

**BEFORE THE  
UNITED STATES JUDICIAL PANEL ON  
MULTIDISTRICT LITIGATION**

**In re: Kind, LLC's Kind Bars Advertising and Marketing Litigation**

**MDL-\_\_\_\_\_**

**PLAINTIFFS CHARLIE MCDONALD'S AND BENJAMIN KARTER'S  
MEMORANDUM IN SUPPORT OF MOTION FOR TRANSFER OF ACTIONS TO THE  
CENTRAL DISTRICT OF CALIFORNIA FOR CONSOLIDATION OF ALL PRETRIAL  
PROCEEDINGS PURSUANT TO 28 U.S.C. § 1407**

**I. INTRODUCTION**

Plaintiffs Charlie McDonald and Benjamin Karter in the case styled *Charlie McDonald, and Benjamin Karter, individually and on behalf of all others similarly situated and the general public v. Kind, LLC*, 8:15-cv-00615-AB-JPR (C.D. Cal.), respectfully submit this Memorandum of Law to the Judicial Panel on Multidistrict Litigation (the "Panel") in support of their Motion pursuant to 28 U.S.C. § 1407 for the transfer of 12 pending class actions in seven districts (collectively, the "Scheduled Actions") to the United States District Court for the Central District of California, and consolidate them for pretrial proceedings.

The Scheduled Actions that Plaintiffs seek to consolidate are consumer class actions against KIND, LLC ("Defendant" or "Defendant KIND"). Pursuant to J.P.M.L. Rule 6.1(b)(ii), a chart enumerating the Scheduled Actions is submitted herewith. Defendant KIND manufactures, advertises, markets, and sells a variety of snack bars (the "Products" or "Snack Bars"). In each case, the plaintiffs allege that KIND marketed or advertised the KIND Products in an unlawful, unfair, and/or deceptive fashion by representing through its advertising

campaign, packaging, and labeling that the Snack Bars are “healthy” and “All Natural,” when, in fact, they are not.

All actions in this litigation involve common questions of fact, and transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. All twelve Scheduled Actions share common factual questions arising out of allegations that Defendant KIND’s representations about the Snack Bars are false and misleading. Transfer will reduce or avoid inconsistent pretrial rulings, particularly on class certifications; minimize duplicative discovery on potentially complex factual inquiries such as the nutritious benefits of the Snack Bars; and conserve the resources of the parties, their counsels, and the judiciary.

Consolidation of the Scheduled Actions in the Central District of California is appropriate under Section 1407 because the district has the judicial resources and expertise to efficiently manage this consumer class action litigation and a strong nexus to the parties and witnesses. Further, the Central District of California enjoys docket conditions conducive to efficient resolution of the litigation and a majority of the Scheduled Actions (one-third) is pending in that district.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

Defendant KIND is a food company that manufactures and distributes sweet and savory snack bars, which includes many of the bar varieties at issue in the KIND Cases. The bars are varieties of KIND “Fruit & Nut” bars, KIND “Plus” bars, KIND “Nuts & Spices” bars, and KIND “Healthy Grains®” bars (collectively, the “Snack Bars”). Defendant KIND has an extensive retail distribution network; the Snack Bars are sold in 80,000 locations nationally.

Since 2004, Defendant KIND distributed and sold Snack Bars that Defendant packaged and marketed as “healthy” and “All Natural” despite the fact that (1) the Snack Bars exceed federal requirements for use of the nutrient content claim “healthy” and (2) the Snack Bars contain one or more artificial or synthetic ingredients.

The KIND Cases concern the labeling, marketing, and advertising of Snack Bars that the plaintiffs allege are falsely and/or deceptively represented as healthy or free from unnatural ingredients. All 12 KIND Cases are based upon similar conduct of Defendant KIND, including: (1) misrepresenting that the Snack Bars are “healthy” or “All Natural,” (2) failing to disclose that the saturated fat content level in the Snack Bars exceed federal requirements for the use of the nutrient content claim “healthy” on a food label, and (3) failing to disclose that the Snack Bars contain one or more artificial or synthetic ingredients despite the “All Natural” claim. Plaintiffs in each of the 12 KIND Cases seek to represent a class of consumers who purchased one or more Defendant KIND’s Snack Bars. In each of the KIND Cases, the plaintiffs assert claims for breach of warranty or violations of various state consumer protection statutes, including the California Consumers Legal Remedies Act (“CLRA”).

