BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: HYUNDAI AND KIA FUEL ECONOMY LITIGATION	)	MDL Docket No. _____

PLAINTIFF GUNTHER KRAUTH'S MOTION TO TRANSFER PURSUANT TO 28 U.S.C. § 1407

I. INTRODUCTION

Plaintiff Gunther Krauth ("Plaintiff") hereby respectfully moves the Judicial Panel on Multidistrict Litigation ("Panel") for an order pursuant to 28 U.S.C. § 1407 transferring 12 related putative class actions that are pending in five different federal district courts (identified in the concurrently filed Schedule of Actions) to the United States District Court for the Central District of California, Southern Division for coordinated or consolidated pretrial proceedings.

In support of this Motion, and as fully explained in the accompanying Memorandum, Plaintiff states as follows:

1. In recent months, several actions have been filed against Hyundai Motor America ("Hyundai") and Kia Motor America ("Kia") (collectively "Defendants" or "Hyundai").[1] (hereafter the "Actions"). Each of the Actions involve one or more Hyundai or Kia 2011-2013 models and stem from the same underlying factual issues involving Hyundai's false and

[1] Both Hyundai Motor America and Kia Motor America are owned by the same parent corporation - Hyundai Motor Group, a Seoul, South Korea-based corporation that is the world's fourth largest auto manufacturer.

misleading national mass-marketing campaign using inflated fuel economy estimates for each of the vehicles. Further, each Action involves the revelation by Hyundai on November 2, 2012, that it failed to comply with United States Environmental Protection Agency ("EPA") testing protocols and, as a result, provided inflated fuel economy estimates in both advertising and on the window stickers ("Monroney Labels") affixed to each new vehicle sold for 13 different models over a three year period.

2. The 12 Actions are pending in district courts in California, Ohio, New Jersey, Alabama and Illinois. The known pending Actions are as follows[2]:

- *Gunther Krauth v. Hyundai Motor America*, Case No. 8:12-cv-01935 (C.D. Cal. Southern Division);
- *Brady, et al. v. Hyundai Motor America, et al.*, Case No. 8:12-cv-01930 (C.D. Cal. Southern Division);
- *Wilton v. Kia Motors America, Inc., et al.*, Case No. 8:12-cv-01917 (C.D. Cal. Southern Division);
- *Espinosa, et al. v. Hyundai Motor America*, Case No. 8:12-cv-00800 (C.D. Cal. Western Division);
- *Hunter, et al. v. Hyundai Motor America, et al.*, Case No. 8:12-cv-01909 (C.D. Cal. Southern Division);
- *Sanders, et al. v. Hyundai Motor Company, et al.*, Case No. 1:12-cv-00853 (S.D. Ohio Cincinnati);

[2] Pursuant to Rule 6.1(b)(ii) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, complete case information is included on the Schedule of Actions filed concurrently herewith.

- *Graewingholt, et al. v. Hyundai Motor America, et al.*, Case No. 8:12-cv-01963 (C.D. Cal. Southern Division);
- *Kievit, et al. v. Hyundai Motor America*, Case No. 2:12-cv-06999 (N.J. Newark);
- *Maturani v. Hyundai Motor America*, Case No. 2-12-cv-00998 (M.D. Ala. Montgomery);
- *Rezai v. Hyundai Motor America*, Case No. 1:12-cv-09124 (N.D. Illinois Chicago);
- *Thomson, et al., v. Hyundai Motor America, et al.*, Case No. 8:12-cv-01981 (C.D. Cal. Southern Division); and
- *Rotter v. Hyundai Motor America*, Case No. 1:12-cv-09196 (N.D. Illinois Chicago).

3. In addition to the common factual issues involved, the Actions all allege violations of consumer protection laws and common law. The Actions seek relief on behalf of state classes and overlapping and competing nationwide putative classes. The Actions seek injunctive relief and damages, among other remedies.

