No. _____

In The
Supreme Court of the United States

ALIM ADBURAHMAN, *ET AL.*,
Petitioners,

v.

HYUNDAI MOTOR AMERICA, INC., *ET AL.*,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does a United States District Court, as affirmed by the Court of Appeals, have the power to exercise jurisdiction over and dismiss with prejudice cases previously transferred to a Multidistrict litigation, and not remanded, thereby interfering with the adjudication of issues of national application pending before the En Banc Court of Appeals for the Ninth Circuit and causing inconsistent rulings with the MDL Court?

2. When a District Court's final order conflicts with the Court's written opinion, does the final order control as held by this Court in *Bell v. Thompson*, 545 U.S. 794, 805, 125 S.Ct. 2825, 2832, 162 L.Ed.2d 693 (2005), or does the written opinion control as allowed here by the Fourth Circuit?

3. Does a District Court's inherent authority to manage its docket allow it to remove the liberal standard for amendment of a complaint allowed by FRCP 15 (a)(2), as held here by the Fourth Circuit, or, as held by the Second, Third, and Seventh Circuit, is the District Court prohibited from requiring plaintiffs to propose amendments before the Court rules on a 12(b)(6) motion to dismiss on pain of forfeiture of the right to amend?

LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED

In United States Court of Appeals for the Fourth Circuit Case No. 17-1587, *Abdurahman, et al v. Alexandria Hyundai, LLC, et al*, there are 715 named plaintiffs and 29 named defendants.

The Plaintiffs are:

ALIM ADBURAHMAN; JOHN ABEL; LENA ABEL; TAMARA ADAMS; BRANDON ADAMS; ASHRAS AHMADI; WADHAH AL-HADDAD; CLAUDIA ALLEN; PAUL ALLEN; JAMES ALLER; PEGGY ALLER; JIANPING ALLOCCA; NICOLE ALVARADO; GREGORY AMODEO; ROBERT ANDERSON; SHERRY ANDERSON; DENNIS ANDREW; LINDA G. ANDREWS; TINA ANTLEY; PAULINE APISITPAISAN; MONICA ADAIR ARGENT; GAURAV ARORA; RAMON ARROYO; JAMES E. ASHLEY, JR.; BAKAL ASRAT; ELIZABETH AVALAAN; CHERYL AYCOCK; JOANN K. BACHNER; SHANON BAILESS; CHRISTOPHER BAILEY; ANDY BAKER; BRIAN BAKER; CAROL BAKER; GEORGE BAKER; SUSAN BALLARD; DAVID BALMER; JEFF BARBER; SCOTT BARNITT; LINDA BARR; EMMETT BATTEN; SAMANTHA BEARD CURRY; BRIAN BECKER; ROY BECKER; TONYA BECKER; JOHN BECKNER, JR.; GINA BEEBE; KENNETH BELL; PAMELA BELL; WHITNEY BENSON; RAYMOND J. BERNERO; JOHN BESSERER; COLONEL BILLINGSLY; DANA BISHOP; MICHAEL BIZIK;

THOMAS BJERS; PETER BOMBIK; SHARON BONNEAU; VIRGINIA BONNELL; ZESTANN BOOKER; STEPHANIE BORN-NEWTON; JORDAN BOSCH; SHIRLEY BOURNE; CARROL E. BOWEN; JOSEPH BOWE; JANICE BOWLES; JEAN BOWMAN; GRAY BOYCE; RPBERT BRABO, II; CHERYL A. BRADFORD; MARIE BRADLEY; OLIVIA BRADY; PHYLLIS BRANCH; NICOLE BRANDON; JOHNNY W. BRANSON; ELLIOTT ANDREW BRAY; EDMUND P. BREITLING; MARY ANN BRENDEL; MICHELLE BRINDLE; RICHARD BRINDLE; STEVE BRINGHURST; MELANIE BRINK; EDWINA D. BRITT-CRABLE; DANA BROADWAY; BARBARA BROWN; CHRISTINA L. BROWN; DELORES BROWN; JAMES A. BROWN; MATTHEW BROWN; MELANIE BROWN; MELISSA BROWN; NICOLE BROWN; TONY BROWN; PATRICK D. BRYAN; BRIANNE BRYANT; THOMAS J. BULLOCK; BEVERLY W. BURKE; JOYCE BURKE; RICHARD BURKE; MICHAEL BURNAM; JOHN M. BURNETT; DARLENE BURTON; GRACE M. BUTLER; SUZETTE BYRD; JOSEPH CALABRETTA; JAMES CALLIS; CLARE CAMPBELL; DOROTHY CAMPBELL; SETH CAMPBELL; STEVEN CAMPBELL; WHITNEY CAMPBELL; JOYCE CANTRELL; PAUL CAPOZZOLI; PHYLLIS CARIMI; DALE F. CARLEO; DENNIS CARLSON; MARK CARLTON; JAMES CARNEAL; MICHAEL CARPENTER; JOSE CARRASQUILLO; LINDA CARY; LEON CARY; JEFFREY CASH; ILONA CASTRO; ROBERTO CASTRO; JENNY CAVENDER; SHANNON CHAIN; DILIP CHAKRABORTY; BAISHAKHY CHAKRABORTY; ROGER CHELSEA; PETER CHIAMARDAS; MICHAEL CHRISTOPHER;

CHERENE CIMBALIST; BENJAMIN CLARK; DANIEL K. CLARK; ELIZABETH CLARK; LARRY CLEMENTS; ROBBIN CLEMENTS; KENDALL S. CLOETER; JEREMY COBB; QUEEN B. COBBS; GARY COCUZZI; JACK VICTOR COHEN; JULIEANNA COLEMAN; CLINTON COLLINS; AMON R. COLLINS, JR.; COLLIN CONNORS; LOLANDA COOPER; SHARON COOPER; EILEEN CORBIN; MICHAEL CORCORAN; KRISTEN CORLEW; GARY COVERSTON; MARINA M. COX; MOSES COX; TAMMY COX; JUSTIN CRONIN; JILL CROWDER; BELINDA CUBBAGE; KELSEY CUBBAGE; BESSIE CUFFEE; DAN CUOMO; BRENDA CURTIS; ELVIS CYPRIANO; STEPHANIE DAENZER; RICHARD L. DAMEWOOD; JON DANCE; WILLIAM DANIEL; BROOKE DAVIES; ANGELA DAVIS; JODY W. DAVIS; MATTHEW DAVIS; JASON DAWSON; LAURIE DAWSON; NELSON DAWSON; PAUL DAWSON; DESIREE DEAN; ANTWAIN DEBERRY; BLAIR DEEM; JENNIFER DEGRAFF; WILLIAM DEJOHN; JOE DELGADO; TOM DELPOZZO; ANTHONY DEPAUL, JR.; MICHAEL DESOUTO; STACY DOBSON; DAVID DOBSON; SONYA DODSON; DAVID DODSWORTH; MASON DOERMANN; YVONNE DOVER; MINNIE DUNFORD; SANDRA K. DUNTON; CHRIS C. DUTTON; DEBORAH EDGEFIELD; KASEY EIKE; MIRIAH EISENMAN; KATHY ELDRETH; TIMOTHY ELLIOTT; THOMAS ENGLISH; KEITH EPPS; CINDY FABER; MASE FABER; LUIS FALCON; JOHN FARMER; BRANDON FARRELL; CHRIS D. FERGUSON; FARANDA FERGUSON; WANDA FERGUSON; JUNE FERRARA; MICHAEL FERTICH; JAMES FICKLE; SHIRLEY FICKLE; JOSELYN FIELDS;

JODI FILIPEK; BEVERLY FINTCH; JENNIFER FLEURET; SUSAN FOFI; RANDALL FOFI; LAURI FOUTZ; TIMOTHY FOUTZ; KATHLEEN FOWLER; THOMAS ROBERT FRANCO; GREG FRANK; JOHN FRANKLIN; RONALD FRASIER; CATHLEEN FREIBURGER; SHARON FRITH; MICHAEL FRUITMAN; ALICIA FUSCO; ADLYN FUTRELL; DOUGLAS FUTRELL; GUILLERMO GALARZA; ANTHONY GALLARDY; IVAN GALLOWAY, JR.; PETER GARTNER; CYNTHIA GASTLEY; SHEILA GAY; JESSICA S. GEARHART; PAMELA EDWARDS; JOHN WILLIAM GENTRY; MARK GEORGE; JOHN GILBERT; DANIELLE KAY GILLELAND; ANGELA GIONIS; JACQUELINE GIOVANNELLI; ADAM G. GOLDSMITH; RICHARD GOULD; CARRINE GRAHAM; CHERYL GRAHAM; RAY GRAHAM; TAMMY B. GRAHAM; KAMERON GRAY-HAROLD; ADAM GRAYBERG; AYNDRIA GREEN; LISA D. GREEN; THOMAS GREICO; ROBERT GRIMES; DAVID GROSS; JOE GROSS; JESSICA GROVES; MEGAN GUILLAUME; MICHAEL GUILLAUME; KELLI GUNTER; LAUREN HAGY; RICHARD HALL; DOROTHY HALPIN; PETE HALSETH; DAVID HAMMOND; RICHARD HAMNER; STACY HARDY; JIM HARNEY; TERESA R. HAROLD; AQUISI HARRIS; ASHLEY HARRIS; CHAD HARRIS; ERVIN M. HARRIS; MARY HARRIS; WILLIAM HARRIS; BRIANNA HARRISON; PATRICIA HARRISON; SHARON HARRISON; JESSE HATHAWAY; CLAUDIA HAVEKOST; DAVID HAYNES; LESLIE HEARN; KATHLEEN HEDRICK; ADAM HEIDEL; TINY L. HENLEY; AMBER HERNANDEZ; ZACHACY HERRERA; F. DALE HERRON; TARENNE HERRON; JENNIFER HESTER;

DEBBIE HETTERLY; AMANDA HILL; RONALD HILL; CHRIS HILLAND; SHIRLEY B. HINES; VERON HINES; TIMOTHY HINSON; HEATHER HOBACK; BRITTANY HOBAN; DOMINGA HOBBS; MARY HODGES; CHRISTOPHER HOEHN; JERRY HOLLEY; KEISHA HOLLOWAY; BRENDA HOLMES; JAMES HOLMES, III; TIMOTHY HOLROYD; CHAD HOLSTON; CHARLES HOOFNAGLE; CANDI HOOVER; CHARLIE HOPKINS; MARCIA HORSTMAN; RICHARD HOSKINS; CODY HOWARD; JESSICA HOWARD; AUDREY HUBAND; MAX HUBAND; JOHN HUBBARD; SUZANNE HUBBARD; DAVID HUBER; TEDDY HUDDLESTON; AMY HUDSON; HUBERT HUGHES; DENNY HUNCHES; LINNIE HUPE; SHERRY HUTCHINS; DEBORAH G. JACKSON; MITCHELL JACKSON; STANLEY JACKSON, SR.; TRACY JACKSON; JASON JAFFEUX; BRUCE JAMES; SALLY JAMES; SANDY JAMES; WALTER JEFFRIES, SR.; RANDALL JNBAPTISTE; AUSTIN JOHNSON; AUSTIN JOHNSON; EBORAH L. JOHNSON; DAVID W. JOHNSON; BILLY JONES; CHARLIE JONES; CHRISTINA JONES; JOHN K. JONES; PEYTON P. JONES; WILBUR JONES; PHILIP R. JUDSON; KENNETH JUNGERSON; NANCY JUNGERSON; JENIFER JUSTICE; DAVID KADAS; TINA KADAS; GREGORY KASHIN; SRINIVAS KATEPALLI; WILLIAM L. KEE; VICTOR G. KEHLER; SEAN KELLER; TERESA KELLER; CHRISTOPHER KELLY; NONA KELLY; VERONICA KELLY; PATRICK KEOUGH; MEE RAN KIM; CARLTON KINARD; DORIS E. KING; KARL KING; JOHN KIRBY; VERNON KIRBY; DIANA KITE; EDWARD KIZER; PATSY KIZER; JOHN KNIGHT; ANN KORKOLIS; FRED KRAUER,

