BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION

In re LAW SCHOOL ACCREDITATION LITIGATION	)	MDL Docket No. _____

BRIEF IN SUPPORT OF MOTION FOR CONSOLIDATION OF LAW SCHOOL ACCREDITATION ACTIONS IN THE WESTERN DISTRICT OF NORTH CAROLINA PURSUANT TO 28 U.S.C. § 1407

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INTRODUCTION

The American Bar Association ("ABA"), the ABA's Council of the Section of Legal Education and Admissions to the Bar ("Council"), and the Accreditation Committee of the Section of Legal Education and Admissions to the Bar ("Accreditation Committee") request the consolidation of pretrial proceedings in three district court cases because they present "one or more common questions of fact," and consolidation will be "for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions." 28 U.S.C. § 1407.

The ABA's Council is the agency approved by the U.S. Department of Education to accredit law schools. In order to gain and maintain accreditation, law schools must comply with standards promulgated by the Council. The standards are designed to ensure, among other things, that accredited law schools provide a quality education that equips their students to enter the legal profession, and that law schools admit only students who appear capable of successfully completing their legal education and passing the bar. By accrediting a law school, the Council provides the public with its assurance that, in the view of the Council, the law school is in compliance with these standards.

Sometimes law schools seeking to obtain or maintain their accreditation fail to demonstrate compliance with the ABA's standards. When that happens, the Council may provide notice to the public, direct the school to take remedial action, or even withdraw approval altogether. Schools facing these potential consequences generally focus their efforts and resources on bringing their programs back into compliance. But occasionally a disappointed law school files suit in federal court, challenging the Council's determination and asserting due process violations or similar claims.

This motion arises from an unprecedented wave of overlapping challenges to the Council's accreditation decisions. InfiLaw Corporation recently filed three separate lawsuits

against the ABA in three separate and distant federal district courts—joined in each case by one of InfiLaw's subsidiary law schools—alleging many identical facts and legal theories. Each suit challenges an ABA accreditation decision on the same legal grounds and contains verbatim repetitions of many of the same allegations. And each case attacks the validity of some of the same standards that schools must meet in order to maintain accreditation. If the three cases are not consolidated, there is a substantial risk of inconsistent rulings on key issues involving both the ABA's accreditation standards and the legal standards under which it accredits law schools.

Inconsistent rulings would yield particularly grave consequences here. The ABA accredits more than two hundred law schools nationwide under the same standards that InfiLaw and the law school plaintiffs challenge in these three suits. Inconsistent court rulings based on inconsistent interpretations of the ABA's standards will disrupt the Council's accreditation work nationwide—which serves an essential consumer protection function for prospective law students and the public.

For these reasons, the ABA respectfully requests that the Panel centralize these overlapping actions under § 1407 to promote the just and efficient conduct of the litigation.[1] One case is currently pending in the Middle District of Florida; another is in the Western District of North Carolina; and the third is in the District of Arizona. The ABA submits that the three actions should be centralized in the Western District of North Carolina. Charlotte is a convenient forum, and Judge Graham Mullen, before whom the North Carolina case is pending, has successfully presided over three multidistrict litigations and is currently handling four

[1] In each case, plaintiffs have sued the ABA along with both the Council and the Accreditation Committee. Although the Council and Accreditation Committee are not separate corporate entities, the ABA files this motion on behalf of all defendants in each case.

consolidated class actions involving InfiLaw and the Charlotte School of Law. Judge Mullen is therefore well-positioned to "ensure that pretrial proceedings are conducted in a streamlined manner leading to the just and expeditious resolution of all actions to the overall benefit of all parties and the courts." *In re Armodafinil Patent Litig.*, 755 F. Supp. 2d 1359, 1360 (J.P.M.L. 2010).

BACKGROUND

A. The ABA and Law School Accreditation

The Council is the U.S. Department of Education–designated agency for the accreditation of programs leading to the J.D. degree. *See* ABA, *ABA Standards and Rules of Procedure for Approval of Law Schools 2017–2018* v (2017) [hereafter, "Standards"].[2] The Council ensures that federal financial aid goes to schools "that provide students with quality education or training worth the time, energy, and money they invest in it." 59 Fed. Reg. 22250 (Apr. 29, 1994). As the Under Secretary of Education has explained, "[s]tudents and families trust that accreditation indicates that a school or program will offer them a worthwhile education that prepares graduates for work and life." *See* Ted Mitchell, "Strengthening Accreditation's Focus on Outcomes," Feb. 4, 2016, https://sites.ed.gov/ous/2016/02/strengthening-accreditations-focus-on-outcomes/?src=accred-page.

