 63 at 17–18, *Homeward* Dkt. # 67 at 19]. At the time, Defendants represented that they did "not intend to seek consolidation . . . for trial or pretrial proceedings." [*OLS* Dkt. # 63 at 17–18, *Homeward* Dkt. # 67 at 19]. Relators, on the other hand, opposed transfer of any sort, noting repeatedly that OFC was a "non-party" to the cases, and asserting that Chief Judge Clark and Judge Schell could "manag[e] their own dockets" and claiming that Defendants were "precoccup[ied] with getting away from the Sherman Division." [*OLS* Dkt. # 63 at 16–17, *Homeward* Dkt. # 67 at 17–18].

On January 9, 2015, OLS filed a Motion to Transfer Action and Memorandum in Support to transfer the *OLS* case to this Court. [*OLS* Dkt. # 81]. In that motion OLS explained that **"[b]ecause there is a different defendant in each suit**, Ocwen is not suggesting that the two cases be consolidated for trial or pretrial proceedings" and that "Ocwen believes that separate trials of each suit against each defendant are appropriate." [*Id*. at 1 and 4 (emphasis added)]. Relators did not oppose this motion transfer [*OLS* Dkt. # 82], which the Court granted. [*OLS* Dkt. # 102]. After transfer, on April 15, 2015, the Court issued identical Scheduling Orders in the *Homeward* and *OLS* cases setting them for Final Pretrial Conference on December 9, 2015,

with trial "between January 11, 2016 and January 29, 2016." [*Homeward* Dkt. # 110 and *OLS* Dkt. # 123].

After OLS filed its Motion to Transfer, Relators sought leave to amend their complaints to add OFC as a defendant on March 3, 2015 [*Homeward* Dkt. # 100] and April 17, 2015 [*OLS* Dkt. # 125]. The motions for leave were respectively granted on July 17 and 16, 2015, [*Homeward* Dkt. # 153 and *OLS* Dkt. # 212] and for the first time the cases shared a common defendant. On November 10 and 12, 2015, this Court denied OFC's motions to dismiss it from the *Homeward* case [*Homeward* Dkt. # 199] and *OLS* case [*OLS* Dkt. # 262], respectively.

In August and September 2015, OLS, Homeward, and OFC retained the law firms O'Melveny & Myers LLP and Sayles | Werbner PC as new trial counsel, and those counsel made their first appearance during a September 2, 2015 telephonic hearing with the Court. The purpose of that hearing was for the Court to hear argument on Defendants' Emergency Motion for Extension of Time to Complete Discovery. [*Homeward* Dkt. # 170 and *OLS* Dkt. # 232]. Before the hearing, the parties came to an agreement to resolve the motion. [*See* Proposed Agreed Scheduling Orders, *Homeward* Dkt. # 181-2 and *OLS* Dkt. # 243-2].

The crux of the agreement was to propose that the Court amend the scheduling orders to allow Defendants more time to complete their significant document production, allow Relators more time to review those documents once produced, and amend the trial schedule by 90 days to accommodate the schedule of Relators' lead trial counsel. [*See* Proposed Agreed Scheduling Orders, *Homeward* Dkt. # 181-2 and *OLS* Dkt. # 243-2]. As with the prior scheduling orders, the parties proposed a Final Pretrial Conference for both cases on April 13, 2016, and jury selection and trial "[b]etween May 2, 2016 and May 13, 2016." [*Id.* at 4]. Before the September 2, 2015

hearing, counsel for the parties did not discuss whether the cases would be tried together or separately.

During the September 2 hearing the Court raised the issue of trial consolidation. Defendants' counsel advised the Court that consolidation for trial made sense and, based on experience, two-weeks likely would be sufficient. At the hearing, Relators did not object to consolidation or the estimated length, but requested time to consider the issue. Through a Minute Entry, the Court specially set both cases for trial on May 16, 2016, entered identical amended scheduling orders [*Homeward* Dkt. # 183 and *OLS* Dkt. # 245], and advised Relators to provide the Court with any objection by no later than September 4, 2015.

