

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-001187-224

**SUPERIOR COURT
(CLASS ACTION CHAMBER)**

MARTIN KODYKBO, natural person,
residing at [REDACTED]

Applicant

vs.

**HYUNDAI AUTO CANADA
CORPORATION**, legal person duly
constituted, having its address of
service at 75 Frontenac Drive,
Markham, Ontario, L3R 6H2, Canada

and

HYUNDAI MOTOR AMERICA INC.,
legal person duly constituted, having
its address for service at 10550
Talbert Avenue, Fountain Valley,
California, 92708, United States of
America

and

**HYUNDAI MOTOR
MANUFACTURING ALABAMA
LLC**, legal person duly constituted,
having its address for service at 1209
Orange Street, Wilmington, Delaware
19801, United States of America

and

HYUNDAI MOTOR COMPANY., legal person duly constituted, having its address for service at 12, Heolleung-ro, Seocho-gu, Seoul, South Korea.

and

KIA CANADA INC., legal person duly constituted, having its address for service at 180 Foster Crescent, Mississauga, Ontario, L5R 4J5, Canada

and

KIA AMERICA, INC., legal person duly constituted, having its address for service at 111 Peters Canyon Road, Irvine, California, 92606, United States of America

and

KIA MOTORS MANUFACTURING GEORGIA, INC., legal person duly constituted, having its address for service at 1209 Orange Street, Wilmington, Delaware 19801, United States of America

and

KIA MOTOR COMPANY, legal person duly constituted, having its address for service at 12, Heolleung-ro, Seocho-gu, Seoul, South Korea

Defendants

AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
(Art. 571 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT RESPECTFULLY ALLEGES AS FOLLOWS:

I. OVERVIEW

1. This proposed class action relates to a persistent, recurring, and dangerous latent defect in the Hydraulic Electronic Control Unit (“HECU”) and/or the Anti-Lock Brake System (“ABS”) located in the engine compartment of select Hyundai and Kia vehicles that has a propensity to short circuit which can catch fire, the whole to the detriment of consumers (“Electrical Fire Defect”). Schedule A to this Application for Authorization sets out the specific categories of vehicles that have been subject to a recall by Transport Canada and/or the Defendants (the “Affected Vehicles”) due to the presence and existence of this latent defect.
2. Applicant wishes to institute a class action on behalf of the following group, of which he is a member, namely:

All residents of Quebec who purchased or leased an Affected Vehicle, for their own personal use, from 2013 up to the date this action is authorized as a class proceeding.

(the "Class", "Class Members" and "Class Period")

3. The Defendants manufactured, distributed, and/or sold the Affected Vehicles with ABS and/or HECU units that were plagued with a serious, dangerous, and hidden design and manufacturing defect which places vehicle occupants as well as those in the surrounding areas of the vehicle at risk of serious injury and/or death.
4. The Electrical Fire Defect is of a persistent, continual, and recurring nature, as seen by the listed of Affected Vehicles and corresponding recalls since 2013.
5. The Applicant contends that the Defendants failed to disclose, despite their longtime knowledge and the fact that previous models were also subject to the same dangerous defect, that the ABS and HECU features manufactured into the new models continued to be defective and predisposed to short circuit and catch fire.
6. The Defendants omitted to inform purchasers of important material facts regarding the Electrical Fire Defect.

7. The repetition of the Defendants to manufacture, distribute and/or sell the Affected Vehicles, model after model and in year after year, with the presence of the same, recurring Electrical Fire Defect, demonstrates their reckless corporate behavior.

II. THE PARTIES

The Applicant

8. The Applicant, Martin Kodybko, resides in Laval, Québec.
9. The Applicant purchased one of the Defendants' vehicles, specifically a 2021 Kia Sportage, the whole as appears on the contract of sale dated November 3, 2020, a copy joined as **Exhibit P-1**.
10. The Applicant purchased this car for his own personal use and is a consumer pursuant to the meaning of article 2 of the Quebec *Consumer Protection Act* ("**CPA**").
11. The Applicant concluded this purchase upon the informed belief and understanding that the Defendants were providing a vehicle free of latent defects, including those associated with the risk of short circuit in the ABS and/or HECU potentially causing fire.
12. The Applicant relied on the representations of the Defendants to his detriment.