The Council promulgates Standards for Approval of Law Schools, which set out criteria for securing and retaining ABA accreditation, as well as the associated Interpretations and Rules of Procedure that govern the accreditation process. *See* Standards, *supra* at v. The core substantive standards are designed to ensure that schools admit qualified applicants and prepare

[2] The ABA's Standards are available online at https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_aba_standards_rules_approval_law_schools_final.authcheckdam.pdf.

them for admission to the bar and the legal profession. For example, Standard 501(b) provides that accredited law schools may not admit applicants who do not "appear capable of satisfactorily completing its program of legal education and being admitted to the bar." *Id.* at 31. Standard 301(a) requires an accredited law school to "maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession." *Id.* at 15. And Standard 309(b) requires schools to "provide academic support designed to afford students a reasonable opportunity to complete the program of legal education, graduate, and become members of the legal profession." *Id.* at 21.

A law school that seeks ABA approval must demonstrate its compliance with these and other standards, and once approved, a law school must demonstrate ongoing compliance to maintain its accreditation. In particular, approved schools are subject to "site evaluations" at regular intervals, *id.* at 51–52, and the ABA's Accreditation Committee regularly monitors ABA-approved schools for compliance with the standards. *See id.* at 52 (Rule 6: Interim Monitoring of Accreditation Status). If the Accreditation Committee determines that a law school is out of compliance with a standard, the school may be directed to take remedial action or face sanctions ranging from public censure to withdrawal of ABA approval. *See id.* at 57. Accreditation Committee decisions are subject to review by the Council, *see id.* at 56 & 61, and Council decisions to deny or withdraw approval are subject to further review by an appeals panel, *see id.* at 50 & 56.

B. The InfiLaw Actions

This motion arises from three closely related actions filed within two weeks of one another.

The first is *Florida Coastal School of Law, Inc. and InfiLaw Corp. v. ABA*, No. 18-cv-621, which was filed on May 10, 2018 in the U.S. District Court for the Middle District of Florida. (Complaint attached as Exhibit A.) The second suit is *Charlotte School of Law, LLC and InfiLaw Corp. v. ABA*, No. 18-cv-256, filed May 15, 2018 in the Western District of North Carolina. (Complaint attached as Exhibit B.) The third is *Arizona Summit Law School, LLC and InfiLaw Corp. v. ABA*, No. 18-cv-1580, filed May 24, 2018 in the District of Arizona (Complaint attached as Exhibit C.)

The parties in each case are nearly identical. The ABA, its Council, and its Accreditation Committee are the defendants in all three cases. And each case was brought by InfiLaw Corporation and an InfiLaw-owned law school. (*See* Ex. A, ¶ 3 (Florida Coastal School of Law); Ex. B, ¶ 3 (Charlotte School of Law); Ex. C, ¶ 3 (Arizona Summit Law School).)

The cases involve many of the same factual allegations. Each complaint challenges accreditation decisions made by the Council and Committee and overlapping accreditation standards. For example, the *Florida Coastal* plaintiffs assert due process violations arising out of the Committee's determination that Florida Coastal was not in compliance with "Standard 301(a) concerning rigorous program of education; Standard 309(b) concerning academic support; and Standard 501(b) and Interpretation 501-1 concerning admission of capable applicants." (Ex. A, ¶ 75.) The *Charlotte* plaintiffs press similar accreditation challenges and challenge some of the same Standards as in *Florida Coastal*—including Standard 301(a) and Standard 501(b). (Ex. B, ¶ 113). So, too, for the *Arizona Summit* plaintiffs, who challenge accreditation decisions finding Arizona Summit out of compliance with Standard 301(a), Standard 309(b), Standard 501(b), and Interpretation 501-1. (Ex. C, ¶ 23.) And each complaint also alleges that Department of Education officials "coerced, pressured, or significantly encouraged the ABA to

take adverse accreditation actions against for-profit law schools, including law schools owned by InfiLaw." (Ex. A, ¶ 56; Ex. B, ¶ 47; Ex. C, ¶ 49.)

