

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

**IN RE:**

**MDL Docket No. \_\_\_\_\_**

**ZF-TRW ACU DEFECT LITIGATION**

**MEMORANDUM IN SUPPORT OF MOTION OF PLAINTIFFS MARK D. ALTIER,  
WILLIAM BAERRESEN, ERIC FISHON, DRAGAN JAGNJIC, CYNTHIA SACCHETT,  
JACQUELINE SANTOS-SILVA, AMANDA SWANSON, GARY E. SAMOURIS AND  
NIDA EDITH SAMSON FOR CENTRALIZATION OF RELATED ACTIONS IN THE  
CENTRAL DISTRICT OF CALIFORNIA, OR IN THE ALTERNATIVE,  
THE EASTERN DISTRICT OF MICHIGAN, PURSUANT TO 28 U.S.C. § 1407**

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## I. INTRODUCTION

Pursuant to 28 U.S.C. § 1407 (“Section 1407”) and Rule 6.2 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation (the “Panel”), Plaintiffs Mark D. Altier, William Baerresen, Eric Fishon, Dragan Jagnjic, Cynthia Sacchett, Jacqueline Santos-Silva, and Amanda Swanson, in the action captioned *Altier, et al. v. ZF-TRW Automotive Holdings Corporation, et al.*, 8:19-cv-00846 (C.D. Cal.) (the “*Altier* Plaintiffs”) and Plaintiffs Gary E. Samouris and Nida Edith Samson, in the action captioned *Altier, et al. v. ZF-TRW Automotive Holdings Corporation, et al.*, 2:19-cv-11215 (E.D. Mich.)<sup>1</sup> (“*Samouris* Plaintiffs”) (collectively, the *Altier* Plaintiffs and *Samouris* Plaintiffs are referred to herein as “Plaintiffs”) respectfully submit this memorandum of law in support of their motion to centralize the twelve pending federal actions concerning a known defect in vehicles equipped with airbag control units manufactured by the ZF-TRW Defendants<sup>2</sup> (the “ACU Defect Actions” or “Actions”) for coordinated or consolidated pretrial proceedings in the Central District of California, or in the alternative, the Eastern District of Michigan.<sup>3</sup>

The ACU Defect Actions concern defective airbag control units (“ACUs”) manufactured by the ZF-TRW Defendants, which are part of the airbag systems equipped in vehicles

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<sup>1</sup> This action should be captioned as *Samouris, et al. v. ZF-TRW Automotive Holdings Corporation, et al.*, and a revised cover sheet reflecting this change was filed on April 26, 2019, but that change has not yet been made on the docket. This action is referred to herein as the “*Samouris*” action.

<sup>2</sup> “ZF-TRW Defendants” refers to: ZF-TRW Automotive Holdings Corp., TRW Automotive U.S. LLC, ZF Friedrichshafen AG, TRW Automotive Inc., TRW Automotive U.S. LLC, and TRW Vehicle Safety Systems Inc.

<sup>3</sup> There are currently five cases pending in the Central District of California. The Schedule of Actions, attached hereto as Exhibit A, includes the twelve actions currently pending nationwide for which Plaintiffs seek centralization.

manufactured by the Vehicle Manufacturer Defendants (the “Defective Class Vehicles”).<sup>4</sup> As detailed in the ACU Defect Actions, all of the Defective Class Vehicles are equipped with ACUs containing a defect that causes airbags and other safety restraints to not properly deploy during a crash (the “ACU Defect”). The ACU Defect exposes Plaintiffs and members of the Classes to the serious and life-threatening safety risk that the airbags and other safety restraints in their Defective Class Vehicles will fail to deploy during an accident, resulting in injury or death. The sale of the Defective Class Vehicles caused hundreds of thousands of owners and lessees to suffer damages, including but not limited to, diminished value of the Defective Class Vehicles and/or deprivation of the benefit of their bargain in leasing or purchasing the Defective Class Vehicles, and has recklessly placed drivers and passengers of the Defective Class Vehicles at risk for serious injury or death.

On April 26, 2019, the *Samouris* Plaintiffs filed the first-filed class action concerning the ACU Defect in the Eastern District of Michigan. *See* Complaint, *Samouris*, No. 2:19-cv-11215

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<sup>4</sup> The “Vehicle Manufacturer Defendants” include: Defendant American Honda Motor Co., Inc. (“American Honda”); Defendant Honda Motor Co., Ltd. (“Honda Motor”); Defendant Honda of America Mfg., Inc. (“Honda Mfg.”); Defendant Honda R&D Americas, Inc. (“Honda R&D”) (Defendants American Honda, Honda Motor, Honda Mfg., and Honda R&D, are collectively referred to as “Honda” or the “Honda Defendants”), Defendant Hyundai Motor Group (“Hyundai Group”), Defendant Hyundai Motor Co. (“Hyundai Motor”), Defendant Hyundai MOBIS Co. Ltd. (“Hyundai MOBIS”), Defendant Hyundai Motor America, Inc. (“Hyundai America”) (Defendants Hyundai Group, Hyundai Motor, Hyundai MOBIS, and Hyundai America are collectively referred to as “Hyundai”), Defendant Kia Motors Corp. (“Kia Motors”); Defendant Kia Motors America, Inc., (“Kia America”) (Defendants Kia Motors and Kia America are collectively referred to as “Kia”) (Defendants Hyundai Group, Hyundai Motor, Hyundai MOBIS, Hyundai America, and Kia Motors, and Kia America are collectively referred to as the “Hyundai/Kia Defendants”), FCA US LLC (“FCA”), Defendant Mitsubishi Motors North America, Inc. (“Mitsubishi”), Defendant Toyota Motor North America, Inc. (“Toyota”), Defendant Toyota Motor Sales, U.S.A., Inc., (“TMS”), Defendant Toyota Motor Corp. (“TMC”), Defendant Toyota Motor Engineering & Manufacturing North America, Inc. (“TEMA”) (Defendants Toyota, TMS, and TEMA are collectively referred to as “Toyota” or the “Toyota Defendants”). The Vehicle Manufacturer Defendants, collectively with the ZF-TRW Defendants, are referred to as “Defendants.”