On September 4, Relators sent a letter to the Court and requested separate trials in the *Homeward* and *OLS* cases.[1] Relators argued that there was a risk of juror confusion because:

> [M]any employees (including Relator Brian Bullock) worked for both Homeward and Ocwen. It will be difficult to keep track of which witness's testimony applies to which Defendant, or whether a portion of the testimony applies to one Defendant but not to the other one.[2]

Relators also cited Defendants' statements in their December 2014 Joint Status Reports (before OFC was added as a defendant) as an additional basis to deny consolidation.[3] Finally, although the *OLS* case was filed second, Relators asked for it to be tried first because Relators contend it "almost certainly entails significantly more damages than the Homeward case" and a verdict in the *OLS* case would give "significant guidance" that could lead to a resolution of the *Homeward* case without a trial.[4]

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[1] Declaration of Darren Nicholson ("Nicholson Dec."), Exhibit 1, September 4, 2015, Letter from T. Melsheimer.

[2] *Id.* at 1.

[3] *Id.*

[4] *Id.* at 2.

In response to Relators' letter, on September 8, the Court entered Amended Scheduling Orders, setting the *OLS* case for Final Pretrial on April 13, 2016, and Jury Selection on May 16, 2016 [*OLS* Dkt. # 246], and the *Homeward* case for Final Pretrial on June 2, 2016, and Jury Selection on June 28, 2016 [*Homeward* Dkt. # 184]. On September 8, Defendants sent a response letter to the Court that argued for a consolidated trial, but that letter was not delivered to Chambers until after the scheduling orders had been amended.[5] No party has ever formally moved for consolidation.

On December 22, Relators filed a motion to amend the Amended Scheduling Orders in both cases, primarily requesting a four-week extension of expert discovery deadlines and of the fact discovery cutoff, while retaining dates for trial, final pretrial conferences, and other pretrial deadlines. [*OLS* Dkt. # 289 at 2–4; *Homeward* Dkt. # 222 at 2–4]. Relators' proposed schedule would significantly compress the deadlines before the May 16 *OLS* case trial. For instance:

- The parties' respective counsel would have only seven days to prepare their final joint pretrial order in the *OLS* case, as opposed to five weeks under the current schedule. [*Compare OLS* Dkt. # 289 at 3–4 *with OLS* Dkt. # 246 at 2]; and

- Video deposition designations (March 23), motions *in limine* (March 30), the joint final pretrial order (March 30), responses to motions *in limine* (April 8), and proposed jury instructions (April 8) for the *OLS* case would all be due before Defendants' expert disclosures (April 19) and the close of expert discovery (April 27). [*OLS* Dkt. # 289 at 3–4].

Although Defendants did not oppose Relators' motion, they advised Relators that they would move to consolidate, and request that the consolidated trial occur on the June 28 *Homeward* case trial date. [*Homeward* Dkt. # 184]. Consolidating the two trials and using the June 28 trial date would ease the congestion and potential inefficiencies that Relators' proposed revised schedule creates.

[5] Nicholson Dec., Exhibit 2, September 8, 2015 Letter from J. Rosenberg.

ARGUMENT

Defendants acknowledge taking a different view on consolidation in their Joint Rule 26(f) reports and in OLS's Motion to Transfer, both of which were made *before* OFC was added as a common defendant in both cases and before the parties obtained new trial counsel. Relators have done the same; their current opposition to consolidation is contrary to Relator Fisher's August 6, 2014 representation to the Court that he "intends to seek leave, ultimately, for consolidation." Notwithstanding the parties' shifting positions, the circumstances now compel a single trial because the current schedule, which reverses the trial order, is inefficient and very likely to consume *more* judicial resources than a single trial or trial of the smaller and earlier-filed case first. Simply put, the current schedule will require the same case to be tried twice.

Relators' claims in both cases concern the *same government programs*—HAMP and FHA insurance—and *the same representations* made in form government contracts and certifications, and allege that *the same conduct* caused those certifications to be false.[6] They involve companies that became part of the same Ocwen corporate family three years ago, share a common defendant OFC, are brought by the same Relators, and all parties have the same counsel in both cases. The cases involve identical legal questions and defenses, and significant overlap of witnesses. The same Relators will testify in both cases—including Relator Bullock, who claims to have witnessed the alleged fraud at both Homeward and OLS from the inside[7]—and many of the other witnesses will be the same. Thus, a single trial would promote judicial efficiency,

[6] *See* Homeward Second Amended Complaint ¶¶ 22–25, 141–43 [*Homeward* Dkt. # 101]; OLS Fourth Amended Complaint ¶¶ 23–26, 195, 202, 203 [*OLS* Dkt. # 126]; *see also* Joint Conference Reports filed pursuant to FRCP 26(f) in both actions [*OLS* Dkt. # 63, *Homeward* Dkt. # 67 at 1–14 (describing Relators' substantially identical theories and allegations against both defendants).]