The cases also involve largely identical legal claims. First, each complaint asserts that the ABA entities violated common-law due process by employing vague standards that lack "objective metrics" for assessing compliance, and because the Committee failed to "provide a reasoned explanation for its decision[s]," among other things. (Ex. A, ¶¶ 127–28; Ex. B, ¶¶ 113–14; Ex. C, ¶¶ 25, 129.) Second, each complaint relies on the same provisions of the Higher Education Act and its implementing regulations. (Ex. A, ¶¶ 42–45 (relying on 20 U.S.C. § 1099b(a)(6), 34 C.F.R. § 602.25, and 34 C.F.R. § 602.18); Ex. B, ¶¶ 35–38 (same); Ex. C, ¶¶ 35–39 (same).) And third, each complaint alleges that the ABA is a state actor subject to the constraints of the Fifth Amendment. (Ex. A, ¶¶ 55–56; Ex. B, ¶¶ 46–47; Ex. C, ¶¶ 48–49.)

ARGUMENT

Although no single law school's situation is identical to that of any other, the *Florida Coastal*, *Charlotte*, and *Arizona Summit* cases do involve a number of significant "common questions of fact" under § 1407—indeed, many of the allegations are repeated almost verbatim across all three complaints. (*Compare, e.g.*, Ex. A, ¶¶ 23–59, *with* Ex. B, ¶¶ 18–50, *and* Ex. C, ¶¶ 13–52.) Consolidating the actions in a single court will "promote the just and efficient conduct" of the actions, 28 U.S.C. § 1407(a), particularly because consolidation will eliminate the risk of inconsistent pretrial rulings on threshold legal issues and the scope of discovery—in particular, on whether discovery is available in an accreditation case at all. *See infra* Part II.B. The Panel should therefore order the transfer of the *Florida Coastal* and *Arizona Summit* actions for consolidation with the *Charlotte* action before the Western District of North Carolina.

I. The Related Actions Involve Common Questions of Fact and Law.

The Panel has repeatedly consolidated actions challenging an association's bylaws or practices when the relevant actions involve common factual questions. *See, e.g.*, *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, 24 F. Supp. 3d 1366, 1366 (J.P.M.L. 2014) (consolidating two actions challenging NCAA bylaws that limited athletic scholarships to "tuition and fees, room and board, and required course-related books"); *In re NCAA Student-Athlete Concussion Injury Litig.*, 988 F. Supp. 2d 1373, 1373 (J.P.M.L. 2013) (consolidating two actions brought by former student-athletes against NCAA member schools alleging that the NCAA had "concealed information about the risks of the long-term effects of concussion injuries"). The justification for doing so is particularly strong where, as here, the actions repeat verbatim many of the same factual allegations. In plaintiffs' view, at least, common issues apparently predominate.

The overlapping issues are central to plaintiffs' claims. For example, in all three actions, plaintiffs allege that they were denied due process because the relevant Standards "are vague and lack objective metrics for assessing compliance." (Ex. A, ¶ 128; *see also* Ex. B, ¶ 114 (verbatim); Ex. C, ¶ 130 (verbatim).) In all three actions, plaintiffs support their vagueness theory with assertions relating to alleged public statements of Maureen O'Rourke, the current Chair of the Council. (*See* Ex. A, ¶ 33; Ex. B, ¶ 26; Ex. C, ¶ 26.) And in all three actions, plaintiffs challenge some of the very same core Standards, including Standards 301(a) and 501(b), along with Interpretation 501-1. (*See* Ex. A, ¶ 32; Ex. B, ¶ 25; Ex. C, ¶ 25.)