The Defendants

13. The Defendant Hyundai Auto Canada Corporation ("**Hyundai Canada**") is a corporation incorporated pursuant to the laws of Canada, having a principal establishment in Brossard, Quebec located at 202-9150 boulevard Leduc, Brossard, Quebec, J4Y 0E3, with an address of service 75 Frontenac Drive, Markham, Ontario, L3R 6H2, Canada, as shown on the copy of a corporation search and as seen on their corporate profile from the *Registraire des entreprises*, joined as **Exhibit P-2** and **P-3**.
14. The Defendant Hyundai Motor America Inc. ("**Hyundai NA**") is a corporation incorporated pursuant to the laws of California with an address of service 10550 Talbert Avenue, Fountain Valley, California, 92708, United States of America, as shown on a copy of a corporation search joined as **Exhibit P-4**;

15. The Defendant Hyundai Motor Manufacturing Alabama LLC (“**Hyundai Manufacturing**”) is a limited liability company incorporated pursuant to the laws of Delaware with an address of service 1209 Orange Street, Wilmington, Delaware 19801, United States of America, as shown on a copy of a corporation search joined as **Exhibit P-5**;
16. The Defendant Hyundai Motor Company (“**Hyundai Korea**”) is a corporation incorporated pursuant to the laws of South Korea with an address of service 12, Heolleung-ro, Seocho-gu, Seoul, South Korea, as shown on a copy of a financial statement joined as **Exhibit P-6**;
17. During the class period, Defendants Hyundai Canada, Hyundai NA, Hyundai Korea and Hyundai Manufacturing (collectively “**Hyundai**”), either directly or through each other as wholly owned subsidiary, agent or affiliate, manufactured and/or sold automobiles across Canada including in the province of Québec.
18. Given the close ties between them and considering the preceding, the Hyundai defendants are all solidarily liable for the acts and omissions of each other.
19. The Defendant Kia Canada Inc. (“**Kia Canada**”) is a corporation incorporated pursuant to the laws of Canada, having a principal establishment in Montreal, Québec at 340 Rye Guenette, Montreal, Quebec, H4S 2C7, Canada, and with an address of service 180 Foster Crescent, Mississauga, Ontario, L5R 4J5, Canada, as shown on the copy of a corporation search and as seen on their corporate profile from the *Registraire des entreprises*, joined as **Exhibit P-7** and **P-8**, respectively.
20. The Defendant Kia America Inc. (“**Kia NA**”) is a corporation incorporated pursuant to the laws of California with an address of service 111 Peters Canyon Road, Irvine, California, 92606, United States of America, as shown on a copy of a corporation search joined as **Exhibit P-9**;
21. The Defendant Kia Motors Manufacturing Georgia, Inc. (“**Kia Manufacturing**”) is a corporation incorporated pursuant to the laws of Delaware with an address of service 1209 Orange Street, Wilmington, Delaware 19801, United States of America, as shown on a copy of a corporation search joined as **Exhibit P-10**;
22. The Defendant Kia Corporation (“**Kia Korea**”) is a corporation incorporated pursuant to the laws of South Korea with an address of service 12, Heolleung-ro, Seocho-gu, Seoul, South Korea, as shown on a copy of a financial statement joined as **Exhibit P-11**;

23. During the class period, Defendants Kia Canada, Kia NA, Kia Korea, and Kia Manufacturing (collectively “Kia”), either directly or through each other as wholly owned subsidiary, agent or affiliate, manufactured and/or sold automobiles across Canada including in the province of Québec.
24. Given the close ties between them and considering the preceding, the Kia defendants are all solidarily liable for the acts and omissions of each other.
25. The Hyundai and Kia Defendants are *merchants* within the meaning of the Quebec *Consumer Protection Act* (“CPA”).