The first three KIND Cases were filed on the same day in the Central District of California and the Eastern District of New York on April 17, 2015. *Short, et al. v. KIND LLC*, was filed in the Eastern District of New York and is assigned to the Honorable Roslynn R. Mauskopf. See accompanying Schedule of Actions. *McDonald v. KIND LLC*, and *Kaufer v. KIND LLC*, were filed in the Central District of California and are currently assigned to the Honorable Andre Birotte, Jr. *Id.* Thereafter, nine other KIND Cases were filed between April 22, 2015 and May 11, 2015 in the Southern District of California, Northern District of

California, Central District of California, Northern District of Illinois, Middle District of Florida, and Southern District of New York. *Id.*

There has been no discovery in any of the KIND cases. Because all the KIND Cases were recently filed, they are all at the same procedural posture.

### **III. ARGUMENT**

Plaintiffs Charlie McDonald and Benjamin Karter respectfully submit that the Central District of California is the appropriate forum for transfer and consolidation of the Scheduled Actions in this matter, and that Scheduled Actions not pending in that district ought to be transferred there for four reasons.

First, all Scheduled Actions share common questions of law and fact. Second, centralization is appropriate because it is convenient for parties and witnesses and promotes efficient conduct of the litigation. Third, centralization of the Scheduled Actions in a single judicial district reduces the potential for inconsistent rulings and minimizes duplications in discovery. And finally, the Central District of California is the appropriate transferee forum because the district has the judicial resources and expertise to efficiently manage this consumer class action litigation and a strong nexus to the parties and witnesses.

#### **A. The Scheduled Actions Have Common Factual And Legal Issues**

Transfer for coordinated or consolidated pretrial proceedings is appropriate where federal civil actions present “common questions of fact” and transfer will serve “the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” 28 U.S.C. § 1407; *see also In re State St. Bank & Trust Co. Fixed Income Funds Inv. Litigation*, 560 F. Supp. 2d 1388, 1389 (J.P.M.L. 2008). Both criteria for transfer are satisfied here.

All of the Scheduled Actions clearly present common questions of fact arising out of allegations that Defendant KIND's representations concerning the nutritious benefits of the Snack Bars are false and misleading insofar as it claims that the Snack Bars are "all natural" or "healthy."<sup>1</sup> Each complaint also present common legal issue because the plaintiff(s) in each case are asserting claims for violations of consumer protection statutes and deceptive business practices. Moreover, each of the Scheduled Actions proposes a nationwide or multistate class of consumers. Each Scheduled Action undeniably presents common factual and legal issues. These common questions of fact include, but are not limited to:

- (a) Whether Defendant KIND claimed that the Snack Bars were all-natural on packaging, labeling or marketing/advertisement materials;
- (b) Whether the Snack Bars contain artificial or synthetic ingredients;
- (c) Whether Defendant KIND failed to disclose that the Snack Bar contain unnatural ingredients;
- (d) Whether Defendant KIND claimed that the Snack Bars were healthy on packaging, labeling or marketing/advertisement materials;
- (e) Whether Defendant KIND failed to disclose that the Snack Bars are not helpful in maintaining healthy dietary choices;
- (f) Whether Defendant KIND's claims are true, misleading or reasonably likely to deceive;
- (g) Whether Defendant KIND's improper labeling and misbranding is material to a reasonable consumer;

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<sup>1</sup> This Panel has noted that "[t]ransfer under Section 1407 does not require a complete identity or even a majority of common factual or legal issues as a prerequisite to transfer. *In re Denture Cream Prods. Liab. Litig.*, 624 F.Supp.2d 1379, 1381 (J.P.M.L. 2009)

- (h) Whether Defendant KIND engaged in false or misleading advertising; and
- (i) The appropriate measure of damages or restitution.