Likewise, in all three actions plaintiffs allege that "ABA officials are biased against InfiLaw-owned law schools because of their proprietary status," contrary to "DOE regulations [that] require the ABA to control such bias." (Ex. A, ¶ 58; *see also* Ex. B, ¶ 49 (verbatim); Ex. C, ¶ 51 (substantially verbatim).) And in all three actions, plaintiffs point to the same facts to

support their assertions of bias. (*See* Ex. A, ¶ 59 (referring to 1995 litigation with the U.S. Department of Justice); Ex. B, ¶ 50 (same); Ex. C, ¶ 52 (same).) The Panel has previously centralized actions against a private adjudicative body in part based on similar overlapping of assertions of bias. *See In re Nat'l Arbitration Forum Antitrust Litig.*, 682 F. Supp. 2d 1343, 1345 (J.P.M.L. 2010) (consolidating "actions involv[ing] allegations that the Forum, a large consumer debt arbitration company, operated a biased arbitration process and concealed from the public its ties to the collection industry"). It should do the same here.

Another common issue concerns plaintiffs' assertion that the ABA violated their Fifth Amendment rights to due process of law. The Fifth Amendment applies only to state actors, and courts have repeatedly held that accreditors are *not* state actors. *See, e.g.*, *Prof'l Massage Training Ctr., Inc. v. Accreditation All. of Career Sch. & Colls.*, 781 F.3d 161, 169 (4th Cir. 2015) ("Accreditation agencies are private entities, not state actors"); *Hiwassee Coll., Inc. v. S. Ass'n of Colls. & Sch.*, 531 F.3d 1333, 1335 (11th Cir. 2008) ("[T]he overwhelming majority of courts who have considered the issue have found that accrediting agencies are not state actors."). Recognizing the hurdle of precedent, plaintiffs take a different tack than prior litigants have, asserting that the ABA may be treated as a state actor as a result of coercion by the Department of Education: "InfiLaw officers have information and believe that during the prior Administration one or more DOE officials coerced, pressured, or significantly encouraged the ABA to take adverse accreditation actions against for-profit law schools, including law schools owned by InfiLaw." (Ex. A, ¶ 56; *see also* Ex. B, ¶ 47 (verbatim); Ex. C, ¶ 49 (verbatim).) And to support their speculative coercion theory, plaintiffs in all three actions cite the same former official's social media posting. (*See* Ex. A, ¶ 57; Ex. B, ¶ 48; Ex. C, ¶ 50.)

The common issues extend to the relief sought in each action. *See In re Terminix Emp'l. Practices Litig.*, 466 F. Supp. 2d 1354, 1355 (J.P.M.L. 2006) ("Plaintiffs in both actions seek similar relief, including injunctive relief and damages."). In addition to seeking damages—raising the common legal question whether damages are even available in an accreditation case—plaintiffs in all three actions seek a declaration that ABA Standards 301(a) and 501(b) are "unlawfully vague and, therefore, unenforceable," as well as an injunction barring the ABA from enforcing them against *any law school*. (Ex. A, at 32; Ex. B, at 27; Ex. C, at 24.) *See In re Gen. Motors Class E Stock Buyout Sec. Litig.*, 696 F. Supp. 1546, 1547 (J.P.M.L. 1988) ("The presence of common questions in *Hart* and the MDL–720 actions is further illustrated by the overlapping injunctive relief sought in both proceedings."). In fact, the *Charlotte* case attempts to justify plaintiffs' request for declaratory relief—something that is of no use at this point to Charlotte School of Law itself, as the school closed in 2017 (Ex. B, ¶ 1)—by asserting that "[a] judgment declaring that the ABA violated Charlotte's due process rights would benefit InfiLaw and the other law schools owned by InfiLaw, Arizona Summit and Florida Coastal, which are also accredited by the ABA." (*Id.*, ¶ 133.) In other words, the *Charlotte* action is, in part, just another shot on the same goal: InfiLaw wants a judicial decree that will benefit Florida Coastal and Arizona Summit, and it has asked three separate judges in three separate districts for that same decree.

There is a fourth pending action involving some of the same issues presented by the three InfiLaw cases: *Thomas M. Cooley Law School v. American Bar Ass'n*, No. 17-cv-13708 (E.D. Mich.). (Amended Complaint attached as Exhibit D.) Among other things, *Cooley* involves allegations that Standard 501(b) is unlawfully vague, just as the InfiLaw cases do, and the Panel might therefore reasonably decide to consolidate *Cooley* as well. However, in *Cooley*, the most

important discovery dispute that is likely to arise has already been decided—there will be no discovery prior to briefing on summary judgment—and cross-motions for summary judgment will be fully briefed before the Panel's next hearing. Accordingly, the ABA has not requested the transfer and consolidation of the *Cooley* case.