4. While limited discovery has been conducted in the *Espinosa* Action and one state court Action (*Bird v. Hyundai Motor America*, Case No. 34-2012-00127249 (Sac. Sup. Ct.)), no discovery has been taken regarding the revised EPA estimate issue, which precipitated the increase from two to 12 actions in approximately two weeks. Coordination or consolidation can easily build upon the discovery already conducted and counsel can work together to ensure that the process is efficient and non-duplicative.

5. Transfer for coordination or consolidation is appropriate because the Actions involve one or more common questions of alleged fact, the transfer will serve the convenience of the parties and witnesses, and it will promote the just and efficient conduct of the Actions because transfer will eliminate duplicative discovery, prevent duplicative motions, prevent conflicting pretrial

rulings (particularly as to class certification), conserve judicial resources, reduce the costs of litigation, and allow the Actions to proceed more efficiently to trial.

6. Plaintiff seeks transfer of the Actions to the United States District Court for the Central District of California, Southern Division. First, Hyundai and Kia have their headquarters in the Southern Division. Second, and for similar reasons, a substantial component of the relevant documents and witnesses are located in, or are most easily accessible from, the Central District, Southern Division. Third, the cases are in the early stages of litigation. Fourth, the Central District, Southern Division is in a major metropolitan area that is readily accessible to witnesses and counsel.

7. This Motion is based on the foregoing, the Memorandum filed concurrently herewith, the Schedule of Actions filed concurrently herewith, the pleadings and papers on file herein, and such other matters as may be presented to the panel at the time of the hearing.

DATED: November 19, 2012

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BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: HYUNDAI AND KIA FUEL ECONOMY LITIGATION	)	MDL Docket No. _____

PLAINTIFF GUNTHER KRAUTH'S MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER PURSUANT TO 28 U.S.C. § 1407

Movant Gunther Krauth ("Plaintiff") respectfully submits this memorandum in support of Plaintiff's Motion to Transfer Pursuant to 28 U.S.C. § 1407.

I. INTRODUCTION

In recent months, several actions have been filed against Hyundai Motor America ("Hyundai") and/or Kia Motor America ("Kia") (collectively, "Defendants" or "Hyundai").[1] (hereafter, the "Actions"). The Actions all pertain to inaccurate representations concerning fuel economy. Each of the Actions concerns one or more 2011-2013 Hyundai and Kia models and stems from the same underlying factual issues regarding the false and deceptive national mass-marketing campaign by Hyundai using inflated fuel economy estimates for each of the vehicles. Further, each case involves the revelation by Hyundai on November 2, 2012, that it failed to comply with United States Environmental Protection Agency ("EPA") testing protocols and, as a

[1] Both Hyundai and Kia are owned by the same parent corporation—Hyundai Motor Group, a Seoul, South Korea-based corporation that is the world's fourth largest auto manufacturer. Hyundai Motor Group purchased Kia in 1998.

result, provided inflated fuel economy estimates in both advertising and on the window stickers ("Monroney Labels") affixed to each new vehicle sold for approximately 13 different models over a three year period.

To avoid the high likelihood of duplicative discovery and inconsistent rulings at or before the class-certification stage, Plaintiff respectfully requests the Panel transfer the Actions for coordination or consolidation to the United States District Court for the Central District of California, Southern Division.

Each Action challenges the concededly inaccurate advertising disclosures provided by Hyundai and Kia. Plaintiffs in each Action cite state consumer protection statutes and common law claims. The relief requested in the Actions is similar. All Actions assert overlapping and competing putative nationwide classes. All Actions request parallel relief in the form of injunctive relief and damages, among other remedies. The Actions involve numerous common questions of fact, meaning transfer for coordination or consolidation would serve the convenience of parties and witnesses. More importantly, transfer would promote the just, efficient, and consistent adjudication of these Actions.