(E.D. Mich. Apr. 26, 2019), ECF No. 1. Subsequently, on May 6, 2019, the *Altier* Plaintiffs filed their class action asserting similar claims regarding the ACU Defect in the Central District of California—the home district of the Hyundai/Kia Defendants that engaged in the RICO enterprise and conspiracy alleged in the *Altier* complaint. *See Altier*, 8:19-cv-00846 (C.D. Cal. May 6, 2019), ECF No. 1. In addition to Plaintiffs’ actions, there are ten other related actions pending. *See* Exhibit A. Each of the ACU Defect Actions has been filed by owners and/or lessees of the Defective Class Vehicles and asserts claims on behalf of overlapping nationwide classes of consumers against overlapping defendants.<sup>5</sup> The ACU Defect Actions commonly allege that Defendants engaged in fraud, misrepresentations and/or omissions by manufacturing

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<sup>5</sup> *See* Exhibit 1, at ¶ 114 (asserting claims on behalf of “All persons in the United States who entered into a lease or bought a Class Vehicle, and who (i) still own or lease the Class Vehicle, as of April 24, 2019 or (ii) following an accident, whose Class Vehicle was declared a total loss after the date on which the Class Vehicle was recalled”); Exhibit 2, at ¶ 55 (asserting claims on behalf of “All persons in the United States who purchased or leased a Class Vehicle”); Exhibit 3, at ¶ 132 (asserting claims on behalf of “All persons in the United States who entered into a lease or bought a Class Vehicle, and who (i) still own or lease the Class Vehicle, as of April 24, 2019 or (ii) following an accident, whose Class Vehicle was declared a total loss after the date on which the Class Vehicle was recalled”); Exhibit 4, at ¶ 86 (asserting claims on behalf of “All persons or entities in the United States who purchased or leased a Class Vehicle”); Exhibit 5, at ¶ 63 (asserting claims on behalf of “All persons or entities in the United States who purchased, leased or own a Class Vehicle”); Exhibit 6, ¶ 114 (asserting claims on behalf of “All persons in the United States who entered into a lease or bought a Class Vehicle, and who (i) still own or lease the Class Vehicle, as of April 24, 2019 or (ii) following an accident, whose Class Vehicle was declared a total loss after the date on which the Class Vehicle was recalled”); Exhibit 7, at ¶ 65 (asserting claims on behalf of “All persons or entities in the United States (including its territories and the District of Columbia) who purchased or leased a Class Vehicle”); Exhibit 8, at ¶ 62 (asserting claims on behalf of “All persons in the United States who purchased or leased a Class Vehicle”); Exhibit 9, at ¶ 103 (asserting claims on behalf of “All persons in the United States who entered into a lease or bought a Class Vehicle, and who (i) still own or lease the Class Vehicle, as of April 24, 2019 or (ii) following an accident, whose Class Vehicle was declared a total loss after the date on which the Class Vehicle was recalled”); Exhibit 10 at ¶ 79 (asserting claims on behalf of “All persons or entities in the United States (including its territories and the District of Columbia) who purchased or leased a Class Vehicle”); Exhibit 11 at ¶ 171 (asserting claims on behalf of “All persons in the United States who purchased or leased a Class Vehicle”); Exhibit 12 at ¶ 104 (asserting claims on behalf of “All persons in the United States who purchased, leased, or own a Class Vehicle”).

and/or selling defective ACUs and/or equipping and/or selling Defective Class Vehicles with the ACU Defect and concealing the defect from consumers.<sup>6</sup>

Centralization of the ACU Defect Actions is appropriate for at least the following reasons: (1) the ACU Defect Actions involve common questions of fact; (2) transfer will aid the convenience of parties and witnesses; and (3) transfer will promote the just and efficient conduct of the Actions. *See* 28 U.S.C. § 1407(a). Moreover, transfer and centralization will eliminate the possibility of inconsistent pretrial rulings, including the certification of potentially overlapping classes against the same defendant.