These common questions give the Panel the authority to order the transfer and coordination or consolidation of the Scheduled Actions to a single judicial district. *See In re Katz Interactive Call Processing Patent Litig.*, 481 F. Supp. 2d 1353, 1355 (J.P.M.L. 2007) (“[T]he Panel finds that the [25] actions in this litigation involve common questions of fact and that centralization in the Central District of California will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.”).

**B. Coordination Or Consolidation Will Serve The Interests Of The Courts, The Parties, And The Witnesses, And Will Promote Efficient Conduct Of This Litigation**

Transferring the Scheduled Actions to a single judge will preserve judicial resources by avoiding the need for several federal judges in multiple different districts to address identical legal issues and similar factual patterns. *See, e.g., In re Union Pac. R.R. Co. Empl. Practices Litig.*, 314 F. Supp. 2d 1338, 1384 (J.P.M.L. 2004) (holding that centralization is necessary to “conserve the resources of the... judiciary.”). The Panel has consistently recognized that significant efficiencies derive from centralizing marketing and sales practices litigation of the type filed against Defendant KIND in a single forum. *See In re Coca-Cola Prods. Mktg. & Sales Practices Litig.*, 37 F. Supp. 3d 1386, (J.P.M.L. 2014); *In re Tropicana Orange Juice Mktg. & Sales Practices Litig.*, 867 F. Supp. 2d 1341 (J.P.M.L. 2012); *In re Frito-Lay N. Am., Inc. "All Natural" Litig.*, 908 F. Supp. 2d 1379 (J.P.M.L. 2012).

The transfer and consolidation of the Scheduled Actions for pretrial proceedings will not only significantly reduce the burden on the federal courts, the parties, and the witnesses involved, but is also convenient for the parties and witnesses in the cases. Absent centralization, the Central District of California, the Northern District of California, the Southern District of

California, the Middle District of Florida, the Northern District of Illinois, the Eastern District of New York, and the Southern District of New York, as well as any other courts in which subsequent actions are filed, will each have to make separate inquiries into a similar set of facts that involves the same defending parties and witnesses. The federal court system will be forced to administer—and the parties will be forced to litigate—several similar actions on different pretrial schedules. Since the Scheduled Actions allege similar violations, overlapping factual inquiries in different courts would force parties and witnesses to make multiple appearances to resolve the same issues in different venues.

Also, centralization in a single judicial district helps streamline discovery, which allows discovery tasks to be conducted more efficiently and at a lesser expense. Discovery in each of the Scheduled Actions will require much of the same information from Defendant KIND and third party manufactures and suppliers. Thus, centralization further promotes the just and efficient conduct of the Scheduled Actions by sparing the parties, witnesses and judiciary the burden of expending valuable time and resources in resolving common questions of fact and in discovery.

Moreover, the Scheduled Actions all commenced recently, and no discovery has yet to occur in any of the actions. Hence, transfer will save Defendant KIND and its witnesses from duplicative document production, duplicative written discovery responses, redundant depositions, and the significant likelihood of conflicting scheduling obligations. Transfer is appropriate to mitigate these burdens. Additionally, transfer of the Scheduled Actions will save the resources of all plaintiffs' counsels because discovery requests and depositions can be coordinated amongst counsels, thus reducing litigation expenses and attorneys' fees. Any inconvenience to the individual parties does not outweigh the substantial economies

centralization offers the litigation as a whole. *See, e.g., In re Crown Life Ins. Premium Litig.*, 178 F. Supp. 2d 1365, 1366 (J.P.M.L. 2001) (noting that “transfer is often necessary to further the expeditious resolution of the litigation taken as a whole.”)