Plaintiff supports the United States District Court for the Central District of California, Southern Division as the most appropriate transferee court under the circumstances. First, Hyundai and Kia—the parties responsible for the conduct at issue—are both headquartered in the Southern Division. Second, and for similar reasons, the vast majority of relevant documents and witnesses are located in, or are most easily accessible from, the Southern Division. Third, all the actions are actions are in relatively nascent stages: no class certification argument has yet occurred in any case and only two cases (one state, one federal) have reached the stage of discovery. None of the cases have received discovery concerning the EPA-related revelations of

November 2, 2012. Finally, the Southern Division is conveniently located to the major metropolitan areas of both Los Angeles and San Diego.

For these reasons the 12 related actions should be transferred for coordination or consolidation before the United States District Court for the Central District of California, Southern Division.

II. PROCEDURAL HISTORY

The 12 Actions currently pending in federal court against Defendants consist of the following[2]:

- *Gunther Krauth v. Hyundai Motor America*, Case No. 8:12-cv-01935 (C.D. Cal. Southern Division);
- *Brady, et al. v. Hyundai Motor America, et al.*, Case No. 8:12-cv-01930 (C.D. Cal. Southern Division);
- *Wilton v. Kia Motors America, Inc., et al.*, Case No. 8:12-cv-01917 (C.D. Cal. Southern Division);
- *Espinosa, et al. v. Hyundai Motor America*, Case No. 8:12-cv-00800 (C.D. Cal. Western Division);
- *Hunter, et al. v. Hyundai Motor America, et al.*, Case No. 8:12-cv-01909 (C.D. Cal. Southern Division);

[2] Pursuant to Rule 6.1(b)(ii) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation ("JPMDL Rules"), complete case information is included on the Schedule of Actions filed concurrently herewith. Pursuant to JPMDL Rule 6.1(b)(iv), a copy of each complaint referenced in this Memorandum, and their respective docket sheets, are concurrently filed as Exhibits 1-12.

- *Sanders, et al. v. Hyundai Motor Company, et al.*, Case No. 1:12-cv-00853 (S.D. Ohio Cincinnati);
- *Graewingholt, et al. v. Hyundai Motor America, et al.*, Case No. 8:12-cv-01963 (C.D. Cal. Southern Division);
- *Kievit, et al. v. Hyundai Motor America*, Case No. 2:12-cv-06999 (D.C.N.J. Newark);
- *Maturani v. Hyundai Motor America*, Case No. 2-12-cv-00998 (M.D. Ala. Montgomery);
- *Rezai v. Hyundai Motor America*, Case No. 1:12-cv-09124 (N.D. Illinois Chicago);
- *Thomson, et al., v. Hyundai Motor America, et al.*, Case No. 8:12-cv-01981 (C.D. Cal. Southern Division); and
- *Rotter v. Hyundai Motor America*, Case No. 1:12-cv-09196 (N.D. Illinois Chicago).

III. ARGUMENT

"The objective of transfer [under 28 U.S.C. § 1407] is to eliminate duplication in discovery, avoid conflicting rulings and schedules, reduce litigation cost, and save the time and effort of the parties, the attorneys, the witnesses, and the courts." MANUAL FOR COMPLEX LITIGATION (FOURTH) § 20.131 (2004). Thus, transfer and coordination or consolidation is appropriate under § 1407 when: (1) the actions involve one or more common questions of fact; (2) transfer would serve the convenience of the parties and witnesses; and (3) transfer would promote the just and efficient conduct of such actions. 28 U.S.C. § 1407(a). The Actions satisfy these requirements.

A. The Actions Involve One or More Common Questions of Fact.

The core factual allegations in each of the Actions are identical. Specifically, each complaint alleges false and misleading fuel economy disclosures by Hyundai in its advertising

and Monroney Labels for each of the subject Hyundai and Kia models. Further, Defendants concede that, with respect to the inaccurate fuel economy information provided to the EPA, the "procedural error" was the same: the improper calculation of "coast down" values for the subject vehicles.