III. THE ELECTRICAL FIRE DEFECT

26. Select Hyundai and Kia vehicles have a latent defect in the Hydraulic Electronic Control Unit (“HECU”) and/or the Anti-Lock Brake System (“ABS”), located in the engine compartment.
27. Together, these two systems operate to provide control of the vehicles wheels while the driver applies the brakes. ABS is an apparatus and a method to prevent wheels from locking to support the driver’s steering control of the vehicle when brakes are applied and the HECU is the unit that controls the ABS system.
28. More specifically, the ABS is hydraulically powered, and the HECU electronically controls the flow of the pressurized liquid to allow the brake pressure to be increased or decreased as needed to maintain control of the vehicle when brakes are applied. In other words, the HECU is the control module for the ABS.
29. As detailed in the recalls below, due to a consistently defective design, moisture and other liquids can penetrate the ABS or the HECU, which can cause the electrical circuit in the HECU to short-circuit possibly causing an engine compartment fire thereby increasing the risk of injury.
30. Given the HECU maintains an electrical charge even when the vehicle is off, there is always an unacceptable risk of engine fire to customers, the propensity to short circuit presents customers with an unacceptable risk of an engine fire (‘Electrical Fire Defect’). The particular vehicles and models affected by the Electrical Fire Defect are indicated as Affected Vehicles in Schedule A to this Application.
31. In February 2022, Transport Canada recalled the 2017-2018 Hyundai Santa Fe, 2017-2018 Hyundai Santa Fe Sport, 2019 Hyundai Santa Fe XL, 2014-2015

Hyundai Tucson, 2016-2018 (Transport Canada Recall no. 2022-046) as well as the Kia K900, and 2014-2016 Kia Sportage (Transport Canada Recall no. 2022-044) for the Electrical Fire Defect (“February 2022 Recall”), as seen from the copies of the Transport Canada Motor Vehicle Safety Recalls Database **Exhibits P-12** and **P-13**.

32. In the February 2022 Recall, the Defendants indicate that the defect relates to the ability for moisture or liquid to enter and accumulate within HECU and that this presents a safety risk that a short circuit could create a fire risk. The recall specifies that this risk is always present, when the vehicle is in use, when the vehicle is parked and when the vehicle is turned off.
33. In the February 2022 Recall, the Defendants advise those with the Affected Vehicles that they may continue to drive their vehicle. However, they simultaneously advise to “park it outdoors and away from other vehicles or structures until the recall repairs have been completed.”
34. Unfortunately, in the February 2022 Recall the Defendants do not state a cause of the fire risk, but state, once again, that the risk of fire is related to the HECU and ABS short circuiting – a recurring theme for the ABS and HECU units designed, manufactured and/or sold by in the Defendants Affected Vehicles since at least 2013.
35. Since 2013 there is a pattern of recalls issued by Transport Canada and/or the Defendants that all relate to this same Electrical Fire Defect in numerous Hyundai and Kia models and years. The Defendants have failed to locate the source of the problem and have failed to provide an adequate remedy to customers.
36. To date, individuals that currently own any of the Class Vehicles are at an increased risk of a short circuit in the engine compartment and therefore have an increased fire risk.
37. The Defendants unlawful conduct stems much before the February 2022 Recall as the Defendants recalls regarding a fire risk associated with the engine compartment in the Class Vehicles go as far back as 2013.
38. Like the February 2022 Recall, each of the recalls issued prior to 2022 by Hyundai, Kia, and subsequently Transport Canada, have been centered around an increased risk of short circuiting due to the risk of moisture entering the HECU.