[7] *See, e.g.*, Homeward Second Amended Complaint ¶¶ 6, 68 [*Homeward* Dkt # 101]; OLS Fourth Amended Complaint ¶¶ 5, 77 [*OLS* Dkt # 126].

conserve judicial and party resources, and pose no risk of prejudice to the parties given that the actions are in procedurally identical stages.

At a minimum, Defendants submit that the Court consolidate these cases for pretrial purposes, and request that if the Court does not also consolidate for trial, the *Homeward* case be tried first because it is the first-filed and will consume less time and resources to try.

I. CONSOLIDATION OF THE CASES IS APPROPRIATE BECAUSE THE CASES INVOLVE IDENTICAL LEGAL AND FACTUAL ISSUES AND CONSOLIDATION WILL CONSERVE JUDICIAL RESOURCES.

Under Federal Rule of Civil Procedure 42(a)(1), the Court "has wide discretion" to order a single trial of two actions with "common questions of law and fact" where doing so "would save time and money."[8] In determining whether to consolidate actions for trial, Fifth Circuit courts consider whether "(1) the actions are pending before the same court; (2) there are common parties; (3) there are common questions of law or fact; (4) there is risk of prejudice or confusion if the cases are consolidated and if so, whether the risk is outweighed by the risk of inconsistent adjudications of factual and legal issues; (5) consolidation will conserve judicial resources and reduce the time and cost of handling the cases separately; and (6) the cases are at different stages."[9] As one court in this District has held, "the existence of a common question by itself is

[8] *Gabriel v. OneWest Bank FSB*, No. CIV.A. H-11-3356, 2012 WL 1158732, at *1 (S.D. Tex. Apr. 5, 2012) (citing *Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 761-62 (5th Cir. 1989) (consolidating two cases where they "are on this Court's docket, they have a common plaintiff and common defendant, they arise out of foreclosure on the same property, they have common issues of law and fact, there is no risk of confusion, and consolidation will conserve judicial resources and reduce the time and cost of handling the cases separately."); *see also Bottazzi v. Petroleum Helicopters, Inc.*, 664 F.2d 49, 50–51 (5th Cir. 1981) (affirming consolidation of two lawsuits based on two separate helicopter accidents where plaintiff was involved in both accidents, issue of plaintiffs' mental and psychological states presented a sufficient common question of fact, and the helicopter operator was a defendant in each suit); *Kershaw v. Sterling Drug, Inc.*, 415 F.2d 1009, 1012 (5th Cir. 1969) (affirming an order for consolidation of two personal injury actions where common questions of fact included causation of eye damage based on use of defendant's drug, defendant's knowledge of the disease, and the nature of defendant's warning, and where common questions of law included the defendant's duty and the reasonableness of its warnings) (superseded on other grounds).

[9] *Gabriel*, 2012 WL 1158732 at *1 (citing *In re Enron Corp. Sec., Derivative & ERISA Litig.*, Nos. H-01-3624, et al., 2007 WL 446051, at *1 (S.D. Tex. Feb. 7, 2007).

enough to permit consolidation under Rule 42(a), even if the claims arise out of independent transactions."[10] Here, all of these factors weigh in favor of a single, consolidated trial.[11]

There is no serious argument that factors 1, 2, 5, and 6 weigh in favor of consolidation. Both cases are pending in the same court, they are on approximately the same discovery schedule, they will be ready for trial at approximately the same time, the Relators are the same, the government agency at issue is the same, and the cases share a common defendant OFC, which is the parent of OLS and Homeward. Consolidation would necessarily conserve judicial resources and reduce the time and cost of handling the cases separately, as is apparent from the Court's scheduling orders, which now have these cases taking up two months, rather than one, of the Court's trial docket.

Regarding factor 3—common questions of law or fact—Relators readily acknowledge that "the allegations in the two cases substantially overlap."[12] The cases involve identical legal questions, including whether compliance with the certifications at issue was material to the Government's decision to pay OLS and Homeward incentive fees for the same loan-modification activities within the same government programs. Defendants have filed a consolidated summary judgment motion applicable to both cases, [*OLS* Dkt # 292; *Homeward* Dkt # 225], and each defendant in both cases will have similar scienter defenses—i.e., that there is no evidence it

[10] *See, e.g., Innovative Automation, LLC v. Audio Video and Video Labs, Inc.*, Nos. 6:11-cv-234 & 6:11-cv-445, 2012 WL 10816848, *14 (E.D. Tex. May 30, 2012) (granting defendant's motion for consolidation where plaintiff was the same and legal issues overlapped) (citations, quotations omitted).