These nearly identical factual allegations and similar claims for relief satisfy the Panel's requirements for commonality. "Indeed, when two or more complaints assert comparable allegations against identical defendants based upon similar transactions and events, common factual questions are presumed." *In re Air West, Inc. Sec. Litig.*, 384 F. Supp. 609, 611 (J.P.M.L. 1974). Accordingly, the Panel has found commonality where all the actions at issue "share[d] factual questions concerning defendants' imposition of a mortgage loan registration fee." *In re Merscorp, Inc. Real Estate Settlement Procedures*, 473 F. Supp. 2d 1379, 1379 (J.P.M.L. 2007). Here too, the element of commonality exists because all the Actions share similar questions concerning Hyundai's false and misleading fuel economy representations. The Panel has held the "potential for conflicting or overlapping class actions presents one of the strongest reasons for transferring such related actions to a single district for coordinated or consolidated pretrial proceedings which will include an early resolution of such potential conflicts. . . ." *In re Plumbing Fixtures,* 308 F. Supp. 242, 244 (J.P.M.L. 1970). Indeed, the Actions seek relief on behalf of overlapping and competing putative classes.

These assertions of overlapping classes will require more than a half dozen different courts to expend duplicative efforts to determine whether the same classes satisfy the requirements of Rule 23. This weighs strongly in favor of transferring the Actions for coordination or consolidation. *See In re Maytag Corp. Neptune Washer Prods. Liab. Litig.*, 333 F. Supp. 2d 1382, 1383 (J.P.M.L. 2004) (transferring three putative class actions coordination or

consolidation where "[a]ll actions are purported class actions brought by persons who seek to recover damages because of alleged defects in Maytag 'Neptune' washing machines"); *In re Air West, Inc. Sec. Litig.*, 384 F. Supp. at 611 ("Moreover, the appearance of conflicting class representation claims between the California and Nevada actions militates strongly in favor of transfer."); *see also In re Vonage Mktg. & Sales Practices Litig*., 505 F. Supp. 2d 1375, 1376 (J.P.M.L. 2007); *In re Pharmacy Benefits Mgrs. Antitrust Litig.*, 452 F. Supp. 2d 1352, 1352 (J.P.M.L. 2006); *In re Global Crossing Ltd. Secs. & "ERISA" Litig.,* 223 F. Supp. 2d 1384, 1385 (J.P.M.L. 2002); *In re 7-Eleven Franchise Antitrust Litig.*, 358 F. Supp. 286, 287 (J.P.M.L. 1973); *In re Plumbing Fixtures*, 308 F. Supp. 242, 244 (J.P.M.L. 1970).

B. Transfer and Coordination or Consolidation Would Serve the Convenience of the Parties and Witnesses.

Coordination or consolidation of these nearly identical Actions against what essentially amounts to a single, common defendant, would invariably serve the interests of the parties and witnesses. As noted above, Hyundai Motor Group—a Seoul, South Korea-based corporation that is the world's fourth largest auto manufacturer—owns both Hyundai and Kia. As also noted above, Hyundai Motor Group purchased Kia in 1998, so all the conduct at issue occurred during Hyundai Motor Group's stewardship of both companies. As a result, the plaintiffs' assertions of similar claims and factual allegations, as well as overlapping and competing classes, creates a high likelihood that plaintiffs will also pursue similar discovery (class and merits) and class-certification motions. Absent coordination or consolidation, the plaintiffs and Hyundai and Kia would be compelled to file multiple highly duplicative class certification-related pleadings, as well as summary judgment-related pleadings in the Actions. These inevitable pretrial litigation activities are almost certain to be duplicative and nearly identical in each of the Actions—

particularly discovery, given that Hyundai and/or Kia are defendants in all of the Actions and the witnesses and evidence are likely to be similar or even identical. The coast-to-coast locations of the Actions also indicate that coordination or consolidation would benefit the parties and witnesses. At present, there are 12 Actions pending in United States District Courts in five states: California, Ohio, New Jersey, Illinois and Alabama. The locations of the pending Actions promise to impose thousands of miles of air travel on counsel and witnesses, not to mention the likelihood that myriad duplicative discovery demands and depositions will be made.