39. In October 2013, Transport Canada recalled the 2009-2012 Hyundai Genesis (Transport Canada Recall no. 2013-376) models due to a defect where brake fluid entered and corroded the module. Hyundai admitted that a corroded HECU could affect braking and could lead to increased risk of crash. In the United States, Hyundai waited a full year to implement this recall, and was fined \$17.35 million by the National Highway Traffic Safety Administration (“NHTSA”). A copy of this recall from the Motor Vehicle Safety Recalls Database is joined as **Exhibit P-14** and a copy of a Press Release published by the NHTSA dated August 7, 2014 is joined as **Exhibit P-15**.
40. In November 2016, Transport Canada recalled 2008-2009 Kia Sportage (Transport Canada Recall no. 2016-562) Vehicles for the Electrical Fire Defect (“November 2016 Recall”). The recall stated that the connector pins in the HECU could corrode due to an improper sealing and that if moisture entered, electrical short circuits may occur. A copy of this recall from the Motor Vehicle Safety Recalls Database is joined as **Exhibit P-16**.
41. In January 2018, Transport Canada recalled the 2006-2009 Hyundai Azera and the 2006 Hyundai Sonata (Transport Canada Recall no. 2018-033) for the Electrical Fire Defect (“January 2018 Recall”). The recall stated that there was an increased fire risk due to the ABS control module remaining on when the vehicle is off, and that if moisture were to enter, electrical short circuits may occur. A copy of this recall from the Motor Vehicle Safety Recalls Database is joined as **Exhibit P-17**.
42. In February 2020, Transport Canada recalled the 2007-2010 Hyundai Elantra, 2009-2011 Hyundai Elantra Touring, 2007-2009 Hyundai Entourage (Transport Canada Recall no. 2020-045), 2006-2010 Kia Sedona, and 2007-2009 Kia Sorento (Transport Canada Recall no. 2020-064) for the Electrical Fire Defect (“February 2020 Recall”). The recall was issued for the Hyundai vehicles due to the risk of moisture entering the ABS and leading to a short circuit. The recall was issued for the Kia vehicles due to the risk of moisture entering the HECU system and leading to a short circuit. A copy of these recalls from the Motor Vehicle Safety Recalls Database is joined as **Exhibit P-18 and P-19**.
43. In August 2020, Transport Canada recalled the 2018-2021 Kia Stinger (Transport Canada Recall no. 2020-404) for the Electrical Fire Defect (“August 2020 Recall”). The recall stated that an engine compartment fire could occur near the HECU while driving. A copy of this recall from the Motor Vehicle Safety Recalls Database is joined as **Exhibit P-20**.

44. In December 2020, Transport Canada issued a recall of 2016-2021 Hyundai Tucson (Transport Canada Recall no. 2020-648, which was an expansion of Transport Canada Recall 2020-431) vehicles for the Electrical Fire Defect (“December 2020 Recall”). This recall stated that the ABS modules could short circuit, leading to a fire risk. A copy of this recall from the Motor Vehicle Safety Recalls Database is joined as **Exhibit P-21**.
45. In March 2021, Transport Canada recalled the 2017-2020 Hyundai Genesis G80 and 2015-2016 Hyundai Genesis (Transport Canada Recall no. 2021-133) for the Electrical Fire Defect (“March Hyundai 2021 Recall”). The recall stated that the ABS modules could short circuit leading to a fire risk. A copy of this recall from the Motor Vehicle Safety Recalls Database is joined as **Exhibit P-22**.
46. Also in March 2021, Transport Canada recalled the 2017-2021 Kia Sportage and the 2017-2018 Kia Cadenza (Transport Canada Recall no. 2021-123) for the Electrical Fire Defect. The recall stated that a problem in the control module for the antilock brake system could cause it to short circuit, as seen on a copy of this recall from the Motor Vehicle Safety Recalls Database joined as **Exhibit P-23**.
47. In April 2021, Transport Canada recalled the 2013-2015 Hyundai Santa Fe Sport (Transport Canada Recall no. 2021-253) for the Electrical Fire Defect (“April 2021 Recall”). The recall stated that the brake fluid could enter the HECU and could short circuit. Customers were asked to leave their vehicles parked outside due to the fire risk. A copy of this recall from the Motor Vehicle Safety Recalls Database is joined as **Exhibit P-24**.
48. In May 2021, Transport Canada recalled the 2014-2015 Kia Sorento (Transport Canada Recall no. 2021-278) for the Electrical Fire Defect (“May 2021 Recall”). The recall states that brake fluid could enter the HECU leading to a risk of short circuit. A copy of this recall from the Motor Vehicle Safety Recalls Database is joined as **Exhibit P-25**.
49. The Kia and Hyundai defendants’ misconduct, in repeatedly allowing their defective HECU and/or ABS products to enter the stream of commerce to the detriment of consumers, over a number of years and in a number of different models, departs to a marked degree from ordinary standards of decent corporate behavior and shows a willful disregard for the rights of Class Members.