If the Panel centralizes the ACU Defect Actions, Plaintiffs respectfully state that the Central District of California is the ideal forum in which to coordinate pretrial proceedings. The Central District of California is the district home to certain of the Vehicle Manufacturer Defendants, including the Hyundai/Kia Defendants that engaged in a RICO enterprise and

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<sup>6</sup> *See generally* Claims for Breach of Warranties. *See* Exhibit 1, ¶¶ 75-93, 127-133, 134-155; 177-183, 184-205; Exhibit 2, ¶¶ 103-116, 139-152, 201-207; Exhibit 3, ¶¶ 147-165, 296-301, 325, 330; Exhibit 4, ¶¶ 99-117, 118-129, 130-137, 164-175, 176-183; Exhibit 5, ¶¶ 75-93, 127-133, 134-155, 177-183, 184-205; Exhibit 6, ¶¶ 128-149; Exhibit 7, ¶¶ 85-102, 182-189, 212-218; Exhibit 9, ¶¶ 117-138, 197-210; Exhibit 10, ¶¶ 99-117; 169-175, 191-206, 237-245; Exhibit 11, ¶¶ 189-209, 240-300; 321-351, 372-402, 410-463, 483-513, 534-562, 601-631, 654-684, 704-734, 754-784, 808-838, 860-890, 912-972, 996-1026, 1052-1081, 1102-1132, 1156-1194, 1216-1279, 1304-1333 1374-1404, 1425-1455, 1477-1507, 1529-1559, 1580-1610, 1629-1659, 1680-1710, 1731-1761, 1785-1814, 1834-1864, 1886-1915, 1939-1969, 1994-2023, 2045-2075, 2096-2126, 2148-2178, 2198-2228, 2249-2279, 2300-2330, 2351-2416, 2436-2469, 2490-2522, 2544-2576, 2597-2661, 2683-2746; Exhibit 12, ¶¶ 153-171, 209-222, 223-243, 279-284. Claims for Fraud. *See* Exhibit 1, ¶¶ 94-106, 107-119; Exhibit 2, ¶¶ 117-132; Exhibit 3, ¶¶ 166-180, 181-195, 202-216, 223-237; Exhibit 4, ¶¶ 138-147, 184-193, 232-240, 280-289; Exhibit 5, ¶¶ 169-181, 182-194; Exhibit 6, ¶¶ 150-164, 165-179, 186-200, 207-221; Exhibit 7, ¶¶ 103-116; Exhibit 8, ¶¶ 124-139; Exhibit 9, ¶¶ 139-153, 154-168; Exhibit 10, ¶¶ 118-131; Exhibit 11, ¶¶ 210-221, 222-233; Exhibit 12, ¶¶ 172-186, 187-202. Claims for Unjust Enrichment. *See* Exhibit 1, ¶¶ 120-126; Exhibit 2, ¶¶ 133-138; Exhibit 3, ¶¶ 196-201, 217-222, 238-243; Exhibit 4, ¶¶ 148-155, 194-201, 241-248, 290-297; Exhibit 5, ¶¶ 195-201; Exhibit 6, ¶¶ 180-185, 201-206, 222-227; Exhibit 8, ¶¶ 140-145; Exhibit 9, ¶¶ 169-174; Exhibit 11, ¶¶ 234-239, Exhibit 12, ¶¶ 203-208. Claims for Violation of the Racketeer Influenced and Corrupt Organizations Act. *See* Exhibit 2, ¶¶ 70-90, 91-102; Exhibit 5, ¶¶ 113-134, 135-149; Exhibit 8, ¶¶ 77-97, 98-109; Exhibit 12, ¶¶ 118-138, 139-152.

conspiracy with the ZF-TRW Defendants, manufactured and sold certain of the Defective Class Vehicles, and knowingly, actively, and affirmatively concealed the existence of the ACU Defect from Plaintiffs and members of the Classes. Much of the communications and conduct concerning the RICO enterprise and conspiracy and the marketing and sales of the Defective Class Vehicles emanated from California, and the Central District of California has a strong evidentiary nexus to the ACU Defect Actions.

Even if the Central District of California was not the evidentiary center of the Actions (it is), centralization in this district would nevertheless be appropriate given that the Central District of California is geographically central to the ACU Defect Actions and offers very favorable docket statistics to ensure the speedy resolution of Plaintiffs' claims. Centralizing the ACU Defect Actions in the Central District of California will further Section 1407's objectives of promoting convenience and the efficient prosecution of the Actions.

Alternatively, Plaintiffs respectfully state that the Eastern District of Michigan is also an appropriate forum for centralization. The Eastern District of Michigan is home to the ZF-TRW Defendants, the manufacturers of the defective ACUs that are at the core of this litigation. The ZF-TRW Defendants' decisions regarding design, engineering, manufacturing, marketing, and sales of the defective ACUs emanated from the Eastern District of Michigan.

Accordingly, Plaintiffs respectfully request the Panel centralize the ACU Defect Actions in the Central District of California, where the *Altier* action is currently pending, or alternatively in the Eastern District of Michigan-Southern Division, where the *Samouris* action is currently pending.

## **II. BACKGROUND FACTS**

### **A. Defendants Supplied the Defective ACUs and/or Equipped Class Vehicles with the Defective ACUs and Failed to Remedy the Known Defect**

This case involves egregious conduct by the ZF-TRW Defendants and the Vehicle Manufacturer Defendants, including manufacturing and/or selling defective ACUs and equipping and/or selling Defective Class Vehicles with the defective ACUs without disclosing the known ACU Defect, which places drivers and occupants of the vehicles at risk for serious injury or death.