JR.; JEAN KUESTER; KATHRYN KUYKENDOLL; DANIEL KWITCHEN; CHIN KWON; DENNIS LAMB; JEANETTE LAMB; KAREN LAMB; JAMES LAMBERT; STEPHANIE LAMM; KATHY LAMPERT; ANDREW W. LANDER; CODY LAUGHINGHOUSE; DAVID LEATHERMAN; BLAIRE S. LEE; KENNETH LEE; JENNIFER LEEMAN; RONALD LEEMAN; JERRY LERMAN; CALVIN LEWIS; HAYES LEWIS; REGINA A. LEWIS; ROY W. LEWIS; KAREN LILLEY; STEPHEN LILLEY; LYLE LINDBERG; ASHLEY LIPPOLIS-AVILES; BILLY LLEWELLYN; WILLIAM LOHMANN, JR.; ROBIN LOVETT; DAVID W. LOVING; KEN LU; MICHELE J. LUIS; MELINDA LUMPKIN; DIRK LYNCH; GINGER LYNCH; PATRICIA LYONS; WILLIAM LYONS; DINNE MACDONALD; DWAYNE MADDOX; SORAYA MAINS; MELISSA MALONE; THOMAS MALONE; REGINA MANNING; TERRANCE MANNING; KIRAN MANTRALA; ANDREA MARCHESE; STANLEY MARCUS; STEVE MARKOVITS; KENNETH MARTIN; RACHEL MARTIN; REYNALDO MARTINEZ; RALPH MARTINI; CLETIOUS T. MASHBURN; LAUREN MATSKO; SHAWNA MATTOCKS; LEO MAYNES; PENNY MCCENEY; STELLA MCCLAIN; WILLIAM MCCLELLAN; ROBERT MCCLELLAND; SUSAN MCCLELLAND; SUSAN MCFADDEN; RICHARD MCGRUDER; VICTORIA MCGRUDER; DONALD MCINTIRE; ANNE MCKENNA; RACHEL MCKENZIE; KENNETH MCKINNEY; TERESA MCLAWHORN; DAVID MEADOWS; RITA MEDLEY; TOMMY MEDLEY; ROBERT MEEKER; MICHAEL MEISTER; KAREN MELLER; CARMEN C. MERCADO; ROBERT E. MICKLE; EDMEE

MIGUEZ-GERSTLE; MICHAEL E. MILLER; LISA MILLFORD; MICHAEL MINTZ; MARY MITCHELL; MICHELLE MONROE; CHRIS MOONEY; GARY MOORE; KAREN MOORE; MELODY MORRIS; SUZANNE MOWBRAY; RAYMOND MUELLER; PATRICK MULHERN; DAVID MULLIGAN; LAURENCE MULLIGAN; MARY MULLIGAN; BILLIE MUTTER; MELISSA MUTTER; KEVIN NEWSOME; REVERDY NICHOLSON; SUSAN NOON; SARAH NOVAK; RACHEL NOVERSA; TODD NUNNALLY; JONATHAN O'BRIEN; DARLENE O'DONNELL; JAMES O'DONNELL; PAUL O'KEEFE; TIMOTHY O'MARA; CAROLYN O'NEILL; PAUL J. O'ROURKE; MALCOLM O'SULLIVAN; BRIAN OSBORNE; SARAH OSINSKI; JESSICA OUTER; HERBERT C. OVERSTREET; CANDACE OWENS; CHRISTOPHER PALAZIO; LYNETTE PALMER-FORD; ASHLEY D. PANNELL; MATTHEW PARK; TERRI PARKER; MICAH PARMAN; BHAGVATI PATEL; MUKESH PATEL; PRADIP PATEL; SHREYA PATIL; JOHN PATTIE; JAMES PEARSALL, JR.; DONNA PEARSON; OREST PELECH; CHRIS PENA; ROY M. PENNINGTON, III; THOMAS PEPE; MARK PERRY; KAREN PETERS; JOHN PETERSON; MARK PETERSON; REBECCA PETRELLA; SUSAN PETRIE; ROBERT PETRUSKA; CLAUDE PETTYJOHN; CARL PIERCE; JANET PIETROVITO; DEBRA PINES; LINDSEY POLI; ANGELA POLINKO; CARLTON POLLARD; DAVID POORE, III; ANTON POPOV; LINDA M. PRATT; JASON PRICE; ROBERT PUAKEA; SARA PULLEN; SARHAN QURAISHI; JAMES RADCLIFFE; MELISSA RADCLIFFE; SCOTT RAMSEY; JACQUELINE RANDOLPH; MICHAEL RANGER;

NANCY RANSOME; SHELLIE RENZ; SHERI RESSE; MATTHEW D. REVELLE; STEPHEN RIBBLE; ANITA RICE; LARRY RICE; RICHARD RICHARDSON; CARI RICHARDSON; MICHAEL RICHEY; SARAH RICHEY; MARVIN RIDDICK; DANNY RIDDLE; JENNIFER RIGGER; WAYNE RILEY; TAMRIA RISHER; DANIEL ROBERTS; MARY ROBERTS; SUSAN ROBERTS; GAYE ROBERTSON; SKYLER ROBEY; ANNIE ROBINSON; ANTONIO ROBINSON; KEVIN ROBINSON; PAMELA ROBINSON; ROCKY ROCKBURN; COLETTE ROOTS; DARYL ROOTS; GREGG ROSENBERG; ERIC ROTHMAN; BRIAN ROWE; VIRGINIA A. ROWEN; JULIET ROWLAND; PAUL ROY; RONALD RUCKER; DAVID RUFFNER, JR.; JILL RUFFNER; KRISTYN RUZICKA; JENNIFER RYAN; STEPHEN RYAN; JOSEPH SALAZAR; RACIN SAM; GEORGE SANCHEZ; BONNIE SANDAHL; GARY SARKOZI; JEFF SAUNDERS; JEANNETTE SCHAAR; AILEEN L. SCHMIDT; EDWARD SCHNITTGER; LINDA RUTH SCOTT; GWEN SEAL; AMY SEAY; ANTHONY SELB; DELMAR N. SELDEN; LYNN SETTLE; RICHARD SEYMANN; SHARON SGAVICCHIO; SHA'NESHA SHARPE; ROBERT L. SHELLHOUSE; GARY SHELOR; STEPHANIE SHELOR; BRENDA SHIFFLETT; NINA SIBERT; DAVID SILVERNALE; JESSICA SIMONS; MARY SINGHAS; RANDALL SINGHAS; DONALD SKINNER; RICHARD E. SMITH; SUZANNE SMITH; CYNTHIA L. SNYDER; MANDY SNYDER; HOWARD SNYKER; WESLEY SONGER; JOHN SORESE; RAYMOND M. SOUZA; SHELLIE S. SPADARO; TONY L. SPARKS; LINDA SPRADLIN; SUSAN STANDRIDGE; NANETTE STANLEY; JONATHAN STARKS; EUGENIA

STARNES; GARY STECK; REBECCA STECK; ANDREW STEELEY; CAROLYN RENEE STEVENS; SARA STEVENS; SASHA STITT; TIM STOESSEL; CHEVON D. STOKES; EDWARD STOKES; NATHAN STONE; YOLANDA SULLIVAN; DENNIS SUMLIN; JOHNNIE SUMLIN; JOHN SUTOR; WANDA SUTPHIN; STELLA TANG; ANDREW TAYLOR; ANN TAYLOR; KIMBERLY TAYLOR; FREDDY TELLERIA; MATTHEW TENGS; JOHN THACKER; CANDACE TILLAGE; CHRISTOPHER TOKAR; SUSIE TORTOLANI; MARY TRAINOR; ADELINE TROTTER; PEGGY TSACLAS; JAMES TURNER; ROBERT TURNER; RUFUS TUNSTALL; LUCILLE TYLER; TRAVIS TYSINGER; JOHN TYSON; CYNTHIA UTLEY; CARRIE VAN HOOK; DENISE VANGELOS; MILCA VARGAS; ROBERT VARNER; MARY VAUGHAN; ROBENA D. VAUGHAN; KELLY VERHAM; KIMBERLY VEST; CAROL VIERGUTZ; MARY ANN VILLIES; WALLACE VINGELIS; MARVIN WADE; SANDRA WADE; SCOTT WAGGONER; TERESA WAGGONER; MAGI WAGNER; JANE WALLACE; STACY WALLER; SHERYL WALTERS; GARY WALTON; KIMBERLY WARD; CATHERINE WATERS; BERNARD WATTS; MICHAEL WEBB; SCOTT WEBB; MELISSA WEBSTER; SHARON WELLS; STEPHANY WHIPPLE; SARAH WHITLOCK; ROBERT T. WIENER; CHRISTOPHER WILCHER; DAVID WILD; CHRISTINA WILLIAMS; GEORGE WILLIAMS; GINER WILLIAMS; DAGNY WILLS; GARY WILLS; DR. SARAH WILMER; LESLIE WILSON; ROBIN WILSON; THOMAS WINSTON; CHARLES WISER; SARA WOLLMACHER; MIKE WOO; WAYNE H. WOOD; WAYNE WOODHAMS; STACEY T. WOODS;

ARTHUR WRIGHT; THOMAS WRIGHT; DAVID WYCKOFF; GINO YANNOTTI; JAMIE YOUNG; JONG YUN; ATEF ZAYD; ANGELA R. ZIMMERMAN; RINGO YUNG,

The Defendants are:

HYUNDAI MOTOR AMERICA, INCORPORATED; ALEXANDRIA HYUNDAI, LLC; BROWN'S LEESBURG HYUNDAI, LLC; BROWN'S MANASSAS HYUNDAI, LLC; CHECKERED FLAG IMPORTS, INCORPORATED; CHECKERED FLAG STORE #6, LLC; CRAFT AUTOMOTIVE, INCORPORATED; DUNCAN IMPORTS, INCORPORATED; FAIRFAX HYUNDAI, INCORPORATED; FIRST TEAM, INCORPORATED; GATEWAY HYUNDAI, INCORPORATED; HALL AUTOMOTIVE GROUP, INCORPORATED; HALL HYUNDAI NEWPORT NEWS, LLC; HALL HYUNDAI, LLC; MILLER AUTO SALES, INCORPORATED; CAVALIER HYUNDAI, INCORPORATED; HARRISONBURG AUTO MALL, LLC; JAMES CITY COUNTY ASSOCIATES, INCORPORATED; MALLOY HYUNDAI; POHANKA AUTO CENTER, INCORPORATED; PRICE HYUNDAI CORPORATION; PRIORITY GREENBRIER AUTOMOTIVE, INCORPORATED; PRIORITY IMPORTS NEWPORT NEWS, INCORPORATED; ROBERT WOODALL CHEVROLET, INCORPORATED; TYSINGER MOTOR COMPANY, INCORPORATED; WBM, INCORPORATED, d/b/a West Broad Hyundai; WRIGHT WAY AUTOMOTIVE, INCORPORATED.