50. To date, the Defendants do not know the cause of the Electrical Fire Defect nor do customers have an appropriate remedy to deal with the increased fire risk.

50.1. Since the filing of this class action, the defendants have issued three additional recalls.

51. 2. On October 27, 2022, Hyundai issued Transport Canada Recall no. 2022-616, recalling Hyundai Sante Fe 2017-2018, Sante Fe Sport 2017-2018, Sante Fe XL 2019 and Tucson 2014-2015, which replaces Transport Canada Recall no. 2022-246 and appears to be identical, save for the number of vehicles affected. The recall states that the control module for the antilock brake system (ABS) could short circuit and create a fire risk, even while the vehicle is parked and turned off, as appears on Exhibit P-28.

50.3. On September 22, 2023, Hyundai issued Transport Canada Recall no. 2023-527, recalling Hyundai Accent 2012-2015, Elantra 2011-2015, Equus 2014-2015, Genesis Coupe 2011-2015, Sante Fe 2013-2015, Sante Fe Sport 2013, Tucson 2010-2013, Veracruz 2010-2012. The recall states that brake fluid could leak into the control module for the antilock brake system (ABS) and cause it to short circuit which could create a fire risk, even when the vehicle is parked and turned off, as appears on Exhibit P-29.

50.4. On September 26, 2023, Kia issued Transport Canada Recall no. 2023-529, recalling the models and years of the following Kia vehicles: Borrego 2010-2011, Cadenza 2014-2016, Forte 2010-2013, Forte Koup 2010-2013, K900 2015, Optima 2010-2015, Rio 2012-2017, Rondo 2010-2017, Sorrento 2010-2017, Soul 2011-2013, Sportage 2010. The recall states that the brake hydraulic electronic control unit could short circuit and create a fire risk, even while the vehicle is parked and turned off, as appears on Exhibit P-30.

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

51. In 2020, the Applicant purchased a 2021 Kia Sportage for a total cost of \$53,457.24 plus taxes payable in 182 bi-monthly installments of \$310.98 including taxes, the whole as appears more fully from a copy of the Purchase Agreement dated November 3, 2020, joined as **Exhibit P-1**

52. At the time of purchase, the Applicant was under the impression that he was purchasing a vehicle that was free of any production or manufacturing issues, including any design and/or manufacturing defects; unbeknownst to him, he overpaid for the purchase price as his Kia was in fact suffering from a serious defect.
53. In April 2021, the Applicant became aware of the defective nature of the HECU in his vehicle, which was on the list of recalled vehicles (Transport Canada Recall no. 2021-123), after Kia notified him by mail of this defect only 4 months of the purchase of his vehicle, as seen on the copy of the April 2021 Recall Notice Letter joined as **Exhibit P-26**.
54. As set out in the Recall Notice Letter, despite the seriousness of the risk to fire which prompted the Defendants to advise the Applicant to park his vehicle outside and away from structures and other vehicles until the repairs were performed, the parts required to perform the repairs were not available as of April 2021.
55. The Applicant was left waiting until July 2021 for the Defendants to perform the required repairs, as seen on the receipt of Kia Motors dealership located at 33, Saint-Jean-Baptiste Chateauguay, Québec, J6J 3H5, joined as **Exhibit P-27**.
56. The Applicant did not know of the Electrical Fire Defect at the time of purchase and would not have purchased the 2021 Kia Sportage had he known.
57. Applicant has suffered ascertainable loss because of the Defendants' omissions and/or misrepresentations associated with the Electrical Fire Defect, including, but not limited to, overpayment for the Vehicle itself substantially lower resale values associated with the Affected Vehicle because of the problems with the ABS, pain and suffering, and trouble and inconvenience.
58. The Applicant's damages are a direct and proximate result of the Defendant's conduct.
59. In consequence of the above, the Applicant is justified in claiming damages.