The airbag systems in the Defective Class Vehicles contain ACUs that sense vehicle crashes and evaluate whether deployment of airbags and other safety restraints is necessary in the event of an impact. The ACUs contain an electronic component—an application specific integrated circuit (“ASIC”)—which monitors signals from other crash sensors located in the Defective Class Vehicles. The ACUs are intended to have electrical wiring and circuitry that prevent the transmission of harmful signals that may damage the ASIC. However, the ACUs in the Defective Class Vehicles do not contain sufficient ASIC protection and are experiencing electrical overstress (“EOS”), which leads to system failure. EOS causes the ACUs to stop working without any warning to drivers or occupants of the vehicles, resulting in failure of the airbags and other safety restraints to deploy when needed, subjecting Plaintiffs and Class members to injury and death.

In March 2018, the National Highway Traffic Safety Administration’s (“NHTSA”) Office of Defects Investigation (“NHTSA ODI”) opened a preliminary evaluation (“PE”) investigation into the ACU Defect based on six frontal crashes where airbags did not deploy, reported via Early Warning Reporting between 2012 and 2017. These crashes resulted in six injuries and four deaths. ZF-TRW was identified as the supplier of the defective ACUs and the



investigation focused on certain Hyundai America and Kia America vehicles containing the ACU Defect. In September 2016, Defendant FCA conducted a voluntary safety recall of certain vehicles experiencing EOS in the ASIC of the ACUs, but did not recall the Class Vehicles. Hyundai and Kia also conducted recalls as a result of the NHTSA investigation and communicated with the ZF-TRW Defendants and NHTSA regarding the ACU Defect.<sup>7</sup>

On April 19, 2019, NHTSA ODI upgraded its PE investigation into the ACU Defect to an Engineering Analysis and expanded the investigation to additional car manufacturers: FCA, Honda, Toyota, and Mitsubishi. NHTSA ODI estimates that 12.3 million vehicles contain the ACU Defect. None of the Defective Class Vehicles have been recalled to date.

Although the ZF-TRW Defendants and Vehicle Manufacturer Defendants have long known of the ACU Defect and associated safety risks, they failed to act within a reasonable time to stop the sale of defective ACUs and/or the sale and lease of Defective Class Vehicles and/or to timely notify Defective Class Vehicle owners and lessees of the defect. As a result of the ZF-TRW Defendants' and the Vehicle Manufacturer Defendants' material misrepresentations and omissions regarding the quality of the defective ACUs and/or Defective Class Vehicles and the existence of the ACU Defect, millions of consumers unknowingly purchased or leased the Defective Class Vehicles and have suffered diminished market value, deprivation of the benefit of their bargain in purchasing or leasing the Defective Class Vehicles and other damages. Defendants' unlawful conduct also has exposed drivers and passengers to the risk that airbags and other safety restraints will not properly deploy in a crash, which can result—and already has—in serious injury or death.

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<sup>7</sup> NHTSA ODI Resume, Investigation EA 18-003.

## B. The ACU Defect Actions

The first ACU Defect Action—the *Samouris* action—was filed in the Eastern District of Michigan, home to the headquarters of the ZF-TRW Defendants that designed, manufactured and sold the defective ACUs. Currently, there are three actions pending in the Eastern District of Michigan, five actions pending in the Central District of California, and four other federal actions pending in other federal courts seeking to hold the ZF-TRW Defendants and Vehicle Manufacturer Defendants liable for, *inter alia*, their violations of statutory and common law, fraud, misrepresentations, breaches of warranty, unfair and deceptive trade practices, and concealment of the ACU Defect and associated safety risks:

- *Samouris, et al v. ZF-TRW Automotive Holdings Corp., et al.*, 2:19-cv-11215 (E.D. Mich.) (Exhibit 1);
- *Hernandez, et al v. Hyundai Motor America, Inc., et al.*, 8:19-cv-00782 (C.D. Cal.) (Exhibit 2);
- *Payne, et al. v. ZF Friedrichshafen AG, et al.*, 1:19-cv-21681 (S.D. Fla.) (Exhibit 3);
- *Rubio, et al. v. ZF-TRW Automotive Holdings Corp., et al.*, 2:19-cv-11295 (E.D. Mich.) (Exhibit 4);
- *Altier, et al. v. ZF-TRW Automotive Holdings Corp., et al.*, 8:19-cv-00846 (C.D. Cal.) (Exhibit 5);
- *Santos, et al. v. ZF Friedrichshafen AG, et al.*, 0:19-cv-61174 (S.D. Fla.) (Exhibit 6);
- *Copley, et al. v. ZF TRW Automotive Holdings Corp., et al.*, 2:19-cv-00707 (W.D. Wash.) (Exhibit 7);
- *Radi, et al. v. FCA US LLC, et al.*, 1:19-cv-02769 (E.D.N.Y.) (Exhibit 8);
- *Croft, et al. v. ZF Friedrichshafen AG, et al.*, 2:19-cv-04256 (C.D. Cal.) (Exhibit 9);

- *Heilman-Ryan, et al v. ZF TRW Automotive Holdings Corp., et al*, 4:19-cv-11464 (E.D. Mich.) (Exhibit 10);
- *Bell, et al. v. ZF Friedrichshafen AG, et al.*, 8:19-cv-00963 (C.D. Cal.) (Exhibit 11); and
- *Bliss, et al v. ZF Friedrichshafen AG, et al*, 8:19-cv-00970 (C.D. Cal.) (Exhibit 12).