[11] While OLS and Homeward did not seek to consolidate these trials in their 26(f) joint reports [*OLS* Dkt. No. 63 at 18; *Homeward* Dkt. No. 67 at 19], the landscape of these cases has changed and they should be consolidated for trial at this time. OFC has been added as a defendant to both the OLS and Homeward actions. Defendants have also recently retained new counsel.

[12] Nicholson Dec., Exhibit 1.

intended to cheat the Government, particularly when the Government knew about the types of conduct Relators claim to have discovered.[13]

Additionally, as Relators have noted, many of the witnesses will be the same.[14] Relators themselves have identified more than 25 persons with knowledge likely to support Relators' claims in both the *Homeward* and *OLS* cases.[15] Those persons include Relator Brian Bullock, who was an employee of both Homeward and OLS, as well as numerous other persons who have worked for both Homeward and OLS, including, for example, Mikel Michini, Stephanie Frazier, and Scott Ellerbee.[16] Witnesses testifying on behalf of OFC will be the same, and the same expert witnesses likely will testify in both cases regarding their analyses of Defendants' loan files.[17] Likewise, government witnesses also will have to testify in both cases about the information the Government considered material when paying HAMP and FHA claims, the Government's intent in creating HAMP, what information the Government had access to during its audits of OLS and Homeward, and the Government's knowledge of the alleged illegal conduct. Separate trials, therefore, pose a high risk of inconsistent adjudications of identical legal issues and nearly identical factual issues.

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[13] *See, e.g.*, *United States v. Southland Mgmt. Corp.*, 326 F.3d 669, 682 & n.8 (5th Cir. 2003) (defendant can "rebut the government's assertion of the 'knowing' presentation of a false claim" if he can show that the government knew about and acquiesced in his actions, as "[w]here the government and a contractor have been working together . . . to reach a solution to a problem") (Jones, J. concurring); *see also United States v. Bollinger Shipyards, Inc.*, 775 F.3d 255, 263 (5th Cir. 2014) (same).

[14] *See* Nicholson Dec., Exhibit 1, p. 1 ("many employees (including Relator Brian Bullock) worked for both Homeward and Ocwen").

[15] *Compare, e.g.*, Nicholson Dec., Exhibit 3, *OLS* Qui Tam Plaintiffs' First Supplemental Rule 26(a) Initial Disclosures, Exhibit A *with* Nicholson Dec. Exhibit 4, *Homeward* Qui Tam Plaintiffs' Rule 26(a) Initial Disclosures, Exhibit A (sharing more than 25 names of persons with knowledge likely to support Relators' claims in both *Homeward* and *OLS*).

[16] *See* Nicholson Dec., Exhibit 3, *OLS* Qui Tam Plaintiffs' First Supplemental Rule 26(a) Initial Disclosures, Exhibit A; Nicholson Dec. Exhibit 4, *Homeward* Qui Tam Plaintiffs' Rule 26(a) Initial Disclosures, Exhibit A.

[17] *Compare OLS* Dkt. # 193, Exhibits A–C & K *with Homeward* Dkt. #134, Exhibits A–C & K (identifying four experts consulting for Relators in both *OLS* and *Homeward* cases, including Victor O'Laughlen, Steve Larkin, Jessica Herrera, and Nelson R. Lipshutz).

Relators' principal argument for opposing consolidation invokes factor 4, arguing that there is a risk of "jury confusion" because some witnesses will be testifying regarding both Homeward and OLS and that it could be "difficult to keep track of which witness's testimony applies to which Defendant."[18] Why this is so, Relators have not said. In fact, if this were enough, the Court would be hard pressed *ever* to try a case with more than one defendant.[19] But there is no doubt that experienced trial counsel, expert and fact witnesses, and the Court will make sure that the jury has no trouble keeping Homeward and OLS separate.[20] Moreover, the overlap in witnesses is a reason to *consolidate* for trial, not to hold separate duplicative trials.[21] Even if the Court were to conclude that there were some risk of confusion, that risk would be outweighed by the risk of inconsistent adjudications of factual and legal issues.

Relators' other argument is an implicit concession that consolidation is appropriate. Relators contend that the *OLS* case should be tried first because its verdict will provide "substantial guidance" to the parties that would obviate the need for trial in the *Homeward* case.[22] But the trial of one case providing "substantial guidance" on the settlement of another only makes sense if the legal and factual issues are the same or substantially the same. If this is so, as Relators impliedly acknowledge, it would be more efficient to consolidate trial of the

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[18] Nicholson Dec., Exhibit 1, p. 1.