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF FACT OR LAW

60. Every member of the class has purchased and/or leased an Affected Vehicle containing the Electrical Fire Defect.

61. The Defendants Affected Vehicles were sold/leased in Quebec were at risk of short circuiting while the vehicle was on and even after the vehicle had been parked, with the engine turned off causing injury and/or damage to property.
62. It is for this reason that the Defendants recommended to Class Members that they park their Affected Vehicle outdoors and away from other vehicles and structures until the recall repairs have been performed.
63. As set out above, the Defendants have issued recalls related to this issue for approximately a decade and during all seasons of the year, including during Winter which in Quebec is subject to extreme cold weather conditions including snowstorms, ice storms, and temperatures often below minus 20 degrees Celsius.
64. The requirement that Class Members park their cars outside during the Winter months in Quebec inevitably results in serious inconveniences and prejudice to Class Members. For example, this requirement can lead to a faster weathering of vehicle, higher consumption of gas to warm up car, additional time, and delay daily to clear ice and snow off of car, etc.
65. All Class Members are entitled to expect that the Defendants guarantee the quality of the vehicles they design, produce, market, sell and service and that the Defendants inform them of important facts concerning these vehicles.
66. Consequently, all Class Members overpaid the Defendants when they purchased or leased one of the Defendants' Affected Vehicles.
67. By virtue of the Defendant's unlawful conduct, Applicant and Class Members have suffered damages, which they may collectively claim against the Defendants.
68. Each member of the class is justified in claiming at least one or more of the following as damages:
 - a. Diminishing value of the defective Affected Vehicle in terms of an overpayment for the purchase price or lease payments;
 - b. Lower resale value of the Affected Vehicle
 - c. Loss of use of the Affected Vehicle and expenditures for rental vehicles and/or alternative transportation

- d. Pain and suffering
 - e. Trouble and inconvenience, and
 - f. Punitive damages;
69. All of these damages to the Class Members are a direct and proximate result of the Defendants' conduct;
70. In light of the above, the questions of fact and law raised as well as the recourses sought by the Applicant are very similar with respect to each and every Class Member.
71. The claims of each Class Member are founded on facts very similar to those of the Applicant's claim.
72. Individual questions, if any, are minimal in comparison to the common questions that are significant to advance the claims shared by the Class Members and to the outcome of the present action.
73. The damages sustained by Class Members flow from a common nucleus of operative facts, namely, Defendants' misconduct.
74. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a. Are or were the Affected Vehicles affected by latent defects within the meaning of the *CPA* or the *Civil Code of Quebec*?
 - b. Did class members purchase or lease one of the Affected Vehicles?
 - c. At what date did any Defendants acquire knowledge of the existence of the issue raised in the recall notices?
 - d. Do the issues described in the Recall Notices constitute a defect within the meaning of the *CPA* or the *Civil Code of Quebec*?

- e. Did any of the Defendants make false or misleading representations to a consumer or fail to mention an important fact in any representation made, to a consumer, within the meaning of the *CPA*?
- f. Did the Defendants fail to satisfy the requirements and duties incumbent upon them pursuant to the *CPA*?
- g. Are class members entitled to:
 - i. a reduction of their obligations and, if so, in what amount?
 - ii. damages for trouble and inconvenience resulting from Hyundai and Kia's misrepresentations and unlawful conduct and, if so, in what amount?
 - iii. moral damages and, if so, in what amount?
 - iv. punitive damages and, if so, in what amount?