See Exhibit A. The ACU Defect Actions are in their infancy and Defendants have not answered or moved to dismiss any of the complaints.

The ACU Defect Actions are being pursued against common Defendants and challenge the *same course of conduct*. The Actions assert nearly identical or overlapping causes of action on behalf of overlapping nationwide classes of consumers who purchased or leased the Defective Class Vehicles.

### III. ARGUMENT

#### A. Transfer and Centralization Is Appropriate Under 28 U.S.C § 1407

Pursuant to 28 U.S.C. § 1407(a), transfer and centralization is appropriate where (1) the pending actions involve one or more common questions of fact; (2) transfer will aid the convenience of parties and witnesses; and (3) transfer will promote the just and efficient conduct of such actions. “The objective of transfer 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 (2018). As discussed below, these factors weigh heavily in favor of centralization of the ACU Defect Actions in the Central District of California.

The threshold requirement for centralization under 28 U.S.C. § 1407(a) is the existence of common factual questions among the ACU Defect Actions. *See In re Fed. Election Campaign Act Litig.*, 511 F. Supp. 821, 823 (J.P.M.L. 1979) (finding transfer necessary in order to avoid duplication of discovery and prevent inconsistent pretrial rulings where the actions involved the

same key factual inquiry). Where the actions involve common questions, absolute uniformity of claims is not required. *See In re Antibiotic Drugs*, 309 F. Supp. 155, 156 (J.P.M.L. 1970) (“Of course, the applicability of different legal principles will not prevent the transfer of an action under section 1407 if the requisite *common questions of fact* exist.”); *In re Zyprexa Prods. Liab. Litig.*, 314 F. Supp. 2d 1380, 1381 (J.P.M.L. 2004) (“transfer under Section 1407 does not require a complete identity or even majority of common factual issues as a prerequisite to transfer”).

Here, the ACU Defect Actions arise from the same operative facts and assert common allegations based on Defendants’ improper conduct, including that:

- The Defective Vehicles were equipped with defective ACUs, which due to a malfunction of the ASIC, cause airbags and other safety restraints to not properly deploy during a crash. *See, e.g.*, Exhibit 1, at ¶ 4; Exhibit 2, at ¶ 1; Exhibit 3, at ¶ 7; Exhibit 4, at ¶ 5; Exhibit 5, at ¶ 4; Exhibit 6, at ¶ 5; Exhibit 7, at ¶ 2; Exhibit 8, at ¶ 2; Exhibit 9, at ¶ 2.
- Defendants knew of the ACU Defect, yet chose to not disclose it to Defective Class Vehicle owners and lessees. *See, e.g.*, Exhibit 1, at ¶¶ 5, 12, 13; Exhibit 2, at ¶ 2; Exhibit 3, at ¶¶ 11, 124; Exhibit 4, at ¶ 6; Exhibit 5, at ¶ 5; Exhibit 6, at ¶ 6; Exhibit 7, at ¶ 7; Exhibit 8, at ¶ 3; Exhibit 9, at ¶ 10.
- Defendants’ conduct exposed Defective Class Vehicle owners, lessees and passengers to risk of serious injury or death. *See, e.g.*, Exhibit 1, at ¶ 5; Exhibit 2, at ¶ 3; Exhibit 3, at ¶ 37; Exhibit 4, at ¶ 6; Exhibit 5, at ¶ 4; Exhibit 6, at ¶ 8; Exhibit 7, at ¶ 4; Exhibit 8, at ¶ 4; Exhibit 9, at ¶ 43.
- As a result of Defendants’ conduct, Defective Class Vehicle owners and lessees have suffered damages, including, *inter alia*, diminution in their vehicle’s value and deprivation of the benefit of their bargain. *See, e.g.*, Exhibit 1, at ¶ 14; Exhibit 2, at ¶ 68; Exhibit 3, at ¶¶ 35-36; Exhibit 4, at ¶ 15; Exhibit 5, at ¶ 16; Exhibit 6, at ¶¶ 20, 21; Exhibit 7, at ¶ 7; Exhibit 8, at ¶ 7; Exhibit 9, at ¶ 19.

In addition to arising under the same common set of facts, the ACU Defect Actions assert common, overlapping claims and legal theories<sup>8</sup> on behalf of overlapping nationwide classes.<sup>9</sup>

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<sup>8</sup> *See generally* Claims for Breach of Warranties. *See* Exhibit 1, ¶¶ 75-93, 127-133, 134-155; 177-183, 184-205; Exhibit 2, ¶¶ 103-116, 139-152, 201-207; Exhibit 3, ¶¶ 147-165, 296-301,

Thus, centralization of the ACU Defect Actions is necessary to prevent inconsistent pretrial rulings and overlapping class determinations. *See In re U. S. Fin. Sec. Litig.*, 375 F. Supp. 1403, 1404 (J.P.M.L. 1974) (“the prevalence of common factual issues and similar class allegations necessitates transfer of all actions to a single district for coordinated or consolidated pretrial