Under similar circumstances, the Panel has frequently recognized the benefits of coordination or consolidation. Foremost among these benefits is enabling a single judge to formulate pretrial procedures and schedules that will minimize witness inconvenience and eliminate duplicative discovery and the potential for inconsistent rulings. *See, e.g.*, *In re Uranium Indus. Antitrust Litig.*, 458 F. Supp. 1223, 1230 (J.P.M.L. 1978) ("[Plaintiffs] will have to depose many of the same witnesses, examine many of the same documents, and make many similar pretrial motions in order to prove their . . . allegations. The benefits of having a single judge supervise this pretrial activity are obvious."). The need for a single, uniform pretrial scheduling order is particularly acute with regard to motions to dismiss, class-certification discovery and motions, and motions for summary judgment. *See id.* With such an order in place following transfer and consolidation or coordination, there is no doubt that all litigants in these Actions will benefit from a drastic reduction in total pretrial litigation expenses. *See In re Cuisinart Food Processor Antitrust Litig.*, 506 F. Supp. 651, 655 (J.P.M.L. 1981) (transfer would "effectuate a significant overall savings of cost and a minimum of inconvenience to all concerned with the pretrial activities."); *In re Maytag*, 333 F. Supp. 2d at 1383 ("Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent

pretrial rulings (especially with respect to jurisdictional and class certification matters), and conserve the resources of the parties, their counsel and the judiciary."); *In re Merscorp*, 473 F. Supp. 2d at 1379 ("Centralization under Section 1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.").

C. Transfer for Coordination or Consolidation Would Promote the Just and Efficient Conduct of the Actions.

The courts will benefit from transfer for coordination or consolidation for many of the same reasons as the parties and witnesses—namely, eliminating duplicative discovery, preventing inconsistent pretrial rulings, and conserving the time and resources of the parties, their counsel, and the judiciary.

Indeed, as explained above, the Actions are based on nearly identical factual allegations and assert substantially similar claims for relief. Where "an analysis of the complaints reveals a commonality of factual issues," transfer and coordination or consolidation "is necessary in order to prevent duplication of discovery and eliminate the possibility of conflicting pretrial rulings." *In re A.H. Robins Co. 'Dalkon Shield' IUD Prods. Liab. Litig.*, 406 F. Supp. 540, 542 (J.P.M.L. 1975).

Given the common factual questions raised in each of the Actions—and the anticipated reliance in each action on the same witnesses and documents—it is inevitable that the parties will duplicate their extensive discovery efforts, absent coordination or consolidation. These concerns regarding duplicative efforts are not limited to discovery issues: consistent pretrial rulings by a single judge will also provide uniform rulings and ensure judicial efficiency. *See In re Prempro Prods. Liab. Litig.*, 254 F. Supp. 2d 1366, 1367 (J.P.M.L. 2003) ("Centralization under Section

1407 is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings (especially with respect to the question of class certification), and conserve the resources of the parties, their counsel and the judiciary."); *In re Maytag*, 333 F.Supp. 2d at 1383 (same); *In re Merscorp*, 473 F. Supp. 2d at 1379 (same). In particular, the Panel has held consistently that the risk of inconsistent class certification rulings strongly favors transfer. *See, e.g.*, *In re Lupron Mktg. & Sales Practices Litig.*, 180 F. Supp. 2d 1376, 1377–78 (J.P.M.L. 2001); *In re Am. Gen. Life & Accident Ins. Co Indus. Life Ins. Litig.*, 175 F. Supp. 2d 1380, 1381 (J.P.M.L. 2001); *In re Plumbing Fixtures*, 308 F. Supp. at 244 (noting that "potential for conflicting or overlapping class actions presents one of the strongest reasons for transferring such related actions to a single district for coordinated or consolidated pretrial proceedings which will include an early resolution of such potential conflicts."); *In re Res. Exploration, Inc. Sec. Litig.*, 483 F. Supp. 817, 821 (J.P.M.L. 1980) ("It is desirable to have a single judge oversee the class action issues in these actions to avoid duplicative efforts and inconsistent rulings in this area."