II. Transfer and Consolidation Will Promote the Just and Efficient Conduct of These Actions.

The three InfiLaw actions make many of the same allegations challenging the same Standards and seeking the same relief. In addition, they are all at the same nascent stage, having been filed within two weeks of one another. It makes no sense for the cases to proceed on separate but parallel tracks. Not only would such duplicative litigation require three federal judges to invest their time and effort in resolving identical pretrial factual and legal questions, but the duplication also presents a very serious risk of inconsistent rulings on those issues—a risk that is only exacerbated by the possibility of satellite litigation over preclusion and estoppel given the overlapping parties.

A. Threshold Legal Questions

These three actions all present some of the same threshold questions of law, including (1) whether the ABA may be considered a state actor under the circumstances presented; (2) whether an asserted due process violation in the accreditation context can give rise to a claim for damages; and (3) whether the challenged standards are unlawfully vague. Having three courts addressing these identical questions in actions involving the same parties at roughly the same time presents a significant risk of inconsistency. *See NCAA Grant-in-Aid Litig.*, 24 F. Supp. at 1367 (citing the risk of "inconsistent pretrial rulings" in centralizing actions involving challenges to NCAA bylaws); *In re Federal Election Campaign Act Litig.*, 511 F. Supp. 821, 823–24 (J.P.M.L. 1979) (consolidating actions involving administrative review of decisions of

the Federal Election Commission "to avoid duplication of discovery and prevent inconsistent pretrial rulings," including inconsistent rulings on threshold legal issues).

The prospect of multiple court rulings based on potentially inconsistent interpretations of the Standards presents a special concern. The ABA's Council is the Department of Education–recognized accreditor for more than two hundred law schools across the country. Suppose the judge in *Florida Coastal* determines that a given Standard is enforceable but the *Charlotte* judge or the *Arizona Summit* judge disagrees—or suppose all three judges issue different rulings regarding the interpretation of a given Standard. On the one hand, the ABA's success in *Florida Coastal* suggests that it should be permitted to apply its Standard against (at least) Florida Coastal, but it might not be able to do so in light of the *Charlotte* ruling or the *Arizona Summit* ruling—no matter how circumscribed either ruling may be. *See In re Tri-State Water Rights Litig.*, 481 F. Supp. 2d 1351, 1352 (J.P.M.L. 2007) (ordering centralization in part to "prevent inconsistent pretrial rulings (particularly with respect to potential requests for imposing conflicting standards of conduct . . .) and conserve the resources of the parties, their counsel and the judiciary"); *In re Operation of Missouri River Sys. Litig.*, 277 F. Supp. 2d 1378, 1379 (J.P.M.L. 2003) (noting the risk of "imposing or threatening to impose conflicting standards of conduct"). If the same Standards are challenged on the same grounds and the same litigation timeline and overlapping parties, the dispute should be presented to a single district judge to promote the "just and efficient conduct" of the actions. 28 U.S.C. § 1407; *cf.* 28 U.S.C. § 2112(a)(3) (providing for mandatory centralization of certain appeals from administrative agencies).

Further compounding the risk of inconsistency in this case is the possibility of satellite litigation over preclusion and estoppel. All three cases involve essentially the same parties: the

ABA, its Council, its Accreditation Committee, InfiLaw, and an InfiLaw subsidiary. As a result, issues resolved in either side's favor in the first case to judgment may have preclusive effect in the others—at least to the extent that the issues are the same, actually litigated, and necessary to the judgment in the first-to-judgment case. *See, e.g.*, *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979) ("Under the doctrine of collateral estoppel, . . . the judgment in the prior suit precludes relitigation of issues actually litigated and necessary to the outcome of the first action."). But the scope and application of preclusion may itself be hotly contested, particularly if key pretrial rulings are resolved inconsistently across the actions. The prospect of preclusion may also lead to a wasteful race to judgment, with the first-to-judgment court's pretrial decisions rendering much of the work done by the other court(s) nugatory. And along the way—even before preclusion formally attaches upon entry of judgment—there is a chance that the parties will seek to leverage a counterparty's statements or a court's decisions from one case in another, leading to satellite litigation over the import of such statements or decisions. Centralization obviates all of these risks.