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325, 330; Exhibit 4, ¶¶ 99-117, 118-129, 130-137, 164-175, 176-183; Exhibit 5, ¶¶ 75-93, 127-133, 134-155, 177-183, 184-205; Exhibit 6, ¶¶ 128-149; Exhibit 7, ¶¶ 85-102, 182-189, 212-218; Exhibit 9, ¶¶ 117-138, 197-210. Claims for Fraud. *See* Exhibit 1, ¶¶ 94-106, 107-119; Exhibit 2, ¶¶ 117-132; Exhibit 3, ¶¶ 166-180, 181-195, 202-216, 223-237; Exhibit 4, ¶¶ 138-147, 184-193, 232-240, 280-289; Exhibit 5, ¶¶ 169-181, 182-194; Exhibit 6, ¶¶ 150-164, 165-179, 186-200, 207-221; Exhibit 7, ¶¶ 103-116; Exhibit 8, ¶¶ 124-139; Exhibit 9, ¶¶ 139-153, 154-168. Claims for Unjust Enrichment. *See* Exhibit 1, ¶¶ 120-126; Exhibit 2, ¶¶ 133-138; Exhibit 3, ¶¶ 196-201, 217-222, 238-243; Exhibit 4, ¶¶ 148-155, 194-201, 241-248, 290-297; Exhibit 5, ¶¶ 195-201; Exhibit 6, ¶¶ 180-185, 201-206, 222-227; Exhibit 8, ¶¶ 140-145; Exhibit 9, ¶¶ 169-174. Claims for Violation of the Racketeer Influenced and Corrupt Organizations Act. *See* Exhibit 2, ¶¶ 70-90, 91-102; Exhibit 5, ¶¶ 113-134, 135-149; Exhibit 8, ¶¶ 77-97, 98-109.

<sup>9</sup> *See* Exhibit 1, at ¶ 114 (asserting claims on behalf of “All persons in the United States who entered into a lease or bought a Class Vehicle, and who (i) still own or lease the Class Vehicle, as of April 24, 2019 or (ii) following an accident, whose Class Vehicle was declared a total loss after the date on which the Class Vehicle was recalled”); Exhibit 2, at ¶ 55 (asserting claims on behalf of “All persons in the United States who purchased or leased a Class Vehicle”); Exhibit 3, at ¶ 132 (asserting claims on behalf of “All persons in the United States who entered into a lease or bought a Class Vehicle, and who (i) still own or lease the Class Vehicle, as of April 24, 2019 or (ii) following an accident, whose Class Vehicle was declared a total loss after the date on which the Class Vehicle was recalled”); Exhibit 4, at ¶ 86 (asserting claims on behalf of “All persons or entities in the United States who purchased or leased a Class Vehicle”); Exhibit 5, at ¶ 63 (asserting claims on behalf of “All persons or entities in the United States who purchased, leased or own a Class Vehicle”); Exhibit 6, ¶ 114 (asserting claims on behalf of “All persons in the United States who entered into a lease or bought a Class Vehicle, and who (i) still own or lease the Class Vehicle, as of April 24, 2019 or (ii) following an accident, whose Class Vehicle was declared a total loss after the date on which the Class Vehicle was recalled”); Exhibit 7, at ¶ 65 (asserting claims on behalf of “All persons or entities in the United States (including its territories and the District of Columbia) who purchased or leased a Class Vehicle “); Exhibit 8, at ¶ 62 (asserting claims on behalf of “All persons in the United States who purchased or leased a Class Vehicle”); Exhibit 9, at ¶ 103 (asserting claims on behalf of “All persons in the United States who entered into a lease or bought a Class Vehicle, and who (i) still own or lease the Class Vehicle, as of April 24, 2019 or (ii) following an accident, whose Class Vehicle was declared a total loss after the date on which the Class Vehicle was recalled”); Exhibit 10 at ¶ 79 (asserting claims on behalf of “All persons or entities in the United States (including its territories and the District of Columbia) who purchased or leased a Class Vehicle”); Exhibit 11 at ¶ 171 (asserting claims on behalf of “All persons in the United States who purchased or leased a Class Vehicle”); Exhibit 12 at ¶ 104 (asserting claims on behalf of “All persons in the United States who purchased, leased, or own a Class Vehicle).

proceedings under Section 1407 in order to prevent duplication of discovery and eliminate the possibility of inconsistent or overlapping class determinations”); *In re Pilot Flying J Fuel Rebate Contract Litig.*, 11 F. Supp. 3d 1351,1352 (J.P.M.L. 2014) (“Centralization will avoid repetitive depositions of [defendant’s] officers and employees and duplicative document discovery regarding the alleged scheme.”).

## **B. The Central District of California Is the Ideal Forum for Centralization**

In deciding which is the most appropriate forum for centralization under 28 U.S.C. § 1407, the Panel considers, *inter alia*, “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 (2018). Based on these factors, the Central District of California is the ideal forum for centralization of the ACU Defect Actions.