**C. Centralization In A Single Judicial District Reduces Potential For Conflicting Rulings And Minimizes Duplicative Discovery**

Centralization in a single judicial district will reduce the potential for inconsistent pretrial rulings. *In re Maxim Integrated Products, Inc., Patent Litigation*, 867 F. Supp. 2d 1333, 1334 (J.P.M.L. 2012). In cases involving putative class actions, this Panel has frequently noted the importance of avoiding inconsistent class certification rulings. *In re Higher One OneAccount Mktg. and Sales Litig.*, 908 F. Supp.2d 1371 (J.P.M.L. 2012); *see, e.g., In re Charlotte Russe, Inc. Fair and Accurate Credit Transactions Act (FACTA) Litig.*, 505 F. Supp. 2d 1377, 1378 (J.P.M.L. 2007) (“Centralization will . . . prevent inconsistent trial rulings, especially with respect to class certification . . . .”); *In re Sugar Indus. Antitrust Litig.*, 395 F. Supp. 1271, 1273 (J.P.M.L. 1975) (“We have consistently held that transfer of actions under Section 1407 is appropriate, if not necessary, where the possibility of inconsistent class determination exists.”); *see also* David F. Herr, MULTIDISTRICT LITIGATION MANUAL § 5.24 (2014) (“The reason for the importance of potentially conflicting class actions is fairly clear. The management of the litigation would become exceedingly difficult if similar actions involving overlapping classes were proceeding in different districts.”). Further, centralized management by a single judge avoids or minimizes the possibility for conflict and duplication in discovery. *See In re Plumbing Fixture Cases*, 298 F. Supp. 484, 470-92 (J.P.M.L. 1968). Transfer will thus ensure consistent application of Rule 23 and avoid the risk of inconsistent rulings on class certifications.

First, each court in the seven different districts would be faced with the same or similar motions on the same issues in the Scheduled Actions, constituting a wasteful and unnecessary



duplication of efforts. In addition, a similar conduct is alleged in every one of the Scheduled Actions, presenting common factual inquiries such that a transfer to a single forum will reduce the possibility of inconsistent pleading determinations.

Second, consolidation is appropriate because there is a potential for inconsistent class determination. Of the 12 Scheduled Actions, at least 10 of them are brought on behalf of proposed nationwide and one or more proposed statewide classes, including seven on behalf of a proposed California class, two on behalf of a proposed Florida class, two on behalf of a proposed New York class. The proposed statewide classes not only overlap with one another, but the proposed members also fall within the definitions of proposed nationwide classes asserted in 10 of the actions. Inconsistent rulings on class certification could subject proposed class members and KIND to inconsistent rights and obligations, thereby wasting judicial and party resources. Thus, centralization of the Scheduled Actions will facilitate orderly class-action treatment.

Third, as illustrated above, consolidation of the Scheduled Actions will help streamline discovery. Each of the plaintiffs in the Scheduled Actions is likely to seek documents from, and depositions of, the individuals involved in the packaging, labeling, marketing and advertising of the Snack Bars, as well as those individuals knowledgeable about the claims made concerning the nutritious benefits of the Snack Bars. Absent coordination or consolidation, the witnesses likely could be subjected to multiple sets of document requests and duplicative depositions.

Additionally, all of the Scheduled Actions remain sufficiently early in litigation to reap the substantial benefits of consolidation with minimal transaction costs. The operative Scheduled Actions were all filed approximately within the last two months, including several by the same firm or firms. No discovery has commenced in any of the Scheduled Actions. Plaintiffs thus cannot complain that their proceedings have advanced too far to merit

centralization, as significant discovery obligations and pretrial proceedings remain in each. *In re Fosamax (Alendronate Sodium) Prods. Liability Litig.*, (No. II), 787 F. Supp. 2d 1355, 1356 (J.P.M.L. 2011) (“While the point at which an action should be excluded from centralized proceedings is not definite, neither of the actions sought to be excluded has professed to that point.”).

Therefore, a transfer and consolidation of the Scheduled Actions would alleviate these concerns and achieve all the efficiencies intended by Section 1407.