B. Discovery Disputes

In addition, common disputes over whether discovery is permitted are likely to arise in each action. To be sure, courts in accreditation cases have consistently held that review is limited to the record before the accreditor. *See, e.g.*, *Prof'l Massage Training*, 781 F.3d at 174–75 ("In considering whether the denial was supported by substantial evidence, we confine ourselves to the record that was considered by the accrediting agency at the time of the final decision."); *Thomas M. Cooley Law Sch. v. Am. Bar Assoc.*, 376 F. Supp. 2d 758, 767 (W.D. Mich. 2005), *aff'd*, 459 F.3d 705 (6th Cir. 2006) ("The Court's review of the ABA's decisions is limited to the existing record."). But, like many plaintiffs challenging accreditation decisions, plaintiffs here will likely assert their case is different. If so, the parties will need to present to the

district court any dispute over the accreditation record, as well as whether discovery should be available to supplement that record. As this Panel has recognized, centralization under § 1407 can "prevent inconsistent pretrial rulings, particularly those with respect to the identification of the underlying administrative record." *In re Polar Bear Endangered Species Act Listing § 4(d) Rule Litig.*, 588 F. Supp. 2d 1376, 1377 (J.P.M.L. 2008). Without centralization, there is a risk that the different district courts will have different (and perhaps conflicting) views on the scope of discovery, including whether discovery is available at all. *See In re Bard IVC Filters Prod. Liab. Litig.*, 122 F. Supp. 3d 1375, 1376 (J.P.M.L. 2015) ("Centralization will streamline these discovery disputes, allow the parties to brief plaintiffs' request for additional discovery once, and result in one ruling on the contested . . . issue. . . . [R]e-litigation of the same issues in different courts significantly impacts the parties and the judiciary."); *In re Roundup Prod. Liab. Litig.*, 214 F. Supp. 3d 1346, 1348 (J.P.M.L. 2016) ("Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings (including with respect to discovery, privilege, and *Daubert* motion practice); and conserve the resources of the parties, their counsel, and the judiciary.").

The nature of the discovery disputes that are likely to arise demonstrates why informal coordination cannot substitute for centralization under § 1407 here. Parties in run-of-the-mill civil cases can informally agree that discovery taken in one case may be usable in another, or they can coordinate the scheduling of depositions so as not to subject the same witnesses to multiple depositions on the same topics. But the discovery issues likely to arise in these actions do not concern such logistical questions: they concern the question whether and to what extent discovery may be taken at all. And plaintiffs have every incentive to litigate that question separately in each court to increase their chances of obtaining the discovery they are likely to

seek. Accordingly, centralization is the only means to ensure the just and efficient conduct of these actions.

III. Transfer and Consolidation Will Serve the Convenience of Parties and Witnesses.

Proceeding separately in three forums on the same claims will be inconvenient for all parties and—in the unlikely event that depositions are taken or pretrial hearings involving live testimony are held—potential witnesses as well.

As noted, it is likely that the main discovery issues in these actions will concern *whether* rather than *how* discovery will be taken. But in the event that any discovery is allowed, contrary to accreditation precedent, centralization would eliminate the risk of having inconsistent discovery ground rules for the overlapping actions. *See In re Alfuzosin Hydrochloride Patent Litig.*, 560 F. Supp. 2d 1372, 1374 (J.P.M.L. 2008) ("Centralization under Section 1407 will have the salutary effect of assigning the present actions to a single judge who can formulate a pretrial program that ensures that pretrial proceedings will be conducted in a manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties and the courts.").

Moreover, to the extent that in-person appearances are required, consolidation in the Western District of North Carolina would (1) eliminate the need for appearances before multiple courts in multiple states and (2) centralize in-person proceedings in a convenient district for all parties, as discussed more fully below.

IV. The Western District of North Carolina is the Most Appropriate Transferee Forum.

If the Panel concludes that centralization is appropriate, then defendants respectfully suggest that the Panel should order the transfer of the *Florida Coastal* and *Arizona Summit* actions to the Western District of North Carolina, where the *Charlotte* case is pending. The Western District of North Carolina is an ideal forum for several reasons.