### **1. The Unlawful Conduct Occurred in the Central District of California**

The ACU Defect Actions have a strong geographic nexus to the Central District of California because it is the home district of Hyundai America and Kia America, who engaged in significant unlawful conduct that is the subject of the ACU Defect Actions, including the RICO enterprise and conspiracy to conceal the ACU Defect. *See In re Delphi Corp. Sec., Derivative & “ERISA” Litig.*, 403 F. Supp. 2d 1358, 1360 (J.P.M.L. 2005) (finding a venue appropriate because the district has a significant nexus to the litigation); *In re Auto. Wire Harness Sys. Antitrust Litig.*, 844 F. Supp. 2d 1367, 1367-68 (J.P.M.L. 2012) (finding a venue to be “the most appropriate transferee district” where several defendants were located in the district). A substantial part of the events and omissions giving rise to Plaintiffs’ claims occurred in the Central District of California as the district is where the Hyundai/Kia Defendants conduct a substantial amount of business. Moreover, the location of these defendants’ headquarters within

the Central District of California provides easy access to critical documents and witnesses central to the litigation and common to the ACU Defect Actions. *See In re Toyota Motor Corp. Unintended Acceleration Mktg. Sales Practices & Prods. Liab. Litig.*, 704 F. Supp. 2d 1379, 1382 (J.P.M.L. 2010) (transferring to the district where defendant maintains its corporate headquarters and “relevant documents and witnesses are likely located there”); *In re Aftermarket Auto. Lighting Prod. Antitrust Litig.*, 598 F. Supp. 2d 1366, 1368 (J.P.M.L. 2009) (transferring to C.D. Cal. because “several defendants are headquartered within the Central District of California and accordingly pertinent documents and witnesses are likely located there.”); *In re Auto Refinishing Paint Antitrust Litig.*, 177 F. Supp. 2d 1378, 1379 (J.P.M.L. 2001) (transferring cases to the district where “a number of the defendants have a nexus . . . so pertinent documents and witnesses” would be found there). The Hyundai/Kia Defendants are alleged to have participated in a RICO enterprise and conspiracy, a substantial part of which is alleged to have taken place in California. Specifically, Hyundai America and Kia America investigated airbag non-deployment related to the ACU Defect and communicated with NHTSA and the ZF-TRW Defendants regarding the ACU Defect from their headquarters in California. Hyundai America’s and Kia America’s decisions and conduct relating to these investigations, communications with NHTSA, and concealment of the ACU Defect are critical to the ACU Defect Actions and establish a strong nexus to the Central District of California.

Given the substantial activities that occurred in California, a significant portion of Defendants’ fraudulent scheme to conceal the ACU Defect and associated safety risk emanated from California and numerous factual issues will be answered by documents and witnesses located within the district. *See In re Auto Refinishing Paint Antitrust Litig.*, 177 F. Supp. 2d at 1379 (transferring cases to the district where “a number of the defendants have a nexus . . . so

pertinent documents and witnesses” would be found there). Thus, the Central District of California is the ideal transferee forum based on its substantial connection to the ACU Defect Actions.

## **2. Cost and Inconvenience Will Be Minimized in the Central District of California**

The Central District of California is a central, convenient location for the parties, counsel, and witnesses. *See In re Anheuser-Busch Beer Labeling Mktg. & Sales Practices Litig.*, 949 F. Supp. 2d 1371, 1372 (J.P.M.L. 2013) (the Panel considers whether a potential transferee district “provides a geographically central forum for this nationwide litigation, and is equally convenient” for the parties).

Given the national aspect of this litigation, California is the most convenient forum. In addition to its proximity to critical documents and witnesses, the Central District of California is conveniently located in and easily accessible for parties and witnesses located throughout the United States. *See In re: Countrywide Fin. Corp. Mortg. Backed Sec. Litig.*, 812 F. Supp. 2d 1380, 1384 (J.P.M.L. 2011) (“The Central District of California also is accessible for parties and witnesses located throughout the United States.”). The Central District, located in Los Angeles, is home to one of the largest airports in the United States, with direct flights from every region in the country. Los Angeles International Airport (“LAX”) is one of the largest air and transportation hubs in the country. LAX is serviced by over 60 major airlines and provides transportation to countless destinations.<sup>10</sup> Thus, the federal courthouse in the Central District of California is easily accessible and cost and inconvenience will be minimized if the ACU Defect Actions are centralized in this district.

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<sup>10</sup> Airline List, FLY LAX, <https://www.flylax.com/en/lax-airline-list> (last visited June 3, 2019).



### 3. The Central District of California Has the Resources, Judicial Expertise and Favorable Caseload to Conduct Efficient Pretrial Proceedings

The Central District of California has the judicial expertise, resources, and favorable caseload to conduct efficient pretrial proceedings in the ACU Defect Actions. *See In re Battlefield Waste Disposal Litig.*, 655 F. Supp. 2d 1374, 1375 (J.P.M.L. 2009) (transferring actions to an “experienced transferee judge who has a caseload favorable to accepting this assignment”). The district currently has a favorable caseload and a limited number of multi-district litigations (“MDLs”) (seven), with only one pending before Judge Josephine Staton and none pending before Judge John A. Kronstadt.<sup>11</sup> *See, e.g., In re Refined Petroleum Prods. Antitrust Litig.*, 528 F. Supp. 2d 1365, 1367 (J.P.M.L. 2007) (transferring to a district with “favorable caseload conditions”). In fact, the Panel already has recognized that the Central District of California is a desirable transferee forum. *See, e.g., In re Aftermarket Auto. Lighting Prod. Antitrust Litig.*, 598 F. Supp. 2d at 1368.