#### **D. The Central District Of California Is The Most Appropriate Forum For Consolidation**

In selecting the transferee court, the Panel considers several factors, including, but not limited to, “where the largest number of cases is pending, where discovery has occurred, where cases have progressed furthest, the site of the occurrence of the common facts, where the cost and inconvenience will be minimized, and the experience, skill, and caseloads of available judges.” MANUAL FOR COMPLEX LITIGATION (FOURTH) § 20.131 (2010). Additional factors that have been considered include (1) the location of relevant documents and witnesses, (2) the backlog of a court’s civil docket and the extent to which it is overtaxed with other MDL cases, (3) a centrally located forum for national litigation, (4) the potential for state-federal coordination, and (5) the preference of the parties. *See id.* at §§ 6:1-6:23; *In re Inter-Op Hip Prosthesis Prods. Liab. Litig.*, 149 F. Supp. 2d 931, 933-34 (J.P.M.L. 2001); *In re Express Scripts, Inc., Pharmacy Benefits Mgmt. Litig.*, 368 F. Supp. 2d 1356, 1357 (J.P.M.L. 2005). Ultimately, the Panel selects a transferee forum based on a determination that the judicial district is best suited to promote the purpose of Section 1407. Given that (3/4) of the cases have California residents as plaintiffs, more than half of plaintiffs’ counsel are located in California

and one-third of the cases are currently assigned to the Central District of California, each of the following considerations favor a transfer to the Central District of California.

***1. The McDonald And Kaufer Actions Were First Filed In The Central District Of California, Where A Majority Of The Scheduled Actions Are Pending***

Out the Scheduled Actions, the *McDonald* and *Kaufer* actions were the first to be filed in the Central District of California on April 17, 2015.<sup>2</sup> In selecting a transferee forum, the Panel also considers the number of actions pending in various districts; the Panel routinely mentions in decisions made that the selection of a transferee district is where at least one action is pending. *See In re Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litig.*, 582 F. Supp. 2d 1378, 1379 (J.P.M.L. 2008) (“two of the nine actions are already pending there . . .”); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 536 F. Supp. 2d 1364, 1365 (J.P.M.L. 2008) (“One of the two actions before us and twelve potential tag-along actions are already pending in that district . . .”); *In re Lupon Mktg. & Sales Practices Litig.*, 180 F. Supp. 2d 1376, 1378 (J.P.M.L. 2001) (“three of the four actions now before the Panel are already pending there . . .”).

Here, four of the twelve Scheduled Actions (one-third) are already pending in the Central District of California and three more are pending in other judicial districts in California. No other judicial district has more than two pending (one-sixth) cases, thus illustrating that California is the nexus of this litigation. In addition, both of the cases pending in the Southern District of New York involve California plaintiffs (e.g., Robert O’Brien [Case No. 1:15-cv-03699-WHP] and Amy Cavanagh [No. 1:15-cv-04064-UA]), and concern violations of California consumer protection statutes and breaches of warranty. Further, as a practical matter,

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<sup>2</sup> The *Molina* action, *Molina v. KIND, LLC*, No. 15-CA-003493, was filed the previous day on April 16, 2015 in the Circuit Court of the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, but was not removed to the Middle District of Florida until May 6, 2015. *See* Dkt. No. 1 in the *Molina* action (8:15-cv-01098-CEH-TBM). In any case, the *Molina* action is the only case of all Scheduled Actions pending in Florida.

fewer actions need to be transferred if the Panel selects the Central District of California where the largest number of actions are pending.

These factors weigh in favor of transfer to the Central District of California. *See In re Rosuvastatin Calcium Patent Litig.*, 560 F. Supp. 2d 1381, 1383 (J.P.M.L. 2008) (transferee district selected primarily because “[s]even of the nine actions, including the first-filed actions, are already pending in that district.”); *In re Make-Up Art Cosmetics (M.A.C.) Fair and Accurate Credit Transactions Act (FACTA) Litig.*, 559 F. Supp. 2d 1404, 1405 (J.P.M.L. 2008) (transferee forum appropriate where “[t]wo of the three actions are already pending there, including the first-filed.”).

## ***2. The Central District Of California Has The Judicial Resources And Expertise To Efficiently Manage The Litigation***

Another relevant factor is the transferee court’s capacity to handle the cases. The Panel favors districts where the transferred cases will not add to an already overburdened docket. *In re Webvention LLC (‘294) Patent Litig.*, 831 F. Supp. 2d 1366, 1367 (J.P.M.L. 2011) (avoiding transfer to districts with “large civil caseloads” and choosing a transferee court with “more favorable” docket conditions); *see also In re GMAC Ins. Mgmt. Corp. Overtime Pay Litig.*, 342 F. Supp. 2d 1357, 1358 (J.P.M.L. 2004) (the Middle District of Florida had “the resources available to manage this litigation”); *In re Baycol Prods. Liab. Litig.*, 180 F. Supp. 2d 1378, 1380 (J.P.M.L. 2001) (Minnesota courts are “not currently overtaxed . . .”).