C) THE COMPOSITION OF THE CLASS

75. Applicant is unaware of the specific number of Class Members who purchased and/or leased an Affected Vehicle.
76. The Transport Canada recalls indicate that ~~74,169~~ 660,992 Hyundai issued Affected Vehicles and ~~13,574~~ 376,098 Kia issued Affected Vehicles were recalled for a total, throughout Canada, of ~~87,740~~ 1,037,090. Assuming 23% of that Canada-wide total Affected Vehicles affects residents of Quebec, which reflects the approximate population of Quebec relative to the approximate population of Canada, this creates an estimate of ~~20,180~~ 238,531 Affected Vehicles in the province of Quebec.
77. Class members are numerous and are scattered across the entire province of Quebec.
78. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendants. Even if Class Members themselves could afford such individual litigation, it would place an unjustifiable burden on the courts. Further, individual litigation of the factual and

legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system.

79. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain individual mandates and to join them together in one action.

80. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Class to effectively pursue their respective rights and obtain access to justice.

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO ADEQUATELY REPRESENT THE CLASS MEMBERS

81. Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:

- a. He is a member of the Class and has a personal interest in seeking the conclusions proposed herein;
- b. He is competent and has the capacity and interest to fairly and adequately protect and represent the interest of Class Members; and
- c. His interests are not antagonistic to those of other Class Members and Applicant's interests do not conflict with the interests of other Class Members.

82. In addition, the Applicant is ready and available to manage and direct the present action in the interest of Class Members that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefits of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec, and to collaborate with his attorneys.

83. The Applicant has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments.

84. The Applicant is ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed.
85. The Applicant has given instructions to his attorneys to put information about this class action on its website and to collect the coordinates of Class Members who wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing.
86. The Applicant is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered because of the Defendants' conduct.
87. As for identifying other Class Members, Applicant draws certain inferences from the situation, notably the available information on Transport Canada Vehicle webpage that indicates there are over ~~87,000~~ 1,037,000 Affected Vehicles in Canada, which leads to an estimate of approximately ~~20,000~~ 238,000 Affected Vehicles in the province of Quebec. Applicant acknowledges that this is a very sizeable number and there is a large number of Class Members who find themselves in an identical situation and that it would be useful or practical for him to attempt to identify these Class Members given their sheer number.
88. Applicant understands the nature of the action.

V. DAMAGES

89. At all material times, the Defendants owed duties to the Applicant and to Class Members to properly design, develop, manufacture, test, assemble, distribute, inspect, market, monitor, sell and/or lease the Affected Vehicles free of latent defects.
90. During the Class Period, the Defendants have likely generated billions of dollars in revenue while intentionally, and repeatedly, choosing to ignore the law in Quebec by cutting corners on costs (resulting in the recurring Electrical Fire Defect in subsequent models of the Affected Vehicles), failing to inform the Class of an important fact, and in certain cases neglecting to repair the defective Affected Vehicles in a timely manner.

91. As a result, the Defendants have breached several of the obligations and duties imposed upon them by the Quebec *Consumer Protection Act (CPA)* and the *Civil Code of Quebec*, including:

- a. The duty of a merchant to provide goods forming the object of the contract fit for the purposes for which they are used and free of latent defects pursuant to the *CPA* articles 37, 53, and 54;
- b. The duty of a merchant to provide goods forming the object of the contract in a durable condition in normal use for a reasonable length of time, pursuant to *CPA*, articles 38, 53, 54;
- c. The duty of a merchant to warrant that the goods forming the object of the contract will conform to the description made of them in the contract as well as to the statements or advertisements regarding them made by the merchant or the manufacturer, pursuant to the *CPA*, articles 40, 41, 53, and 54;
- d. The duty of a merchant to conduct themselves in a manner that avoids exercising any of the prohibited business practices set out in the *CPA* at articles 215, 219, and 228, thus rendering articles 253 or 272 applicable.
- e. The duty to act in good faith and with honesty in representations and in the performance of obligations, pursuant to articles ~~8, 9~~ 6, 7 and 1375 of the *CCQ*.
- f. The duty of a seller to provide goods forming the object of the contract free of latent defects pursuant to article 1726 *CCQ*.