With regard to technology, the Central District of California courtrooms are designed to accommodate large multi-party hearings and trials and are equipped with “state-of-the-art” audio/visual equipment and is outfitted with a document camera, a DVD player, monitors on all tables, electronic markup capability, a large-format monitor, microphones, and a handheld wireless microphone.<sup>12</sup>

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<sup>11</sup> *See Pending MDLs By District*, JUDICIAL PANEL ON MULTIDISTRICT LITIGATION (May 15, 2019) [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-May-15-2019.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-May-15-2019.pdf).

<sup>12</sup> *See, Courtroom Technology*, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, <https://www.cacd.uscourts.gov/clerk-services/courtroom-technology> (last visited June 3, 2019).

The Honorable Josephine Staton, who presides over the *Altier* action, possesses the requisite expertise, experience, and temperament to “steer this complex litigation on a steady and expeditious course.” *In re Bridgestone/Firestone, Inc., ATX, ATX II, & Wilderness Tires Prods. Liab. Litig.*, No. 1373, 2000 U.S. Dist. LEXIS 15926, at \*8 (J.P.M.L. Oct. 24, 2000) (“we have searched for a transferee judge with the ability and temperament to steer this complex litigation on a steady and expeditious course”). Judge Staton has served as a federal district court judge since 2010, and prior to being appointed a federal judge, sat as a California state superior court judge in Orange County, California for eight years. Further, Judge Staton has specialized knowledge relating to automobile defects based on her experience overseeing *McCarthy, et al. v. Toyota Motor Corporation, et al.*, No. 08-00201 (C.D. Cal.) and *Kearney, et al. v. Hyundai Motor America*, No. 09-1298 (C.D. Cal.). Judge Staton also has experience presiding over multi-district litigation.<sup>13</sup> Because Judge Staton is an able jurist who is already presiding over the *Altier* Action pending in the Central District of California, she is well-positioned “to steer this litigation on a prudent course.” *See In re Hyundai & Kia Fuel Econ. Litig.*, 923 F. Supp. 2d 1364, 1366 (J.P.M.L. 2013) (selecting transferee judge who was already presiding over numerous actions).

The Honorable John A. Kronstadt, presiding over the lowest-docketed ACU Defect Action in the Central District of California, is also highly qualified and well-suited to preside over the ACU Defect Actions. Judge Kronstadt served as a California state superior judge in Los Angeles for eight years before being appointed as a federal district court judge and currently has no pending MDLs. Thus, Judge Kronstadt has the experience and resources necessary to

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<sup>13</sup> *See In re: Vizio, Inc., Consumer Privacy Litig.*, MDL No. 2693 (J.P.M.L.).

properly steer the ACU Defect Actions. Indeed, any of the judges in the Central District of California are highly qualified to preside over the ACU Defect Actions.

Finally, while the Central District of California has experience overseeing complex multi-district litigation, there are only seven multi-district litigations pending in the district, with only one MDL currently pending in front of Judge Staton and none pending before Judge Kronstadt.<sup>14</sup> *See In re Battlefield Waste Disposal Litig.*, 655 F. Supp. 2d at 1375 (transferring actions to an “experienced transferee judge who has a caseload favorable to accepting this assignment”). As such, the court will have the necessary resources to conduct pretrial proceedings in the ACU Defect Actions in a just and efficient manner. *See, e.g., In re UnumProvident Corp. Secs., Derivative, & “ERISA” Litig.*, 280 F. Supp. 2d 1377, 1380 (J.P.M.L. 2003).

**C. Alternatively, the Eastern District of Michigan Is an Appropriate Forum for Centralization**

Alternatively, the Eastern District of Michigan is an appropriate forum for centralization of the ACU Defect Actions. The Eastern District of Michigan is home to the ZF-TRW Defendants and Defendant FCA, and the district has the judicial expertise, resources, and favorable caseload to conduct efficient pretrial proceedings in the ACU Defect Actions. *See In re: FCA US LLC Monostable Elec. Gearshift Litig.*, 214 F. Supp. 3d 1354 (J.M.P.L. 2016) (centralizing in the Eastern District of Michigan because the defendant’s headquarters were located in the district and decisions relating to the defect emanated from the district).

**IV. CONCLUSION**

The Central District of California is the ideal forum for centralization of the ACU Defect Actions because it offers the strongest geographical nexus to the factual allegations in the ACU

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<sup>14</sup> *See Pending MDLs By District*, JUDICIAL PANEL ON MULTIDISTRICT LITIGATION (May 15, 2019) [https://www.jpml.uscourts.gov/sites/jpml/files/Pending\\_MDL\\_Dockets\\_By\\_District-May-15-2019.pdf](https://www.jpml.uscourts.gov/sites/jpml/files/Pending_MDL_Dockets_By_District-May-15-2019.pdf).

Defect Actions, a convenient location, favorable docket conditions and judicial expertise. For the foregoing reasons, Plaintiffs respectfully request that the ACU Defect Actions, and any related actions subsequently filed in, or removed to federal court, be transferred and consolidated for pretrial proceedings in the Central District of California, or in the alternative, the Eastern District of Michigan, pursuant to 28 U.S.C. § 1407.

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Respectfully submitted,

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