In United States Court of Appeals for the Fourth Circuit Case No. 17-1582, *Abdul-Mumit, et al v. Alexandria Hyundai, LLC, et al*, there are 583 named plaintiffs and 27 named defendants.

The Plaintiffs are:

JIHAD ADBUL-MUMIT; MATTHEW ABEDI; MONICA ADAIR SARGENT; MARK AGEE; ALIZ AGOSTON; YVONNE ALSTON; DAN AMATRUDA; KRISTY AMBROSE; KIMBERLEY AMICK; WANDA G. AMOS; CHRISTOPHER ARAUZA; CARL ARSENAULT; BROOKE ASHER; MICHELLE ATKINS; RAYMOND O. ATKINS; MATTHEW ATWELL; DAVID AUB; SOHA AYYASH; ASIF AZIZ; SUSAN BAILEY; KAREN BAKER; HAB BAKER, III; TERRY BARNES; JOSEPH BARTELL; HARRY L. BARTON; BENJAMIN BASHAM; MATTHEW BASILONE; JOHN BAXTER; JOHN BEASLEY; TIMM BETCHER; ELIZABETH BELEVAN; BARBARA BELL; JUDY BENDER; AMINE BERBALE; JAMES BERLING; SHARON BISDEE; WILLIAM BONNER; WALTER BORDEAUX; GARY BOYETTE; TODD BRADBURY; KAREN BRADBURY; JOHN BRANCATO; WILLIAM BREWSTER; LORI BRODIE; GLORIA BROOKS; ELSE BROWN; MELANIE BROWN; ANGELA BROWN; GARY BROWN; JEANNE BROWN; SYDNEY BRUMBELOW; JAN BURFORD; SARA BURRUSS; JAMIE BURTON; JOSEPH CALDARELLI; JASON CALL; TODD CARLSON; HOWARD L. CARPENTER; CYNTHIA CARTER; FREDERICK CARTER; JACKLYN CASSELLE-TUPPONCE; JARED CASTRO; REBECCA CATLETT; SUSAN CAVE; KIRT CHAPPELLE; LINDA CHEESEBORO; ROGER CHESLEY, JR.; STEVE CHILDRESS; DAN CHO; SUNG CHO;

SUNG CHUN; WILLIAM CLARK; LINDA CLUNE; STUART COCHRAN; CHARLES COCHRANE; ANGEL COLLINS; HENRY SHANE COLVIN; KARRI COLVIN; CARLY CONNELLY; ANGIE CONNER; JEREMY CONRAD; PHILIP CORRAO; KIMBERLY CRAWFORD; MARGARET CRITTENDON; APRIL CROCKER; WILLIAM CROMER; JAY CUNNINGHAM; MARY CURTIS; ROBERT DANIELS; DONNA DAVIS; BOYD DAVIS; LISA DAVIS; ROGER DAVIS; MICHELLE DEBROSSE; MICHAEL DECANIO; ALMA DELIA DELEON; JENNIFER DEMARCO; ANTHONY DEPAUL, JR.; GEORGE D. DESPERT, III; CYNTHIA DEVANE; RUTH DIAZ; RON DICKMAN; SHERI DIXSON; SONYA DODSON; JESENIA DOMINGUEZ; TERRY DONALDSON; LATAVIA DREW; ARLENE DREWRY; CHRISTINA DRUGATZ; KAREN DUNCAN; SANDRA K. DUNTON; JEFF EDDY; DEBORAH EDGE; DEBORAH EDGEFIELD; PAMELA EDWARDS; KASEY EIKE; MIRIAH EISENMAN; FREDERICK EITEL; SHARON EKSTRAND; NICOLE ELSESSER; JOSEPH ELTON; KAREN EVANS; MASE FABAR; FLOYD FALLIN, JR.; JAMES BASHAM; ELIZABETH FARRELL; MARGIE D. FAULS; CAITLIN FEELEY; BARRY FELDMAN; BRIAN FELDMAN; WANDA FERGUSON; JAMES FICKLE; SHIRLEY FICKLE; SCOTT FLORA; THOMAS ROBERT FRANCO; JOHN FRANKLIN; TAMMY FRANKLIN; ANTHONY FREDERICK; TRACY FREDERICK; THOMAS FREEZE; ADAM FURMAN; ALICIA FUSCO; DONNA GADDIS; GUILLERMO GALARZA; IVAN GALLOWAY, JR.; IDA GARNER; WILLIS M. GARY; KURT GERGLE; TARUN GHAI; ELAINE GIBSON; HELEN GILLESPIE; MELODY GILLEY; TANJA GILMORE; BRIAN GLAUB; BARRY GOLDBERG; SCOTT GOODMAN;

RICHARD GOULD; TROY L. GRAHAM; GABRIELA GRAJEDA; ELIZABETH GRANT; BRANDI GRAY; CHRISTIE GRAY; JANIE GRAY; VALERIE GRAY; GRAYBERG; AYNDRIA GREEN; DIANA GRIFFIN; PAUL L. GROVER; JESSICA GROVES; DEDRA GUENO; CARL GUSSGARD; ARNOLD GUTMAN; JULIAN GUTTERMAN; TESSIE GUTTERMAN; LISA HAGERTY; LAUREN HAGY; CEDON J. HALEY, JR.; DOROTHY HALPIN; NANCY N. HAMLETT; ERESTINE HARDING; DEBORAH HARE; AQUISI HARRIS; KENDALL HARRIS; MARY HARRIS; PATRICE A. HARRIS; BRIANNA HARRISON; SHARON HARRISON; SHARON HART; LEE ANN HARTMANN; PATRICIA HAUSER; DEANNA HAVERLY; LESLIE HEARN; KATHLEEN HEDRICK; AMANDA HEINLEIN; CHARLES HELMS; ROBERT HENDRICKSON; STEPHEN HERMAN; JAMES HERRINGTON; WILLIAM HESTER, JR.; DEBBIE HETTERLY; NANCY HICKMAN; JEREMY HILLBERRY; GREG E. HINES; ROBERT HITE; BRITTANY HOBAN; PAM HODGES; THURMAN HODGES; CHRISTOPHER HOEHN; CAROLYN HORCHNER; JEFFREY HORCHNER; BETTY HORNICK; JENNIFER HORNING; MAJOR M. HORTON; BITSY HOUSE; ALYSSA HRONOWSKI; TEDDY HUDDLESTON; JERRY HUDSON, SR.; HUBERT HUGHES; SHAY HUNTER; MARK HUSTEAD; CAROL HUTCHINSON; NATHEN ILLIDGE; GEORGE IOANNOU; FRANCES JACOCKS; PATRICIA JACOCKS; JASON JAFFEUX; SALLY JAMES; STACEY JANSEN; JOYCE JANTO; WALTER JEFFRIES; JANICE JENKINS; CHELSEA JOHNSON; MONICA JOHNSON; RASHEEDAH JOHNSON; TODD JOHNSON; DERWOOD JOHNSTON; JOHN JOHNSTONE; CHRISTINA JONES; PAMELA JONES; WILBER B. JONES;

RICHARD JORDAN; SANDRA JORDAN; SHERYL JORDAN; JENNIFER JUSTICE; KIM KEATING; CODY KELLY; TERESA KELLY; MELANIE KENYON; JOHN KERR; SHEA KERSEY; HANNAH KIGHT; WILLIAM KIGHT; MIKYUNG KIM; CAROLYN KINES; LARRY KING; SUSAN KING; VERNON KIRBY; DIANA KITE; EDWARD KIZER; PATSY KIZER; JOHN A. KNIGHT; CONNIE KNISELEY; DONNA KNOELL; AMANDA KOZAK; TAMARA KROBERT; FRANK KULOVITZ; CARL KURI; KELLY KUSEK; VICTOR C. KVIETKUS; BRENDA LACKEY; TAMMY LACKEY; MARY LANG; MARKUS LANGE; CATHERINE LANTZ; GLENN LAVINDER; CHRISTOPHER LEGENDRE; BARBARA LEGGETT; DAVID LEHMAN; CALVIN LEWIS; CALVIN LEWIS; REGINA LEWIS; DELORES LINDBLOM; WILLIAM LIPFORD; ASHLEY LIPPOLIS-AVILES; MIKE LITTMAN; BILLY LLEWELLYN; ROBIN LOVETT; DAVID LOVING; CYANE LOWDEN; KEN LU; JOSHUA LUBECK; ROBERT R. LUCAS; PATRICIA LYONS; WILLIAM LYONS; CHRISTINE MACCASLIN; ANITA MADISON; JOHN MALIZIA; SUZANNE MALIZIA; THOMAS MALONE; STANLEY MARCUS; HEATHER MATSEY; JAMES MATSEY; RODNEY MATTHEWS; SHAWNA MATTOCKS; MATTHEW MATTRO; JEFF MAY; HAROLD MAYHEW, JR.; SHAWN MAYNOR; DIANDRA MAYO; ROBERT MCCARRAHER; PENNY MCCENEY; ROBERT MCCLELLAND; MICHAEL MCCLENNING; ROBERT MCCURDY; JOSEPH MCDANIEL; SUSAN MCFADDEN; WILLIAM MCFADDEN; MARK MCGINLEY; RICHARD MCGRUDER; VICTORIA MCGRUDER; DONALD MCINTIRE; KAREN MELLER; KAREN MELLER; CARMEN MERCADO; SCOTT MEYERS; CAROL MIEGGS; CHRISTY MILLER; DAVID MILLER;

RON MILLER; MARIA MING LI; MARY MITCHELL; TERRIE MITCHELL; BANKS MITCHUM; BENJAMIN MOHER; DAVID MOLINARI; JUNG MOON; KAREN MOONEY; BONNIE MOORE; MONTE MORGAN; PHILLIP MORGAN; WILLIAM MORGAN; BRYON MOSS; SUZANNE MOWBRAY; DAVID MULLIGAN; MARY MULLIGAN; NANCY MURRAY; ROGER MYERS; PATRICK NANCE; DENNIS NEGRAN; PENNIE NEWELL; GLEN NEWITT; JACQUI NEWITT; EDWARD NEWMAN, JR.; KEVIN NEWSOME; REVEREDY NICHOLSON; PATRICIA NICOSIA; RANDALL NIXON; KAREN NOLAN; RYAN NOLETTE; BRYAN NORDQUIST; SERGEI NOVITSKY; JONATHAN O'BRIEN; WILLIAM O'FLYNN; KAREN O'NEIL; ADRIAN ODYA-WEIS; DENNIS OLEARY; JOHN OLSEN; TANA RAE OROPEZA; BRIAN OSBORNE; CANDACE OWENS; LYNN PAGE; TANYA PALIK; RONA PALMER; ASHLEY PANNELL; HARRY PAULETTE; TANYA PEAKE; DONNA PEARSON; RICHARD PEARSON; JOHN PEDERSEN; CHRIS PENA; ROY MASON PENNINGTON, III; NICHOLAS PEREZ; GREG PERIGARD; KIM PERKINS; MARK PERRY; BRADY PETERS; KAREN PETERS; THOMAS PETIT; REBECCA PETRELLA; SUSAN PETRIE; ADRIAN PHILLIPS, JR.; ANNE PICCIANO; JOHN PICCIANO; CARL PIERCE; SIVATHANU PILLAI; DEBRA PINES; CHARLES PINKARD; LILIA PINSON; ARLOVE PLUNKETT; TIMOTHY POHLIG; DENISE POINDEXTER; RACHEL POLIQUIN; MARGARET POMEROY; DAVID POORE, III; LAURA POTTER; KATHY POWERS; LINDA PRATT; BERNARD PRESGRAVES; JASON PRICE; DENISE PRYOR; JOSHUA PUCCI; VICTORIA PUCKETT; SARA PULLEN; TONY PULLEY; CYNTHIA QUATTLEBAUM; EVA

