

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., ET AL.,	)	
	)	
Plaintiffs,	)	
vs.	)	Civil Action No. 12-1158 (BAH)
	)	
UNITED STATES DEPARTMENT OF TRANSPORTATION, ET AL.,	)	
	)	
Defendants.	)	

FRED WEAVER ET AL.,	)	
	)	
Plaintiffs,	)	
vs.	)	Civil Action No. 14-0548 (BAH)
	)	
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, ET AL.,	)	
	)	
Defendants.	)	

**PLAINTIFFS’ UNCONTESTED MOTION AND MEMORANUM FOR  
CONSOLIDATION OF ACTIONS**

**I. INTRODUCTION AND FACTUAL BACKGROUND**

Plaintiffs Owner-Operator Independent Drivers Association, Inc. (“OOIDA”), Brian Kelley, Robert Lohmeier, Klint Mowrer, Mark Moody, and Fred Weaver, Jr., hereby move to consolidate for all purposes pursuant to Fed. R. Civ. P. 42(a) OOIDA v. United States Dept. of Transp., (No. 12-1158 (BAH)) (D.D.C. filed July 7, 2012) with Weaver v. Federal Motor Carrier Safety Administration, (No. 14-0548 (BAH)) (transferred from D.C. Cir. February 28, 2014).

Counsel for Plaintiffs have met and conferred with counsel for Defendants on this issue pursuant to LCvR 7.1(m) and this motion is not contested.

Both of these cases challenge the practices of the Federal Motor Carrier Safety Administration (FMCSA) relating to the agency's collection of data related to state enforcement actions in a federal data base known as the Motor Carrier Management Enforcement System ("MCMIS"). Data included in the MCMIS database is disseminated to potential employers of commercial motor vehicle operators under a program known as the Pre-employment Screening Program or "PSP."

In *OOIDA v. Department of Transportation*, (12-1158), Plaintiffs Kelley, Lohmeier, and Mowrer were each issued a citation at a roadside inspection by a state law enforcement officer. They challenged their citations in a state court of competent jurisdiction and in each case the state court either dismissed the citation or found Plaintiff not guilty. Inspection "violation" reports relating to Plaintiffs were transmitted by the respective state law enforcement authorities to the MCMIS database. Each of the above-named Plaintiffs filed a "request for data revision" ("RDR") through FMCSA's "DataQs" system challenging the "violation" based on the fact that each violation had been dismissed by a state court of competent jurisdiction. In each case, FMCSA forwarded the RDR to the state personnel designated to respond to DataQs challenges, and in each case the state agency rejected each Plaintiff's challenge and communicated the denial of the challenge to FMCSA. FMCSA, in turn, refused to disturb the decision of the states.

In *Weaver*, (14-0548), the allegations are similar. In that case, Weaver received a misdemeanor citation for failing to stop his truck at a weigh station as required by Montana law. *Weaver v. Federal Motor Carrier Safety Administration*, 744 F.3d 142 (D.C. Cir. 2014). Weaver challenged the citation in Montana state court and the charge was dismissed "without prejudice."

Despite the dismissal, a record of Weaver's citation was included in the MCMIS database and may be used by potential employers to screen potential employees. OOIDA, on behalf of Weaver, filed a DataQs request seeking to have the citation removed from Weaver's profile. *Id.* at 143-44. "The Montana authorities would have none of it. Colonel Dan Moore of the Montana Department of Transportation replied: 'You are obviously confused. . . . I will explain the differences and the matter will be closed. Our decision is our decision and any further argument will be turned over [to] the FMCSA as a violation of the DQ process.'" *Id.* Weaver and OOIDA then filed a petition with the court of appeals "seeking to enjoin FMCSA from disseminating citations that have been overturned or dismissed." *Id.*

This Court stayed action 12-1158 pending the decision of the court of appeals in *Weaver*. Dkt. No. 25, Sept. 25, 2013. On February 28, 2014, the Court of Appeals for the D.C. Circuit issued its decision in *Weaver* holding that "[b]ecause FMCSA's action falls short of being a rule, regulation or final order within the meaning of 28 U.S.C. § 2342(3), we lack jurisdiction under that provision and we transfer the case to the district court pursuant to 28 U.S.C. § 1631." *Weaver*, 744 F.3d at 144.

## **II. THESE ACTIONS INVOLVE COMMON QUESTIONS OF LAW AND FACT AND ARE APPROPRIATE UNDER RULE 42(a) FOR CONSOLIDATION**

Rule 42(a) of the Federal Rules of Civil Procedure states that:

When actions involving a common question of fact or law are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the actions; it may order the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Consolidation of action under Rule 42(a) is "a valuable and important tool of judicial administration." *Devline v. Transp. Communications Int'l Union*, 175 F.3d 121, 130 (2d Cir. 1999). It helps to "relieve the parties and the court of the burden of duplicative pleadings and

court orders.” *New York v. Microsoft Corp.*, 209 F. Supp.2d 132, 148 (D.D.C. 2002).

Consolidation under this rule “is permissive and vests a purely discretionary power in the district court.” *Nat’l Ass’n of Mortg. Brokers v. Bd. of Governors of the Fed. Reserve Sys.*, 770 F.

Supp.2d 283, 286 (D.D.C. 2011). “In exercising that discretion, district courts must weigh the risk of prejudice and confusion wrought by consolidation against the risk of inconsistent rulings on common factual and legal questions, the burden on the parties and the court, the length of time, and the relative expense of proceeding with separate lawsuits if they are not consolidated.”

*Id.*

Here, the actions before the Court at docket numbers 12-1158 and 14-0548 should be consolidated because these cases are substantially similar and involve the same legal issues implicating similar fact patterns. Because the Court stayed action 12-1158, both actions are in the beginning stages of litigation. Finally, the burden on the parties and the Court, the length of time, and the relative expense of proceeding with separate lawsuits if they are not consolidated, weigh in favor of consolidation for all purposes.

### **III. CONCLUSION**

In the interests of efficiency and judicial economy, Plaintiffs OOIDA, Brian Kelley, Robert Lohmeier, Klint Mowrer, Mark Moody, and Fred Weaver, Jr., request that the Court grant their motion to consolidate OOIDA v. United States Dept. of Transp., (No. 12-1158 (BAH)) (D. D.C. filed July 7, 2012) with Weaver v. Federal Motor Carrier Safety Administration, (No. 14-0548 (BAH)) (transferred from D.C. Cir. February 28, 2014).

Respectfully submitted,

DATE: April 28, 2014

/s/ Paul D. Cullen, Sr.

Paul D. Cullen, Sr. (D.C. Bar # 100230)

David A. Cohen (D.C. Bar # 481747)

Joyce E. Mayers (D.C. Bar #268227)

Paul D. Cullen, Jr. (D.C. Bar # 463759)

THE CULLEN LAW FIRM, PLLC

1101 30<sup>th</sup> Street, N.W., Suite 300

Washington, D.C. 20007

Tel: (202) 944-8600

Fax: (202) 944-8611