D. The Actions Should Be Transferred to the Central District of California, Southern Division.

On balance, the factors that the Panel considers in identifying the appropriate transferee district favor Plaintiff's request that the Actions be transferred to the United States District Court for the Central District of California, Southern Division. These factors include the Defendants' principal place of business, the location and accessibility of relevant documents and witnesses, the centrality of the transferee district for the convenience of the parties and witnesses, the district where the broadest-based action was filed, the district in which the earliest action was filed, which district has the most cases pending, and which judge(s) are most familiar with the

relevant issues. *See* 17 James Wm. Moore *et al.*, MOORE'S FEDERAL PRACTICE § 112.04 (3d ed. 2011).

The most critical of these factors favor transfer to the Southern Division. Both Hyundai and Kia are headquartered in and have their principal places of business in the Southern Division. Unquestionably, a significant portion of Defendants' relevant documents are also located in, or are most easily accessible from, the Southern Division. A significant portion of Defendants' relevant witnesses will also likely be located in the Southern Division. Likewise, the majority of the Actions are filed in this district. The Panel has recognized in similar circumstances that these facts weigh in favor of transfer. *See e.g., In re MF Global Holdings Ltd. Inv. Litig.*, 857 F. Supp. 2d 1376, 1378 (J.P.M.L. 2012) ("we conclude that the Southern District of New York is an appropriate transferee district for pretrial proceedings in this litigation. Numerous defendants and plaintiffs who have chosen to file their actions in the Southern District of New York support centralization in this district. MF Global Holdings is headquartered there, as are several other defendants."); *see also In re InPhonic, Inc., Wireless Phone Rebate Litig.*, 460 F. Supp. 2d 1380, 1380 (J.P.M.L. 2006) (transferring actions to district because "[t]his district is where many relevant documents and witnesses are likely to be found, inasmuch as [defendant's] headquarters and related offices are located [there]").

As to the remaining factors, none weigh against transfer to the Southern Division.[3] Because each of the Actions seek relief under similar state laws, and seek damages, restitution,

[3] The fact that certain plaintiffs may prefer to litigate in Illinois, Ohio or New Jersey does not militate against transfer to the Central District of California, Southern Division. "This [would be] a worm's eye view of Section 1407. Of course it is to the interest of each plaintiff to have all of the proceedings in his suit handled in his district. But the Panel must weigh the interests of all the plaintiffs and all the defendants, and must consider multiple litigation as a whole in the light

and equitable relief, no action can be deemed the "broader-based" action. Each of the Actions is pending in a courthouse in a metropolitan area, so no action can be deemed to be in a more easily accessible area than the Southern Division. Further, nearly all the Actions are at the same early stages of litigation with Defendants not having even responded to the complaints. While a class certification motion has been briefed in one case, the *Espinosa* case, oral argument has not yet been held , nor has discovery been taken on the EPA-related issues revealed on November 2, 2012.

IV. CONCLUSION

The Actions involve many common questions of alleged fact; transfer would serve the convenience of the parties, witnesses, and attorneys; transfer would promote the just and efficient conduct of the Actions; and the United States District Court for the Central District of California, Southern Division is the most appropriate transferee district. For these reasons, Plaintiff respectfully requests that the Panel transfer the Actions for coordination or consolidation to the United States District Court for the Central District of California, Southern Division.

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of the purposes of the law." *In re Library Editions of Children's Books*, 297 F. Supp. 385, 386 (J.P.M.L. 1968) (emphasis in original).

DATED: November 19, 2012

CONSUMER WATCHDOG

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