RALSTON; WILLIAM RALSTON; HANNAH RAMEY; JACQUELINE RANDOLPH; THOMAS RANDOLPH; MICHAEL RANGER; BRAD RANSOM; HENRY REQUEJO; DAVID REYNOLDS; ROSE RICKER; DANNY RIDDLE; ROBIN ROBERT; JOSHUA ROBERTS; MARY ROBERTS; ANNIE ROBINSON; ANTONIO ROBINSON; ROCKY ROCKBURN; DREW ROPER; TROY ROSIER; ERIC ROTHMAN; BRIAN ROWE; JULIET ROWLAND; JOHN ROWLEY; NANCY ROWSEY; STEPHEN RUBIS; KYLE RUSSELL; JENNIFER RYAN; THOMAS RYDER; JOSEPH SALAZAR; RANDALL SAMPLES; REBECCA SAMUELSON; THOMAS SANCHEZ; AARON SANDERS; ASOK KUMAR SARKAR; TOM SCARCELLA; EDWARD SCEARCE; SHANE SCHLESMAN; WADE SCHWANKE, JR.; GWEN SEAL; AMY SEAY; BRADLEY SEAY; CHARLES SELTMAN; PATTY SENTER; LYNN SETTLE; TIM SEYMOUR; RONALD SHARP; ERNEST SHARPE; SHIRLEY SHAW; STEPHANIE SHELOR; MICHELLE SHIFFLETT; SANDRA SHIFFLETT; JUNE SHORES; D. SHAWN SHUMAKE; NINA SIBERT; ROBERT SILBER; CHRISTIAN SIMMERS; MARY SINGHAS; RANDALL SINGHAS; AMY SMITH; DAPHNE HOPE SMITH; LISA SMITH; STEPHEN SMITH; SUZANNE SMITH; KRISTINE SMOLENS; HOWARD SNYDER; WESLEY SONGER; EMILY SPARKS; BRIAN SPENCER; SVETLANA SPENCER; PATRICIA SPIER; LORI SPIK; DEREK ST. ONGE; RONALD STAFFORD; JONATHAN STARKS; MARK STEPHENS; TERRY STEPP; SARAH STEVENSON; ERIC STEWART; ROXANNE STITH; TIM STOESSEL; JEAN STOTLER; SARA STRAMEL; LARRY STRAYHORN; FRANKLIN STURKEY; BEN SULLENGER; YOLANDA SULLIVAN; JOHN SUTOR; WANDA SUTPHIN;

SHARON SWINBURNE; STELLA TANG; ANDREW TAYLOR; ANN TAYLOR; DONNA TAYLOR; JI JI THEKKEVEEDU; CHRISTOPHER THOME; MICHAEL THOME; DAVID THOMPSON; TOM THOMPSON; ASHLI THURSTON; CHRISTOPHER TOKAR; DION TOMER; CLIFFORD TRIMBLE; SERGIO TROMBA; ADELINE TROTTER; JAMES TURNER; JEFFREY TURNER; OWENS TURNER, JR.; MARILYN TWINE; LONNIE URQUHART; CHERI VALVERDE; MIKE VAMMINO; CARRIE VAN HOOK; KATHERINE VANDENBRIEJE; MILCA VARGAS; MARY VAUGHAN; ROBENA VAUGHAN; JESSYCA VENICE; KIMBERLY VEST; CAROL VIERGUTZ; MARYANN VILLIES; PATRICE VOSSLER; AMADA WAGONER; STACY WALLER; GARY WALTON; GRETCHEN WARD; SHELIA WARD; DANIEL WAXMAN; CHRISTOPHER WEAVER; MARGARET WEBB; LAURA WEISIGER; STEPHANY WHIPPLE; DAVID WHITLEY; SARAH WHITLOCK; DIANE WIEN; ROBERT T. WIENER; CHRISTOPHER WILCHER; MINDY WILLIAMS; VINCENT WILLIAMS; HANNAH WILSON; JUANITA WILSON; RIED WILSON; CHARLES WISER; SHARON WISER; MARK WOEHLER; KENNETH WOMACK; EMILY WONG; GREGORY WOODS; KATHERYN WOOSLEY; CAROL WRIGHT; JONATHAN WRIGHT; MARY WRIGHT; THOMAS WRIGHT; TIMOTHY WRIGHT, JR.; LESLIE YAMNICKY; KENNETH YATES; JAMIE YOUNG; SANDRA YOUNG; ROBERT YOUNIE, II; ATEF ZAYD.

The Defendants are:

HYUNDAI MOTOR AMERICA, INCORPORATED; ALEXANDRIA HYUNDAI, LLC; BROWN'S LEESBURG HYUNDAI, LLC; BROWN'S

MANASSAS HYUNDAI, LLC; CHECKERED FLAG IMPORTS, INCORPORATED; CHECKERED FLAG STORE #6, LLC; CRAFT AUTOMOTIVE, INCORPORATED; DUNCAN IMPORTS, INCORPORATED; FAIRFAX HYUNDAI, INCORPORATED; FIRST TEAM, INCORPORATED; GATEWAY HYUNDAI, INCORPORATED; HALL AUTOMOTIVE GROUP, INCORPORATED; HALL HYUNDAI NEWPORT NEWS, LLC; HALL HYUNDAI, LLC; MILLER AUTO SALES, INCORPORATED; CAVALIER HYUNDAI, INCORPORATED; HARRISONBURG AUTO MALL, LLC; JAMES CITY COUNTY ASSOCIATES, INCORPORATED; MALLOY HYUNDAI; POHANKA AUTO CENTER, INCORPORATED; PRICE HYUNDAI CORPORATION; PRIORITY GREENBRIER AUTOMOTIVE, INCORPORATED; PRIORITY IMPORTS NEWPORT NEWS, INCORPORATED; ROBERT WOODALL CHEVROLET, INCORPORATED; TYSINGER MOTOR COMPANY, INCORPORATED; WBM, INCORPORATED, d/b/a West Broad Hyundai; WRIGHT WAY AUTOMOTIVE, INCORPORATED.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

OTHER AUTHORITIES

OPINIONS BELOW

This is an appeal from the July 13, 2018 Opinion of the United States Court of Appeals for the Fourth Circuit. The style of the cases, considered and ruled upon together, are *Abdul-Mumit, et al v. Alexandria Hyundai, LLC, et al*, Case No. 17-1582; *Abdurahman, et al v. Alexandria Hyundai, LLC, et al*, Case No. 17-1587. The Opinion of the Fourth Circuit is found at 896 F.3d 278 (4th Cir. 2018). The Opinion of the United States District Court for the Western District of Virginia dated January 23, 2017 is found at 2017 WL 354251. The Opinion of the United States District Court for the Western District of Virginia dated April 6, 2017 is found at 2017 WL 1289050.

STATEMENT OF JURISDICTION

The date of the judgements sought to be reviewed were entered on July 13, 2018. The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgments or orders in question is 28 U.S.C. §1254(1).

This Petition demonstrates that the United States District Court for the Western District of Virginia, and the United States Court of Appeals for the Fourth Circuit both made rulings in, and dismissed with prejudice 809 individual claims included in the *Abdurahman* and *Abdul-Mumit* cases before this Court. These 809 individual claims were previously transferred by the Judicial Panel on Multidistrict Litigation to MDL 2424 in the Central District of California and were never remanded.

Thus, the District Court below, and the Fourth Circuit, did not have jurisdiction to make any rulings in these cases. This Court still has jurisdiction to correct errors of the lower courts acting without jurisdiction. See, *Stickney v. Wilt*, 90 U.S. 150, 162-163 (1874) holding:

> "*Cases wrongly brought up, it may be admitted, should, as a general rule, be dismissed by the appellate tribunal, but a necessary exception exists to that rule where the consequence of a decree of dismissal will be to give full effect to an irregular and erroneous decree of the subordinate court in a case where the decree is entered without jurisdiction, and in violation of any legal or constitutional right. Rules of practice are established to promote the ends of justice, and where it appears that a given rule will have the opposite effect, appellate courts are inclined to regard the case as one of an exceptional character…cases occasionally arise in which the proceedings in the lower court are so irregular that a mere affirmance or reversal upon the merits would work very great injustice, and in such cases it is competent for the appellate court to reverse the judgment or decree in question and to remand the cause with such directions, if it be practicable, as will do justice to both parties...Serious embarrassment often arises in such cases where it appears that the subordinate court is without jurisdiction, but that*

> *difficulty does not prevent this court from assuming jurisdiction, on appeal, for the purpose of reversing the judgment or decree rendered in such subordinate court, in order to vacate the same, when rendered or passed without authority of law."* Stickney v. Wilt, 90 U.S. 150, 162-163 (1874).

As demonstrated in this Petition the errors of the Fourth Circuit, made without jurisdiction, work "*very great injustice*" and impair the integrity of the judicial process. The Defendant/Appellee below, Hyundai, used the errors of the Fourth Circuit in an attempt to gain an advantage in the MDL proceeding pending before the *En Banc* United States Court of Appeals for the Ninth Circuit. The Ninth Circuit is adjudicating issues which substantially affect a rule of national application in which there is an overriding need for national uniformity. As held in Stickney v. Wilt, id., there is "*great injustice*" if Hyundai were to "*obtain the full benefit of a judgment or decree rendered in* [its] *favor by a court which had no jurisdiction to hear and determine the controversy*." Stickney v. Wilt, p. 162. Thus, this Honorable Court has jurisdiction under the rule declared in Stickney v. Wilt. id.

STATUTORY PROVISIONS INVOLVED IN THE CASE

This Petition involves 28 U.S.C. §1407 "*Multidistrict Litigation*". The statute is lengthy and is set out in the Appendix pursuant to Supreme Court Rule 14 (1)(f). App. 184-187.

The Petition involves Federal Rule of Civil Procedure 15(a)(2). The Rule in its entirety is lengthy, and is set out in the Appendix pursuant to Supreme Court Rule 14(1)(f).

I. STATEMENT OF THE CASE

A. SUMMARY OF THE STATEMENT OF THE CASE

The legal principles controlling this case are clear:

> 1. Federal courts are courts of limited jurisdiction. "*The limits upon Federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded*." *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978);
> 2. A court speaks through its orders, not its memorandum opinion. *Bell v. Thompson*, *supra*.; and
> 3. The right to amend a complaint is liberal and freely given under FRCP 15(a)(2). This Rule must be heeded. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

The Fourth Circuit's departure from these principles has impaired the integrity of the judicial process in a case of significant national importance involving federalism issues in a class action Multidistrict Litigation currently pending on appeal before the *En Banc* Ninth Circuit. The complex, class

action, Multidistrict Litigation must be described in detail for this Honorable Court to see the magnitude of the harm caused to the Petitioners, and 16,000+ other Virginians, by the errors of the Fourth Circuit.