First, the court in Charlotte is conveniently accessible for all parties. *See In re Laughlin Prods., Inc., Patent Litig.*, 240 F. Supp. 2d 1358, 1359 (J.P.M.L. 2003) (noting that destination forum was "an accessible metropolitan district"); *In re MLR, LLC Patent Litig.*, 269 F. Supp. 2d 1380, 1382 (J.P.M.L. 2003) (noting that destination forum was "a central and easily accessible location for all parties"). Any in-person appearances are going to require air travel. The only parties located at or near the respective courts are the law schools themselves: InfiLaw is in Naples, Florida—more than 300 miles from the *Florida Coastal* court in Jacksonville—and the ABA is in Chicago, Illinois. Lead counsel for the ABA is in Chicago, while lead counsel for InfiLaw and the InfiLaw-owned schools is in Washington, D.C. The need to travel puts a premium on having a major airport with many flight options, and by that metric, Charlotte's Douglas International Airport is a much more convenient option than Jacksonville International, and comparable to Phoenix's Sky Harbor International Airport.[3]

Second, Judge Mullen in the Western District of North Carolina has extensive multidistrict litigation experience, having presided over three MDLs since 2006.[4] *See, e.g.*, *In re Skechers Toning Shoe Prod. Liab. Litig.*, 831 F. Supp. 2d 1367, 1370 (J.P.M.L. 2011) ("[W]e are selecting a jurist experienced in multidistrict litigation to steer this litigation on a prudent course."). Judge Mullen is also already presiding over four consolidated class actions involving Charlotte School of Law and InfiLaw Corporation (*see* Consolidated Class Action Complaint,

[3] Charlotte's airport is one of the top ten busiest airports in the country by some metrics. *See, e.g.*, FAA, Commercial Service Airports (Rank Order), https://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy16-commercial-service-enplanements.pdf. Almost ten times more passengers flew out of Charlotte than Jacksonville in 2016. *See id.*

[4] *See* U.S. Judicial Panel on Multidistrict Litigation, Multidistrict Litigation Terminated Through September 30, 2017, http://www.jpml.uscourts.gov/sites/jpml/files/JPML_Cumulative_Terminated_Litigations-FY-2017.pdf.

Barchiesi v. Charlotte School of Law, LLC, No. 16-cv-861 (W.D.N.C.), attached as Exhibit E), in which he has issued at least one substantive opinion that touches on the role of ABA accreditation. (*See* Aug. 17, 2017 Order, *Barchiesi v. Charlotte School of Law, LLC*, No. 16-cv-861 (W.D.N.C.), attached as Exhibit F.) Judge Mullen's familiarity with both the specific factual context and multidistrict litigation procedure in general make him an ideal transferee judge.

Third, the Fourth Circuit has developed an extensive body of case law, including the seminal *Professional Massage Therapy* case, that will guide pre-trial determinations. Plaintiffs recognize as much, citing the case in *all three* of their complaints. (Ex. A, ¶ 48; Ex. B, ¶ 41; Ex. C, ¶ 41.) It makes sense for a district court in the Fourth Circuit to apply the Fourth Circuit's well-developed body of accreditation case law.

Finally, the Western District of North Carolina has more favorable docket conditions than the Middle District of Florida or the District of Arizona does. As of December 31, 2017, there were 1,223 total civil cases pending in W.D.N.C., which has six Article III judges (204 cases per judge), while there were 6,801 civil cases pending in M.D. Fla., which has 26 (262 cases per judge), and 4,769 civil cases pending in D. Ariz., which has 20 (238 cases per judge).[5]

CONCLUSION

Transfer of the *Florida Coastal* and *Arizona Summit* actions to the Western District of North Carolina for coordinated pretrial proceedings with *Charlotte* will eliminate the serious risk of inconsistent pre-trial rulings and promote judicial economy. Accordingly, the ABA respectfully requests that the Panel grant its Motion for Consolidation of Law School Accreditation Actions in the Western District of North Carolina Pursuant to 28 U.S.C. § 1407.

[5] *See* U.S. Courts, Table C-1—U.S. District Courts–Civil Statistical Tables For The Federal Judiciary (Dec. 31, 2017), http://www.uscourts.gov/statistics/table/c-1/statistical-tables-federal-judiciary/2017/12/31. Information on the number of Article III judges per court was taken from each court's website.

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