The Central District of California has significant complex multidistrict litigation (“MDL”) proceedings. According to statistics from the Judicial Panel on Multidistrict Litigation, as of May 15, 2015, there are 14 MDL proceedings pending before the Central District of

California.<sup>3</sup> With 36 District Judges, 1 visiting Judge, and 27 Magistrate Judges, the Central District of California is well-equipped and experienced in handling such complex proceedings.<sup>4</sup>

***3. The Honorable Andre Birotte, Jr. Of The Central District Of California Is An Experienced And Skilled Jurist To Preside Over The MDL Proceedings***

The *McDonald*, *Kaufer*, *Galvez*, and *Jackson* actions have been assigned to the Honorable Andre Birotte, Jr. of the Central District of California. The availability of an experienced, competent judge weighs heavily in favor of transferring a case to that district. *See In re Hawaiian Hotel Room Rate Antitrust Litig.*, 438 F. Supp. 935, 936 (J.P.M.L. 1977); *In re Sugar Indus. Antitrust Litig.*, 437 F. Supp. 1204, 1208 (J.P.M.L. 1977); *In re Ampicillin Antitrust Litig.* 315 F. Supp. 317, 319 (J.P.M.L. 1970). The experience and knowledge of a particular judge is one of the factors that is considered in determining the appropriate transferee forum for a case. *See In re "Factor VIII or IX Concentrate Blood Prods." Liab. Litig.*, 853 F. Supp. 454, 455 (J.P.M.L. 1993); *In re Silicon Gel Breast Implants Prods. Liab. Litig.*, 793 F. Supp. 1098, 1101 (J.P.M.L. 1992); *In re Data Gen. Corp. Antitrust Litig.*, 470 F. Supp. 855, 859 (J.P.M.L. 1979). This Panel should find that Judge Birotte is an experienced and capable jurist who is well-qualified to preside over this MDL.

Before being sworn in as a federal district judge for the United States District Court, Central District of California, Judge Birotte served as United States Attorney for the Central District of California from 2010 to 2014. As United States Attorney, Judge Birotte was responsible for overseeing approximately 265 attorneys and 200 staff members located in offices in Los Angeles, Riverside, and Santa Ana. From 2003 to 2010, Judge Birotte served as Inspector

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<sup>3</sup> [http://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-May-15-2015.pdf](http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-May-15-2015.pdf)

<sup>4</sup> *See*

<http://court.cacd.uscourts.gov/CACD/JudgeReq.nsf/FAQs+about+Judges'+Procedures+and+Schedules?OpenView>

General of the Los Angeles Police Department. Judge Birotte also served as an Assistant United States Attorney in the Central District from 1995 to 1999 and as a Deputy Public Defender in Los Angeles County from 1991 to 1995. Moreover, Judge Birotte is currently not presiding over any pending MDLs.<sup>5</sup>

#### ***4. The Central District Of California Has Favorable Docket Conditions***

“The Panel has expressly stated that it will consider docket conditions in selecting a transferee district. If two potential transferee districts have widely different docket conditions, one being current and the other being marked by long delays before trial, the Panel will favor the court with the most current docket.” MULTIDISTRICT LITIGATION MANUAL § 6:17 (2014) (Collecting Authority). See *In re Skechers Toning Shoe Prod. Liability Litig.*, 831 F. Supp. 2d 1367, 1370 (J.P.M.L. 2011) (finding that the transferee district “enjoys general docket conditions conducive to the efficient resolution of this litigation.”); *In re Teflon Products Liability Litig.*, 416 F. Supp. 2d 1364, 1365 (J.P.M.L. 2006) (finding that the transferee district “enjoys general docket conditions permitting the Panel to effect the Section 1407 assignment to a court with the present resources to devote to the pretrial matters that this docket is likely to require”).