In sum, the United States District Court for the Western District of Virginia, as affirmed by the Fourth Circuit, improperly exercised jurisdiction over, and dismissed with prejudice, hundreds of individual consumer protection and breach of warranty claims of purchasers of Hyundai Elantras when these claims had been previously transferred to Multidistrict Litigation 2424 "*Hyundai and Kia Fuel Economy Litigation*" and were not remanded. This resulted in inconsistent rulings between the MDL Court and the Western District of Virginia, as affirmed by the Fourth Circuit. Additionally, as shown hereafter, when the Fourth Circuit asked Hyundai's counsel:

> *"You're not going to turn around in California and say these claims are dismissed?"*

Hyundai's counsel responded:

> *"We are not, and we have taken that position in all our briefing."*

As shown hereafter, when Hyundai's counsel appeared later before the *En Banc* Ninth Circuit, he argued the choice-of-law issue pending before the Ninth Circuit should be in Hyundai's favor because:

> *"All 1200 of these individual suits were dismissed on the*

> *merits affirmed by the Fourth Circuit. So, in fact, when those claims were pursued they did not have better remedies at all, they got no remedy whatsoever."*

The improper dismissal with prejudice of hundreds of cases the Western District of Virginia and the Fourth Circuit had no jurisdiction over has impaired the integrity of the judicial process in the adjudication of issues of national application[1] arising from the MDL Court and pending before the *En Banc* Ninth Circuit.

1. FACTUAL BACKGROUND GIVING RISE TO THIS LITIGATION

In 2011 and 2012, a nationwide advertising campaign by Hyundai stated its Elantra model obtained 40 miles-per-gallon ("MPG"). But according to the United States Department of Justice, Hyundai used improper methods to calculate greenhouse gas emissions resulting in a false fuel economy estimate upon which the advertising was allegedly based. According to the Justice Department, the improper methods used by Hyundai included selecting results from test runs that were aided by a tailwind, selecting only favorable results from test runs rather

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[1] Ninth Circuit Local Rule 35-1, provides Rehearing *En Banc* is appropriate in cases which **"*substantially affects a rule of national application in which there is an overriding need for national uniformity.*"** Having granted a rehearing *En Banc*, the Ninth Circuit has found the federalism and choice-of-law issues arising from MDL 2424 meet this criteria.

than averaging a broader set of results, restricting testing times to periods when the temperature allowed vehicles to coast farther and faster, and preparing vehicle tires to improve the test results. *See*, *U.S. v. Hyundai Motor Co., et al*, Case No. 1:14-cv-1837, District of Columbia District Court, Complaint at paragraph 37.

Hyundai agreed to pay the largest civil penalty then in the history of the Clean Air Act - $93,656,000. See, *Hyundai and Kia Clean Air Act Settlement*, EPA, https://www.epa.gov/enforcement/hyundai-and-kia-clean-air-act-settlement. (June 19, 2008). Hyundai also forfeited greenhouse gas emissions credits valued "*over $200 million*." Id.

2. THE LITIGATION BEGINS IN CALIFORNIA

In January 2012 a putative nationwide class action suit was filed in state court in Los Angeles County, California. *See*, *Espinosa v. Hyundai Motor America*, No. B.C. 476445 (Cal. Sup. Ct. filed Jan. 6, 2012). The complaint asserted claims under California's consumer protection laws and common law, alleging Hyundai had falsely advertised its 2011 and 2012 Elantra vehicles obtain 40 miles-per-gallon (MPG) on the highway, when in fact these vehicles get far lower MPG. The *Espinosa* plaintiffs sought legal and equitable relief on behalf of a putative nationwide class of owners of specified vehicles, including Elantras, who purchased or leased their vehicles in the entire United States.

Espinosa was removed to the United States District Court for the Central District of California.

For the purposes of this Petition the Central District of California court made two significant rulings.

First, on April 23, 2012 the Central District of California overruled a Motion to Dismiss asserted on preemption grounds, holding, *"plaintiffs' claims rest on allegations that Hyundai voluntarily made additional assertions, beyond the disclosure of mileage estimates, that are untrue or misleading, and that federal law does not require, or even address"* and therefore are not preempted. *See*, *Espinosa, et al v. Hyundai Motor Am., et al*, Case 2:12-cv-00800-GW-FFM, Doc. 27, filed 01/23/12, p. 4 of 7 (C.D.Cal.). This ruling is significant because, as shown hereafter, the Western District of Virginia later made an inconsistent ruling that the same claims of the Petitioners are preempted by Federal law.

Next, the Central District of California Court was asked to certify a nationwide trial class in spite of the fact *Espinosa* only asserted claims under California law. Hyundai opposed certification of a nationwide trial class. In November 2012, the Central District of California court adjudicated the motion for certification of a nationwide trial class and held it was required to perform a choice-of-law analysis. The Court found that California had sufficient contacts to support the extraterritorial application of California law to all claims, but "*just as in Mazza v. Am. Honda Motor Co., 666 F. 3d 581 (9th Cir. 2012), the three-part choice-of-law test..comes out in [Hyundai's] favor"* prohibiting the certification of a nationwide trial class.

The Central District of California found that the "*Appendix of Variations in State Law*" submitted by Hyundai in its opposition to certification of a

nationwide trial class "*unquestionably demonstrates*" material difference in the various States' laws that would make a difference in the litigation. The Central District of California held the legitimate interests of other States would be more impaired were California law imposed upon their citizens then California would be impaired if the class action was limited to a class of only California consumers. Certification of a nationwide trial class was precluded because the need to apply the laws of the various States to out-of-state purchasers destroyed the "*predominance*" requirement of Rule 23(b)(3) because common questions of law and fact would no longer predominate.

3. "*MULTIDISTRICT LITIGATION NUMBER 2424--HYUNDAI AND KIA FUEL ECONOMY LITIGATION*" IS CREATED

On November 2, 2012 the United States Environmental Protection Agency announced that the results of an investigation confirmed that Hyundai used improper test procedures to develop the fuel efficiency information submitted to it for certain 2011, 2012, and 2013 models. Hyundai agreed to revise its fuel economy ratings. At this point, class action cases were filed throughout the country. Proceedings were initiated before the Judicial Panel on Multidistrict Litigation, (JPML) under 28 U.S.C. §1407 requesting twelve putative class actions against Hyundai related to the marketing and advertising of the fuel efficiency of Hyundai vehicles be transferred to a single district for coordinated pretrial proceedings. On February 6, 2013, the JPML created "*Multidistrict Litigation No.*

2424" *In Re Hyundai and Kia Fuel Economy Litigation* and transferred all pending actions to the Central District of California because of its familiarity with the issues from presiding over the *Espinosa* action. 56 actions were ultimately transferred to the Central District of California Court including, eventually, the cases at bar, *Abdurahman* and *Abdul-Mumit.*

One week after the JPML issued its transfer order, and shortly after the *Espinosa* court made it clear a nationwide trial class was not possible, the *Espinosa* plaintiffs, along with the plaintiffs in two other actions, *Brady v. Hyundai*, No. 8:12-CV-1930 (C.D. Cal. filed Nov. 6, 2012) and *Hunter v. Hyundai*, No. 8:12-CV-01909 (C.D. Cal. filed Nov. 7, 2012), informed the Central District of California court they had reached a proposed settlement with Hyundai for a single nationwide class. These plaintiffs, (none of whom purchased cars in Virginia,) along with Hyundai, in spite of the "*heightened*" scrutiny for certification of settlement classes required by *Amchem Products v. Windsor*, 521 U.S. 591, 620, 117 S.Ct. 2231, 2248, 138 L.Ed. 2d 689, (1997), agreed that the District Court should certify a nationwide settlement class of all persons who were current and former owners and lessees of specified Hyundai and Kia vehicles on or before November 2, 2012. The predicted average total lump sum payment for the nationwide class members owning or leasing Hyundai Elantras was $353. Hyundai was to obtain a release of all claims in the nation. Hyundai also agreed to pay class counsel reasonable attorneys' fees to be negotiated and awarded separately from the proposed payments to class members.

4. ENTER THE VIRGINIANS

Not happy with a proposed $353 recovery, a group of Virginians filed another action against Hyundai in the Western District of Virginia. See, *Gentry v. Hyundai Motor Am.*, No. 3:13-cv-0030 (W.D. Va. filed Oct. 14, 2013). The *Gentry* plaintiffs asserted claims under Virginia consumer protection, false advertising, and vehicle warranty laws on behalf of a putative class of those who purchased a 2011, 2012, or 2013 Hyundai Elantra in Virginia only. From best available information, this proposed Virginia-only class consisted of over 16,000 individual owners of Elantras.

On October 30, 2013, Hyundai noticed the *Gentry* action to the JPML as a "*tag-along*" action related to MDL 2424. Hyundai sought a stay in *Gentry* pending the expected transfer order by the JPML to send the case to MDL 2424 in the Central District of California. Hyundai asserted a stay was "*necessary to ensure that similar actions are treated in a comparable and consistent manner…*" "*…we don't want to invite inconsistent rulings…*" and that a stay "*avoids the risk of inconsistent rulings.*" On November 20, 2013, the Western District of Virginia Court stayed *Gentry* with the specific finding that it would "*avoid the possibility of conflicting judicial determinations*" pending a determination of whether *Gentry* would be transferred to MDL 2424 in the Central District of California.

On December 18, 2014, counsel for *Gentry* filed *Abdurahman, et al v. Alexandria Hyundai, et al*, in the City of Roanoke, Virginia Circuit Court pursuant to Virginia's Multiple Claimant Litigation Act, VA. Code §8.01-267.1 *et seq*. *Abdul-Mumit, et al v.*

Hyundai, et al, was filed on January 10, 2014 pursuant to the same statute. In these two suits 809 named plaintiffs purchased Elantras before November 2, 2012, and 489 bought them after November 2, 2012. Because no class was certified in the MDL at this time, there was no need to separate the two groups.

Since certification of *Gentry* was not guaranteed, *Abdurahman* and *Abdul-Mumit* had to be filed to toll the statute of limitations because Virginia does not recognize "*cross-jurisdictional tolling*". *See*, *American Pipe and Const. Co. v. Utah*, 414 U.S. 538 (1924). *See also*, *Crown Cork & Seal, Inc. v. Parker*, 462 U.S. 345 (1983) (holding statute of limitations is tolled for putative class members during the period a class action is pending.) In Virginia the filing of a class action, in Virginia or elsewhere, does not toll the statute of limitations for putative class members who opt out of a class and who file a subsequent suit unless the named plaintiffs in the class action are certified as recognized representatives of the plaintiff class and they plead the same cause and right of action as the subsequent individual suit. *Casey v. Merck*, 283 VA. 411 (S.Ct. VA. 2012). It was also necessary to include as defendants the individual Hyundai dealerships as Hyundai asserted it was the dealerships that mis-represented the Elantras obtained 40 MPG, not Hyundai. The Western District of Virginia stayed *Abdurahman* and *Abdul-Mumit* on the same grounds that it stayed *Gentry*—to avoid inconsistent rulings in the cases pending in Virginia with the MDL court in California, as the transfer was believed to be imminent.

5. THE VIRGINIANS GO TO CALIFORNIA

With *Gentry*, *Abdurahman*, and *Abdul-Mumit* all transferred to MDL 2424 in the Central District of California, the litigation stalled until December 23, 2013, when plaintiffs in *Hunter*, *Brady*, and *Espinosa* moved for class certification of a nationwide settlement class and preliminary approval of the proposed national settlement. The *Hunter*, *Brady*, and *Espinosa* Complaints only asserted California causes of action.