[19] *See, e.g.*, *United States v. Fernandez*, 576 F. Supp. 397, 401-02 (E.D. Tex. 1983) (declining to sever trial of defendants where court instructed jury to consider each defendant individually); *United States v. Williams*, No. 4:12-CR-159, 2012 WL 5866224, at *2 (E.D. Tex. Nov. 1, 2012) *report and recommendation adopted*, No. 4:12-CR-159, 2012 WL 5866226 (E.D. Tex. Nov. 19, 2012) (denying defendant's motion to sever his trial on one count of conspiracy from trial of three co-defendants on 18 counts, including the conspiracy count).

[20] *Cf. Kershaw v. Sterling Drug, Inc.*, 415 F.2d 1009, 1012 (5th Cir. 1969) ("We find further that in charging the jury, the trial judge sufficiently emphasized the importance of separating the Kershaw and the companion case for consideration and verdict."); *Fernandez*, 576 F. Supp. at 402 (suggesting procedures such as exhibit chart correlating exhibits offered against each defendant).

[21] *See Lay v. Spectrum Clubs, Inc.*, No. SA-12-CV-00754, 2013 WL 788080, at *2 (W.D. Tex. Mar. 1, 2013) ("Since many of the witnesses and evidence overlap, combining the two cases will save time and avoid unnecessary expense.").

[22] *See* Nicholson Dec., Exhibit 1, p. 2.

Homeward and *OLS* cases, rather than try them seriatim. And if Relators' recent motion to amend the scheduling orders [*OLS* Dkt. # 289; *Homeward* Dkt. # 222] is granted, the consolidated case should be tried using the June 28 trial date, to reduce the congestion of various discovery and pretrial efforts that would be bumping up against the May 16 *OLS* case trial date, including expert discovery, motions *in limine*, video deposition designations, and other pretrial filings. *See supra* at 6.

But even if separate trials were appropriate, the *Homeward* case, not the *OLS* case, should be tried first. The *Homeward* case is the action Relators filed first and has the lower case number. Trying it first would be more efficient because it concerns a shorter time period (through December 2012 instead of through the present), involves fewer types of alleged wrongdoing,[23] and thus would take less time and consume fewer judicial resources. If, as Relators contend, the first trial would provide "substantial guidance" to the parties that would obviate the need for a second trial, then trying the shorter case first would make far more sense from all perspectives: the parties, the witnesses, and the Court.

CONCLUSION

Defendants respectfully request that the Court enter an order consolidating the *Homeward* and *OLS* cases for trial, and using the June 28, 2016 *Homeward* setting. The actions are pending before the same court and are at the same stage; there are common parties; the legal and factual issues are identical or nearly identical; there is no risk of prejudice or confusion if the cases are consolidated, and even if there were, the risk is outweighed by the risk of inconsistent adjudications of factual and legal issues; and consolidation will conserve judicial resources and

[23] Although nearly all of the conduct alleged against Homeward is also alleged against OLS (*compare, e.g.*, *Homeward* Second Amended Complaint ¶¶ 49–74, 77–133 [*Homeward* Dkt. # 101] *with OLS* Fourth Amended Complaint ¶¶ 60–83, 89-90, 98-99, 123-28, 131-89 [*OLS* Dkt. # 126]), Relators also allege additional wrongful conduct against OLS (*see, e.g.*, OLS Fourth Amended Complaint ¶¶ 84–86, 91–97, 100–22).

reduce the time and cost of handling the cases separately. If the Court finds that trying the cases separately is more appropriate, however, Defendants respectfully request that the Court enter an order consolidating the cases for pretrial purposes, with the *Homeward* case proceeding to trial first because it is the first-filed, will take less time and judicial resources to try, and could obviate the need for the second, longer *OLS* case trial.

Respectfully submitted this 23rd day of December, 2015.

/s/ Darren Nicholson

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LOCAL RULE CV-7 CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7, I certify that I conferred by telephone with counsel for Relators on December 22nd and 23rd, 2015 and Relators' counsel indicated they are opposed to the requested relief.

/s/ Darren Nicholson
Darren P. Nicholson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposed Motion of Defendants to Consolidate and Memorandum in Support Thereof was served upon all counsel of record, via the Court's CM/ECF system this 23rd day of December, 2015.

/s/ Darren Nicholson
Darren P. Nicholson