According to Federal Court Management Statistics through 2014, the median time from filing to disposition for civil cases in the Central District of California is 5.8 months. By comparison, the Central District of California has the “fastest” docket among the district courts where the Scheduled Actions Cases are pending.<sup>6</sup>

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<sup>5</sup> [http://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-May-15-2015.pdf](http://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-May-15-2015.pdf)

<sup>6</sup> Over the same period, the other districts had the following median times from filing to disposition: Northern District of California, 8.1 months; Southern District of California, 6.6 months; Middle District of Florida, 8.3 months; Northern District of Illinois, 6.8 months; Eastern District of New York, 8.6 months; Southern District of New York, 8.1 months.

***5. The Central District Of California Is Convenient And Accessible For The Parties And The Witnesses***

Given its proximity to a major airport and train station terminal just minutes from the courthouse, the Central District of California is an easily accessible location, allowing easy access for litigants, witnesses, and counsel. *See In re Webloyalty.com, Inc. Mktg. & Sales Practices Litig.*, 474 F. Supp. 2d 1353, 1354 (J.P.M.L. 2007) (“The Panel is persuaded that the District of Massachusetts is an appropriate transferee district for this litigation. Webloyalty is headquartered nearby and it is likely to be the source of a substantial number of witnesses and documents subject to discovery.”). The courthouse in the Central District of California is between 15 and 18 miles (or 25 to 29 minutes) from the Los Angeles International Airport (“LAX”), depending upon the route taken. LAX is one of the country’s best connected airports, offering 692 daily flights to 85 domestic cities and 928 weekly nonstop flights to 67 cities in 34 countries on 64 passenger air carriers.<sup>7</sup> Moreover, LAX offers nearly 8,000 parking stalls in eight parking structures located opposite the roadways from the passenger terminals. In addition to the Central Terminal Area parking, LAX has a capacity of over 4,500 parking stalls available in Economy Parking Lot C.<sup>8</sup> Among the modes of transportation available at LAX are: airport buses, door-to-door shuttle vans, local buses, light rail, rental cars, taxicabs, and limousines.<sup>9</sup> A free, frequent shuttle bus connects LAX with Metro’s Green Line Light Rail, and free shuttle buses transport passengers between airline terminals.<sup>10</sup> In addition, the courthouse is a mere .7 miles or 3 minutes from the Los Angeles Union Train Station, the largest railroad passenger terminal in the Western United States.<sup>11</sup>

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<sup>7</sup> [http://www.lawa.org/welcome\\_LAX.aspx?id=40](http://www.lawa.org/welcome_LAX.aspx?id=40)

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> <http://www.metro.net/about/union-station/history/>

The Central District of California is also the most convenient district for transfer and consolidation because the plaintiffs in nine of the twelve cases are California residents and counsel in seven of the twelve cases are located in California. While the majority of the California cases are pending in the Central District of California, the Central District of California is also a convenient and centralized location for the cases pending in the Southern and Northern District of California

Accordingly, the Central District of California provides a convenient and central hub for the litigation, particularly in light of the fact that the vast majority of the plaintiffs and counsel reside in California.

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#### IV. CONCLUSION

For the foregoing reasons, Plaintiffs McDonald and Karter respectfully request that this Panel assume jurisdiction over the pending Scheduled Actions and enter an order transferring them, as well as any subsequently filed actions, to the Central District of California for consolidated pretrial proceedings.

Respectfully Submitted,

Dated: June 1, 2015

/s/ Ronald A. Marron

By: Ronald A. Marron

**LAW OFFICES OF RONALD A. MARRON,  
APLC**

RONALD A. MARRON

SKYE RESENDES

651 Arroyo Drive

San Diego, California 92103

Telephone: (619) 696-9006

Facsimile: (619) 564-6665

[ron@consumersadvocates.com](mailto:ron@consumersadvocates.com)

[skye@consumersadvocates.com](mailto:skye@consumersadvocates.com)

***Attorneys for Plaintiffs McDonald and Karter, and  
the Proposed Class (Case No. 8:15-cv-00615-AB-  
JPR (C.D. Cal.))***