In May 2014, counsel for the Virginians in *Gentry*, *Abdurahman*, and *Abdul-Mumit* (hereinafter, "the Virginians") opposed both certification of a nationwide settlement class and approval of the proposed settlement. Standing on the Constitutional principle that federalism requires that Virginia law must be respected by Courts in other States, the Virginians argued that California choice-of-law rules did not allow certification of the class. Most of the contracts of the Virginians contained a Virginia choice-of-law provision. Under California law *"an otherwise enforceable choice-of-law agreement may not be disregarded merely because it may hinder the prosecution of a multi-state or nationwide class action or result in the exclusion of non-resident consumers from a California-based class action."* *Washington Mutual Bank FA v. Superior Court,* 24 Cal. 4th 906, 918 (2001). Under California's governmental interest test, there were material conflicts in the law of Virginia as compared to the law and remedy sought to be applied by the California causes of action asserted by *Espinosa*, *Hunter*, and *Brady*. The Virginia Consumer Protection Act ("VCPA") provides for a minimum of

$500 in statutory damages for individuals who suffer damage as a result of a violation of the Act. *See* VA. Code Ann. §59.1-204(A). California's Consumer Legal Remedies Act ("CLRA") sets no statutory minimum damages for individuals who suffer violations of the Act. *See* Cal. Civ. Code §1780(a). Virginia's statutory minimum of $500 is superior to the average maximum lump sum benefit of $353 the Virginia class members would be entitled to under the settlement. Also, under the VCPA, the trier of fact can award treble damages within its discretion if it finds that the violation was "*willful*", *see* VA. Code Ann. §59.1-204; under CLRA, the trier of fact can only award punitive damages if it finds "*clear and convincing evidence*" of "*oppression, fraud, or malice*." Cal. Civ. Code §3294(a). Even more significantly, Virginia law requires the re-purchase of the vehicle if a jury found that the difference in mileage promised – 40 MPG – compared to the actual – 32 MPG – constituted a significant impairment to the use and value of the vehicle. Under California law, a repurchase is not required unless there is a safety hazard in the car.

Not only were the Virginia causes of action materially different from those asserted by the Settling Plaintiffs, but Virginia also had a strong interest in having its law apply. Even without the contractual choice-of-law provisions, California law would require courts to apply Virginia law.

In August 2014, despite its earlier finding that a nationwide trial class could not be certified because of the material differences in State law that would affect the outcome in each State, and despite the "*heightened*" scrutiny required for settlement classes under the Court's ruling in *Amchem Products v.*

Windsor, *supra*, the Central District of California granted class certification of a nationwide settlement class without addressing variations in State law. The Central District of California declined to apply California's choice-of-law rules to determine whether California law was applied to the class, or to make any choice-of-law ruling. The Central District of California Court gave preliminary approval of the proposed settlement, finding it sufficiently fair, reasonable, and adequate to merit disseminating notice to the class.

In March, 2015, the *Hunter*, *Brady*, and *Espinosa* plaintiffs, along with Hyundai, jointly moved for final approval of the class settlement.

During the class settlement litigation, the Central District of California court expressed its view of liability in these cases:

> *"The Court: I agree that during the first portion of this case, the original Espinosa case, there was certainly doubt, et cetera, et cetera, et cetera. But, certainly, after November of 2012, this was – let's put it this way, the liability aspect of this case was no longer a major problem.*
>
> *Mr. McCune: I am not sure defense would agree with that, but it was in a different posture.*
>
> *The Court: Put it this way, the reason why the defense stepped up so quickly in regards to its proposed, not necessarily settlement, but proposed plan relatively quickly was it recognized that the issue of*

> *liability was pretty much over at that point in time."*

See, Transcript from MDL 2424 dated March 19, 2015 at p. 23.

This is significant because later, as shown hereafter, the Western District of Virginia court made an inconsistent ruling that the claims in these cases did not surpass the "plausibility" standard of *Twombly* and *Iqbal*. App. p. 68.

In June, 2015, the Central District of California gave its final approval of the class settlement and reaffirmed that the certification of the nationwide class was proper under Rule 23(b)(3). The *Gentry* plaintiffs filed a Notice of Appeal to the United States Court of Appeals for the Ninth Circuit on July 8, 2015.

6. THE LITIGATION RETURNS TO VIRGINIA—BUT ONLY PARTIALLY

In September 2015, the JPML, upon the advice of the Central District of California, issued an order separating specific claims from MDL 2424 for remand back to the Western District of Virginia. The remand order specified the claims separated and remanded to the transferor court to be:

> (1) *"persons who purchased 2011-2013 Hyundai Elantra vehicles in the State of Virginia after November 2, 2012 notice date; and*

> *(2) the claims of any MDL No. 2424 class member plaintiffs in these cases who timely opted out of the MDL settlement*."

On December 11, 2015, the Western District of Virginia Court issued an order "*to provide the Court with a status report on this case within 21 days*." Thereafter both Hyundai's counsel and Petitioners' counsel submitted status reports. Both Hyundai and Petitioners' counsel informed the Western District of Virginia Court of the proceedings in MDL 2424 and the status of briefing on appeal in the United States Court of Appeals for the Ninth Circuit. Pertinent to this Petition, Hyundai's status report included the following requests of the Western District of Virginia Court:

> "*Defendants therefore request the Court enter a scheduling order as follows:*
>
> > ***1.*** *Within 30 days of the Court's scheduling order plaintiffs* ***are to file amended complaints in Abdurahman, Abdul-Mumit, and Gentry that identify:***
> >
> > ***a. The name, VIN, dealership, and date of purchase for each plaintiff, and***
> >
> > *b.* ***The claims on which plaintiffs are proceeding.*** (emphasis added).
> >
> > *2. Concurrent with the filing of the amended complaints in Abdurahman,*

Abdul-Mumit, and Gentry, plaintiffs should file an indication as to whether they intend to seek to proceed with post-November 2, 2012 claims as a class action (Gentry) or a mass action (Abdurahman and Abdul-Mumit).

3. The form of action in which plaintiffs are not proceeding should be stayed, so if plaintiffs elect to proceed as a class action (Gentry), then the mass actions (Abdurahman and Abdul-Mumit) will be stayed.

4. In the case or cases for the form of action in which plaintiffs elect to proceed, defendants have 45 days from filing of the three amended complaints to respond.

5. In the form of case that is proceeding and not stayed in entirety, discovery is stayed until the Court has ruled on defendants' motion to dismiss.

6. *For the six pre-November 2, 2012 plaintiffs who opted out of the nationwide class settlement, their claims are stayed until the appeal of the nationwide class settlement is resolved.*" (emphasis added).

Hyundai only requested the Western District of Virginia Court to order amended Complaints to identify "*the name, VIN, dealership, and date of purchase for each plaintiff, and the claims on which plaintiffs are proceeding*." It is also significant that Hyundai expressly sought a stay of *Abdurahman* and *Abdul-Mumit*, to resolve the post-November 2, 2012 aspects of *Gentry*, and sought a stay of the pre-November 2, 2012 claims "*until the appeal of the nationwide class settlement is resolved.*"

On January 9, 2016, the Petitioners reported to the Western District of Virginia Court that:

> *"The proposed amendment to the pleadings is not necessary at this point because the Gentry First Amended Complaint encompasses all of the post-November 2, 2012 cases in its asserted class, so it is not necessary to identify any individuals by name because Hyundai already knows who they sold Elantra's to in Virginia after November 2, 2012. Hyundai already knows the VIN number, the dealership, and the date of purchase. Hyundai merely seeks to delay and impose unnecessary procedural work on the Plaintiffs' counsel while avoiding the substantive progress that is needed in this case."*

On June 4, 2016, six months later, the Western District of Virginia Court entered an Order stating, in pertinent part, as follows:

> "*Given the proceedings in the MDL, the voluminous nature of the complaints, their possible duplication, and the fact that Defendants never had their motions to dismiss adjudicated on the merits,* ***the Court is attuned to the possibility that the complaints now may be stale and in need of updating****. But it is also axiomatic that a plaintiff is the master of his complaint. Accordingly, the Court orders the following:*
>
> - *Plaintiffs in each case shall have 21 days from the date of this Order to elect whether to file amended complaints.*
>
> - *If Plaintiffs do not file amended complaints by that date,* ***then the original complaints will be deemed operative****. Defendants must then respond by either renewing their original motions to dismiss* ***or by filing new responsive pleadings or motions within the time set forth in Fed. R.Civ.P. 12(a)(1)(A)(i)***." (emphasis added).

On July 13, 2016, Petitioners' counsel wrote to the Western District of Virginia that counsel had exchanged additional information identifying pre-and-post November 2, 2012 plaintiffs, and opt-outs. Petitioners' counsel stated:

> *"I do not see how we can amend the Complaint to only include opt-outs and post-November 2, 2012 plaintiffs because*

> *the case is still on appeal in the Ninth Circuit. If we prevail in the Ninth Circuit, those who [did not opt out] will have viable claims again, so I do not think their claims should be dismissed."*

The Western District of Virginia responded by ordering:

> *"Plaintiffs have until August 1, 2016 to file amended complaints (or, if they do not, allow their prior complaints to become operative). The Court does not intend to further this deadline. Defendants have 21 days thereafter to file responsive pleadings or motions (or renew prior such filings if applicable.)"*

From this Order, the Western District of Virginia, and the Fourth Circuit held the Petitioners lost the liberal right to amend under Rule 15 even though Hyundai's Motion to Dismiss that the Court adjudicated was not filed until August 22, 2016, 22 days after the deadline to amend, and the Petitioners did not have the benefit of a ruling from the Court on whether their Complaints were sufficient as pled, which would not come until January 23, 2017.

Although Hyundai greatly protested it did not know which of the Plaintiffs were pre-or-post November 2, 2012 purchasers, the Petitioners had already provided this to Hyundai before the litigation in Virginia was stayed. On February 17, 2014, the Petitioners filed "*Plaintiffs' Motion to Organize Plaintiffs Who Obtained Elantras After*

November 2, 2012, for Litigation Purposes Separately From Those Who Obtained Elantras Prior to November 2, 2012." This motion included a list identifying the 489 named plaintiffs who were post-November 2, 2012 purchasers. This motion was never adjudicated because Hyundai moved to stay the litigation while it was transferred to the MDL in California.

Hyundai's Motion to Dismiss asserted:

> (1) the plaintiffs lack Article III standing because they failed to amend their Complaints to identify the amended plaintiffs and allege basic facts to establish a case or controversy;
> (2) plaintiffs' claims are preempted by federal law;
> (3) the district court should decline to intervene because the EPA has primary jurisdiction regarding fuel economy estimates;
> (4) plaintiffs who bought or leased before November 2, 2012 lack Article III standing;
> (5) plaintiffs failed to plead a claim under Virginia's Lemon Law;
> (6) plaintiffs' Virginia Consumer Protection Act (VCPA) and false advertising claim fail because the claims of EPA fuel economy estimates in advertising is not actionable as a matter of law;
> (7) plaintiffs failed to plead a claim under the VCPA;
> (8) plaintiffs failed to plead a false advertising claim; and
> (9) the post-November 2, 2012 plaintiffs in *Abdurahman* and *Abdul-Mumit* are duplicative of the *Gentry* action.

Hyundai's Motion to Dismiss did not assert the Petitioners' Complaints failed to meet the *Twombly* and *Iqbal* plausibility standard. In spite of obtaining a stay pending transfer of the Virginia cases to MDL 2424 because "*we don't want to invite inconsistent rulings,*" Hyundai invited inconsistent rulings on the preemption issue previously ruled upon by the MDL Court in California.

The Petitioners had previously filed oppositions to the Hyundai's earlier motions to dismiss and expressly requested "*If the Court is inclined to dismiss…on the grounds of a Rule 9(b) particularity requirement, the Plaintiffs request and the Court should grant leave to amend the Complaint*." This request was made seven times in the pleadings and filed with the Court's electronic case filing system and appear in the record.[2]

The Petitioners asserted their complaints complied with relaxed pleading standards as previously allowed in the Fourth Circuit and numerous other Courts throughout the Country. *See*, *United States v. Gwinn*, 2008 WL 867927 (S.D.W.Va. Mar. 31, 2008) (Holding "*In cases where there has been extensive allegations resulting in numerous instances of fraud, other courts have held that 'strict application of the requirements of Rule 9(b) may be*

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[2] The District Court, in refusing to allow amendment, found "*And at no time during adjudication of the motions to dismiss did Plaintiffs suggest they might seek leave to amend or had other facts to put before the Court*." App. p. 74. Similarly, the Fourth Circuit, even after the Petitioners in their brief cited the exact Excerpts of Record where these seven requests to amend are located, found *"…these requests were only mentioned, in passing, **in emails** to the district court*." App. p. 34, FTNT 7. There is no basis for these findings as the record plainly establishes otherwise.

relaxed…". See also, California, ex rel. Ven-A-Care of Fla. Keys, Inc. v. Abbott Labs., Inc. (In re Pharm. Indus. Average Wholesale Price Litig.), 478 F.Supp.2d 164, 171-72 (D.Mass.2007); *Corley v. Rosewood Care Ctr., Inc.,* 142 F.3d 1041, 1050 (7th Cir.1998); (*United States ex rel. Johnson v. Shell Oil Co.,* 183 F.R.D. 204, 206-07 (E.D.Tex.1998); (collecting cases that apply relaxed standard.); *United States ex rel. Pogue v. Diabetes Treatment Ctrs. of Am., Inc.,* 238 F.Supp.2d 258, 268 (D.D.C.2002). The Petitioners also responded to each aspect of Hyundai's Motion to Dismiss.

Oral argument on Hyundai's Motions to Dismiss occured in the Western District of Virginia on December 1, 2016. Hyundai's counsel did not mention a lack of plausibility under the *Twombly* or *Iqbal* cases. Hyundai's counsel argued there was no causal relationship between the misrepresentations and the damages alleged, the claims were preempted, and there were no individual allegations pertaining to each of the 1,298 named plaintiffs.

On January 23, 2017, the Western District of Virginia issued its ruling on Hyundai's Motions to Dismiss. Though the District Court ruled in the Petitioner's favor finding they had Article III standing and the EPA did not have primary jurisdiction, the Western District of Virginia ignored the ruling of the Central District of California, and every other Federal Court to rule on the issue, and held all fuel mileage claims were preempted. App. pp. 48-51.

Pertinent to this Petition the Western District of Virginia Memorandum Opinion stated:

> *"As Defendants observe, 'there is not a single substantive allegation anywhere in either Complaint about any dealer.' Dkt. 104-1 at 3). The complaints instead lump the dealers in with generic statements made about HMA. As this Court has observed before, '[i]n the Fourth Circuit and elsewhere, courts have interpreted Twombly and Iqbal to mean that generic or general allegations about the conduct of 'defendants,' without more, fail to state a claim.' See, Marcantonio v. Dudzinski, 155 F. Supp. 3d 619, 626-27 (W.D. Va. 2015) (compiling cases.)*
>
> *Plaintiffs' response on this score states that these lawsuits were filed pursuant to Virginia's class action/ consolidation /coordination statute, Va. Code § 8.01-267.1, for 'efficiency,' and 'it would abate the savings the statute was intended to provide if each and every particular fact unique to each Plaintiff is required.' (Abdurahman, dkt. 105 at ECF 11). While 'each and every' unique fact is not required, federal pleading standards nevertheless control in federal court, see generally Erie R. Co. v. Tompkins, 304 U.S. 64 (1938), and the Complaints here fail those standards."* App. p. 68.

This portion of the Western District of Virginia's memorandum opinion is the only place where "*Twombly and Iqbal*" are referred to or mentioned in any way. The District Court did not mention the

cases Petitioners relied on for a relaxed pleading standard. The District Court also made numerous rulings on Virginia State law claims ruling the Petitioners did not give proper notice or allow a sufficient number of repair attempts under the Virginia Lemon Law. App. pp. 70-71. The District Court held the Petitioners failed to plead their VCPA claims with the particularity of a fraud claim under Rule 9(b) and also failed to plead reliance. App. p. 72.

Finally, the District Court ruled the Petitioners' Complaints would be dismissed with prejudice and without leave to amend. App. pp. 73-75. The District Court ruled "*And at no time during adjudication of the motions to dismiss did Plaintiffs suggest they might seek leave to amend*." App. p. 74.

The Western District of Virginia's Final Order entered January 23, 2017 stated, in pertinent part:

> "*In Abdurahman and Abdul-Mumit, the motions to remand are **DENIED**. The motions to dismiss those cases are **GRANTED**. Accordingly, those cases are **DISMISSED** with prejudice. The Clerk is requested to strike Abdurahman and Abdul-Mumit from the active docket of the Court*." (App. p. 77)

On February 8, 2017 the Petitioners filed a timely Motion to Alter or Amend Opinion, Judgment, and Order of Dismissal Pursuant to FRCP 59(E), and a Memorandum in Support thereof. The Petitioners pointed out errors the District Court made under Virginia law. For purposes of this

Petition the District Court was informed again it did not have jurisdiction over the 809 pre-November 2, 2012 claims and that the Final Order dismissed the *Abdurahman* and *Abdul-Mumit* cases in their entirety with prejudice. Given that only 489 of the 1,298 plaintiffs were remanded, counsel asserted it was difficult to amend part of the Complaint, but not all of the Complaint. Furthermore:

> *"As an additional issue, Plaintiffs' counsel understood this Court to offer the opportunity to amend the Complaints if it was thought the Complaints were "stale" as a result of the proceedings in the MDL. See, Docket # 86. Undersigned counsel did not understand that the Court considered the Complaints deficient under the Federal Rules and that he should amend. If the Plaintiffs' counsel understood this, of course, he would have amended. Accordingly, the Plaintiffs should have the opportunity to amend as such opportunity has not occurred after the Court has expressed its views."*

The Petitioners demonstrated to the District Court that the defects the Court observed could be corrected. Petitioners submitted Affidavits from the seven "opt-out" plaintiffs and considerable correspondence from many of the named plaintiffs in support of this representation. The Petitioners renewed their previous motions for leave to amend.

7. MEANWHILE, THE APPELLATE PROCESS IN THE NINTH CIRCUIT CONTINUED

The oral argument before a three-judge panel of the Ninth Circuit occurred on February 10, 2017. See, https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000010947

8. THE WESTERN DISTRICT OF VIRGINIA RULES

On April 6, 2017, the Western District of Virginia denied the Motion for Reconsideration, denied the Motion to Amend, and refused to amend the Final Order to show pre-November 2, 2012 claims were not dismissed with prejudice. *See esp.*, App. pp. 178-179.

9. THE LITIGATION MOVES TO THE FOURTH CIRCUIT

The Petitioners filed a timely Notice of Appeal and Opening Brief of Appellants in the United States Court of Appeals for the Fourth Circuit[3]. The Petitioners asserted error below on:

1. The issue of preemption;
2. Making inconsistent rulings with the MDL court;
3. That Virginia law expressly held consumer protection claims do not need to be pled with particularity; and

[3] The basis of federal jurisdiction in the court of first instance is 28 U.S.C. §1291.

> 4. That the Virginia Lemon Law did not require the notice and repair attempts the District Court ruled were required.

Pertinent to this Petition it was asserted the Western District of Virginia had no jurisdiction over the portions of *Abdurahman* and *Abdul-Mumit* that were not remanded from the MDL, and that the District Court erred in not allowing amendment of the Complaints.

The Petitioners did not assign or argue error to the singular reference to "*Iqbal and Twombly*" because it did not appear that was the basis of the lower court's ruling, and even if it was, that issue is moot if leave to amend is granted.

10. THE NINTH CIRCUIT PANEL RULES

On January 23, 2018, the Ninth Circuit Panel reversed the Central District of California's certification of a nationwide settlement class in a 2-1 ruling. The Honorable Sandra S. Ikuta writing for the majority held:

> "*In failing to apply California choice of law rules, the district court committed a legal error. A federal court sitting in diversity must look to the forum state's choice of law ruling to determine the controlling substantive law. (quoting Zinser v. Accufix Research Inst., 253 F.3d 1180, 1187 (9th Cir. 2001)). The district court made a further error by failing to acknowledge, as it had in its*

> *tentative ruling that Hyundai and the Gentry plaintiffs submitted evidence that the laws in various states were materially different than those in California, and that these variations in state law defeated predominance under Rule 23 (b)(3)……The district court's reasoning that the settlement context relieved it of its obligation to undertake a choice of law analysis and to ensure that a class meets all of the prerequisites of Rule 23, is wrong as a matter of law.* App. p. 127.

11. ORAL ARGUMENT THEN OCCURS IN THE FOURTH CIRCUIT

At the Oral Argument before the Fourth Circuit on May 9, 2018, Petitioners' counsel argued to the Panel that the Western District of Virginia's Final Order dismissed all the claims before it, including the 809 pre-November 2, 2012 claims. Petitioners' counsel acknowledged the written memorandum of the Western District of Virginia stated it did not purport to dismiss pre-November 2, 2012 claims, but argued the law is that "*a court speaks only through its orders*." http://www.ca4.uscourts.gov/OAarchive/mp3/17-1582-20180509.mp3. Petitioners' counsel argued that failure to reverse the Western District of Virginia's dismissal of all the pre-November 2, 2012 claims would have an adverse effect on the litigation in the Ninth Circuit. The Fourth Circuit Panel acknowledged the concern and

stated it would ask Hyundai's counsel about that issue.

The Fourth Circuit Panel explicitly asked Hyundai's counsel:

> "*You're not going to turn around in California and say these claims are dismissed?*"

Hyundai's counsel responded:

> "*We are not, and we have taken that position in all our briefing as well*."

See, http://www.ca4.uscourts.gov/OAarchive/mp3/17-1582-20180509.mp3 at 15:30-16:00.

12. THE FOURTH CIRCUIT RULES

On July 13, 2018, the Fourth Circuit ruled that the singular reference to "*Iqbal and Twombly*" "*constituted an independent basis for the order below,"* the Petitioners did not brief this issue, and therefore the appellate court declined to consider any other assertion of error other than the failure to allow amendment of the Complaints. App. pp. 27-30. The Fourth Circuit accepted Hyundai's counsel's representation in open court and declined to address the Western District of Virginia's improper exercise of jurisdiction in any manner. In affirming the Western District of Virginia in dismissing the 809 un-remanded claims of *Abdurahman* and *Abdul-Mumit*, the Fourth Circuit improperly exercised jurisdiction it did not have.

Contrary to the holdings of the Second, Third, and Seventh Circuit as shown hereafter, the Fourth Circuit held a plaintiff was not entitled to a ruling on a 12(b)(6) motion to dismiss before losing the right to amend. App. p. 32. The Fourth Circuit held that the "*inherent power to manage its docket*" allows a District Court to require amendments before the final 12(b)(6) motion is filed, and before the Court rules on the Motion to Dismiss. *Id*.

The Fourth Circuit criticized the Petitioners at length for not fulfilling Hyundai's "*demands*" "*to know who and how many plaintiffs are involved in this case*." App. p. 35. The Fourth Circuit failed to observe that the Petitioners identified the 489 post-November 2, 2012, plaintiffs by name in their "*Plaintiffs' Motion to Organize Plaintiffs Who Obtained Elantras After November 2, 2012 For Litigation Purposes Separately From Those Who Obtained Elantras Prior to November 2, 2012*" filed on February 17, 2014.

13. THE NINTH CIRCUIT ORDERS A REHEARING *EN BANC*

On July 27, 2018, the United States Court of Appeals vacated the Panel Opinion and ordered an *En Banc* Rehearing. App. p. 174.

The Oral Argument before the *En Banc* Ninth Circuit occurred on September 27, 2018. Hyundai's counsel argued regarding the choice-of-law issue that there was no reason to reverse the Central District of California District Court on the basis that Virginia consumers have better remedies. Hyundai's counsel, despite his earlier representations to the

Fourth Circuit, represented to the Ninth Circuit that:

> "*All 1200 of these individual suits were dismissed on the merits affirmed by the Fourth Circuit. So, in fact, when those claims were pursued they did not have better remedies at all, they got no remedy whatsoever*." https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000014273 at 48:15-48:55.

This demonstrates that the Fourth Circuit's error in not correcting the Western District of Virginia's dismissal of all 1,298 classes, 809 of which are pre-November 2, 2012 claims, and in not allowing the freely given right to amend the remaining 489 post-November 2, 2012 cases, is being used to improperly influence an En Banc proceeding of the Ninth Circuit in a matter of national importance.

II. THE FOURTH CIRCUIT'S EXERCISE OF JURISDICTION OVER THE 809 PETITIONERS NOT REMANDED TO THE WESTERN DISTRICT OF VIRGINIA CONTRADICTS HOLDINGS FROM THE JPML, THE FIFTH CIRCUIT, AND THE EIGHTH CIRCUIT

In 1968 the JPML ruled that when cases are transferred to an MDL under 28 U.S.C. §1407, the transferor court has no jurisdiction to act until the cases are properly remanded by the JPML. *In Re Plumbing Fixture Cases*, 298 F.Supp. 484, 496

(JPML, 1968). (Citing *Phebus v. Search*, 264 F. 407 (8th Cir. 1920), holding *"it is essential to the orderly and effective administrations of justice that the exclusive jurisdiction shall be at all times in either the transferring or the receiving court, and that there shall be no conflict of or divided jurisdiction.*" 264 F. 409-410.) *See also*, *Astarte Shipping Co. v. Allied Steel*, 767 F.2d 86, 87 (5th Cir. 1985) (*"…when the JPML orders a case transferred, the transferor district court is deprived of jurisdiction until the case is returned to it.*") *See also*, *General Electric Co. v. Byrne*, 611 F.2d 670, 673 (1979) ("*It is also true that the entry of the transfer order deprives the transferor court of jurisdiction until the case is returned to it, so that any action of the transferor court after transfer would be ineffective.*")

III. THE REFUSAL OF THE FOURTH CIRCUIT TO CORRECT THE ERROR OF THE WESTERN DISTRICT OF VIRGINIA WAS USED TO IMPROPERLY INFLUENCE THE NINTH CIRCUIT *EN BANC* IN ITS CONSIDERATION OF CHOICE OF LAW ISSUES

The Fourth Circuit's ruling erroneously affirming the dismissal with prejudice of *Abdul-Mumit* and *Abdurahman* was used in oral argument to influence the *En Banc* Ninth Circuit in an important ruling. Hyundai's argument at the *En Banc* Ninth Circuit oral argument, which its counsel told the Fourth Circuit panel he would not make, was that even though a nationwide settlement class requires more scrutiny than a nationwide trial class, the Ninth Circuit should dismiss the Virginians'

challenge to certification of a nationwide settlement class because they do not have a claim**, as the Fourth Circuit ruled in these cases**. The errors of the Fourth Circuit do not only harm the 1,298 plaintiffs in *Abdurahman*, and *Abdul-Mumit*, but these errors also hurt the 16,000+ Virginians in the pre-November 2, 2012 class. The errors of the Fourth Circuit were used to improperly influence the Ninth Circuit as it decides issues in which there is an overriding need for national uniformity. This Court has jurisdiction to the correct errors of the lower courts to protect Hyundai from having the benefit of a judgment rendered without jurisdiction. *See*, *supra* at Statement of Jurisdiction.

IV. THE COURT SPEAKS THROUGH ITS ORDERS ONLY

"*Basic to the operation of the judicial system is the principle that a court speaks through its judgments and orders*." *Bell v. Thompson*, *supra* at p. 805. Quoting *Murtaugh Volkswagen, Inc. v. First National Bank of South Carolina*, 741 F.2d 41, 44 (C.A. 4 1984). In *Murtaugh* the Fourth Circuit held:

> "*Courts must speak by orders and judgments, not by opinions, whether written or oral, or by chance observations or expressed intentions made by courts during, before or after trial, or during argument. When the terms of a judgment conflict with either a written or oral opinion or observation, the judgment must govern*."

In spite of the clear law of this Court and the Fourth Circuit—that a court speaks only through its orders—the Fourth Circuit refused to correct the error of the District Court below in asserting jurisdiction over, and dismissing with prejudice, the 809 claims that were not remanded from the MDL.[4]

V. WITHOUT THE BENEFIT OF A RULING ON A MOTION TO DISMISS, A PLAINTIFF CANNOT TEST IF THE COURT WILL ACCEPT HIS OR HER LEGAL POSITION

In *Loreley Financing No. 3 Ltd. V. Wells Fargo Securities, LLC*, 797 F.3d 160 (2d.Cir. 2015) a district court held a "*pre-motion conference*" in which the defendants' anticipated Rule 12(b)(6) motion was discussed. At the conference the district court inquired whether the plaintiffs wished to amend in light of this preview, stating it was not necessarily the court's practice "*to give them another opportunity later. The court indicated that it considered Defendants' pre-motion letter and the points raised at the conference to provide 'fair warning' of Defendants' arguments and the potential need for amendment. Plaintiffs declined the court's invitation to amend, arguing that the complaint was legally sufficient.*" 797 F.3d 169. The defendants moved to dismiss the complaint for failure to state a claim under Rule 12(b)(6). After sustaining the motion to dismiss with

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[4] The Western District of Virginia Judge, the Honorable Norman K. Moon, when on the Court of Appeals of Virginia, wrote the Opinion in *Walthall v. Commonwealth*, 3 VA. App. 674, 679 (1987) holding "*Furthermore, a court speaks only through its orders.*"

prejudice, the district court denied the motion to amend.

The Second Circuit reversed, holding the district court "*presented Plaintiffs with a Hobson's choice: agree to cure deficiencies not yet fully briefed and decided or forfeit the opportunity to replead. Without the benefit of a ruling, many a plaintiff will not see the necessity of amendment or be in a position to weigh the practicality and possible means of erring specific deficiencies*." 797 F.3d 190. The Second Circuit held the procedure utilized there, similar to the one at bar, was "*premature and inconsistent with the course of litigation prescribed by the Federal Rules*." Id. Here, the Western District of Virginia stated the Complaints would be "*operative*" if no amendment was made, and never indicated there would be no opportunity to amend as was done in Loreley. When the Western District did this, the "*operative*" motion to dismiss that was adjudicated had not yet been filed.

The Third and Seventh Circuits agree with the Second Circuit. In United States v. Customs Fraud Investigations, 839 F.3d 242 (3rd. Cir. 2016) the Third Circuit held *"…the mere fact that a defendant files a motion to dismiss is not necessarily sufficient to put a plaintiff on notice that the court will find his complaint to be deficient…in the context of a typical Rule 12(b)(6) motion, a plaintiff is unlikely to know whether his complaint is actually deficient—and in need of revision—until after the District Court has ruled."* (Holding district court abused discretion in not allowing leave to amend after granting motion to dismiss.)

Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago, 786 F.3d 510 (7th Cir. 2015) held "*a plaintiff*

who receives a Rule 12(b)(6) motion and who has good reason to think the complaint is sufficient may also choose to stand on the complaint and insist on a decision without losing the benefit of the well-established liberal standard for amendment with leave of court under Rule 15(a)(2)…A district court does not have the discretion to remove the liberal amendment standard by standing order ***or other mechanisms requiring plaintiffs to propose amendments before the court rules on a 12(b)(6) motion on pain of forfeiture of the right to amend****.*" 786 F.3d 523. (Emphasis added.)

If the 409 Petitioners were in the Second, Third, or Seventh Circuit, they would be allowed to amend their complaints curing the deficiencies observed by the District Court and their cases would not be dismissed with prejudice. This circuit split allowed inconsistent rulings with the MDL court, and improperly altered the *En Banc* Ninth Circuit's calculus on the choice-of-law issues pending before it in a case of national importance. If this Honorable Court does not correct this, it not only denies the Petitioners of their day in court, skews the result in the Ninth Circuit, but the improper procedure will surely become a prolific practice.

VI. REASONS FOR GRANTING THE WRIT

By affirming errors of the Western District of Virginia and exercising jurisdiction it did not have, the United States Court of Appeals for the Fourth Circuit has improperly affected proceedings in a Multidistrict Litigation in the Ninth Circuit. As the *En Banc* Ninth Circuit properly works to resolve the issue regarding class certification for settlement

purposes only, (issues the *En Banc* Ninth Circuit has found are of national application and require uniformity,) the Western District of Virginia, as affirmed by the Fourth Circuit, has improperly affected the choice of law analysis by giving Hyundai the opportunity to argue the Virginians "*have no remedy at all*." In doing so, the Fourth Circuit exercised jurisdiction it does not have, ignored this Court's holding in *Bell v. Thompson*, and its own precedent in *Murtaugh Volkswagen v. First National*.

The Virginians' long-fought effort to protect federalism and to curb class action abuse by certification of overbroad nationwide settlement classes should not be improperly prejudiced as shown here. The errors of the Fourth Circuit harm class action litigation throughout the Nation. The *En Banc* ruling of the Ninth Circuit is awaited by the Nation's class action bar. Guidance is needed regarding the ability of a court to certify a nationwide settlement class, which requires "heightened" scrutiny of the 23(b)(3) predominance requirement, after the court has already found predominance was not met in the same case for a nationwide trial class. The errors of the Fourth Circuit in exercising jurisdiction over cases not remanded by the MDL alters the calculus of the Ninth Circuit on the choice-of-law issues before it. The Fourth Circuit's improper exercise of jurisdiction, along with ignoring this Court's ruling in *Bell v. Thompson*, and the destruction of Rule 15(a)(2)'s mandate that "*The court should freely give leave when justice so requires*" has caused inconsistent rulings between the MDL Court and the Western District of Virginia, defeating the purpose

of Congress in enacting 28 U.S.C. 1407, the Multidistrict Litigation statute.

Under this Court's Rule 10(a) the Fourth Circuit's ruling has "*so far departed from the accepted and usual course of judicial proceedings*" by exercising jurisdiction over 809 cases it has no jurisdiction over, and in sanctioning the same error by the Western District of Virginia, that it calls for the exercise of this Court's supervisory power given the harmful effect on thousands of Virginians and the improper effect it has on issues pending before the *En Banc* Ninth Circuit. The Fourth Circuit's rulings on an important question of Federal law regarding the liberal standard for amendment of complaints, contradicts this Court's holding in *Foman v. Davis*, 371 U.S. 178, 182 (1962) that the mandate of Rule 15(a)(2)— "*leave to amend shall be freely given when justice so requires*"—must be heeded. Finally, the Fourth Circuit has created a circuit split with the Second, Third, and Seventh Circuit holdings that "*A district court does not have the discretion to remove the liberal amendment standard by…requiring plaintiffs to propose amendments before the Court rules on a 12(b)(6) motion on pain of forfeiture of the right to amend.*" *Runnion v. Girl Scouts*, *supra*, 786 F.3d 523.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully Submitted:

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