92. As such, the following damages may be claimed solidarily against the Defendants:

- a. Compensatory damages, in an amount to be determined, on account of the damages sustained; and
- b. Punitive damages, in the amount of \$1000.00 per Class Member, or as otherwise determined just by this Honourable Court, for the breach of obligations imposed on the Defendants, pursuant to section 272 *CPA*.

The Applicant suggests that this class action be exercised before the Superior Court of Justice in the district of Montreal

93. A great number of Class Members likely reside in the judicial district of Montreal and in the appeal district of Montreal;
94. The Defendants have principal establishments either in Montreal or in the surrounding area;
95. The Applicant's attorneys practice their profession in the judicial district of Montreal;

VI. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

96. The action that the Applicant wishes to institute on behalf of the Class Members is an action in damages.
97. The conclusions that the Applicant wishes to introduce by way of a motion to institute proceedings are:

GRANT the Applicant's motion to institute proceedings;

GRANT the Applicant's action on behalf of all class members;

CONDEMN the Defendants solidarily to pay to the Class an amount to be determined in compensation of the damages suffered with interest at the legal rate and the additional indemnity provided for by law in accordance with article 1619 of the *Civil Code of Quebec*, from the date of service of the *Application for Authorization to institute a class action and to obtain the status of class representative*.

CONDEMN the Defendants solidarily to pay punitive damages to each member of the Class, evaluated temporarily at \$1000.00 per Class Member;

ORDER the collective recovery of the class members' claims.

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

THE WHOLE WITH costs, including all expert fees, notice fees, and expenses of the administrator, if any.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the Applicant's motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages and punitive damages;

ASCRIBE the Applicant, Martin Kodybko, as representative of the class hereby described:

All residents of Quebec who purchased or leased an Affected Vehicle, for their own personal use, from 2013 up to the date this action is authorized as a class proceeding.

IDENTIFY as follows the main issues of fact and law to be dealt with collectively:

- a. Are or were the Affected Vehicles affected by latent defects within the meaning of the *CPA* or the *Civil Code of Quebec*?
- b. Did class members purchase or lease one of the Affected Vehicles?
- c. At what date did any Defendants acquire knowledge of the existence of the issue raised in the recall notices?
- d. Do the issues described in the Recall Notices constitute a defect within the meaning of the *CPA* or the *Civil Code of Quebec*?
- e. Did any of the Defendants make false or misleading representations to a consumer or fail to mention an important fact in any representation made, to a consumer, within the meaning of the *CPA*?
- f. Did the Defendants fail to satisfy the requirements and duties incumbent upon them pursuant to the *CPA*?
- g. Are class members entitled to:

- v. a reduction of their obligations and, if so, in what amount?
- vi. ii. damages for trouble and inconvenience resulting from Kia and Hyundai's misrepresentations and illegal practice and, if so, in what amount?
- vii. iii. moral damages and, if so, in what amount?
- viii. iv. punitive damages and, if so, in what amount?

IDENTIFY, as follows, the conclusions sought in relation to those issues:

GRANT the Applicant's motion to institute proceedings;

GRANT the Applicant's action on behalf of all class members;

CONDEMN the Defendants solidarily to pay to the Class an amount to be determined in compensation of the damages suffered with interest at the legal rate and the additional indemnity provided for by law in accordance with article 1619 of the *Civil Code of Quebec*, from the date of service of the *Application for Authorization to institute a class action and to obtain the status of class representative*.

CONDEMN the Defendants solidarily to pay punitive damages to each member of the Class, evaluated temporarily at \$1000.00 per Class Member;

ORDER the collective recovery of the class members' claims.

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

THE WHOLE WITH costs, including all expert fees, notice fees, and expenses of the administrator, if any.

DECLARE that unless a person has opted out of the class, all class members will be bound by any judgment on the representative plaintiff's application in the manner provided for by law.

SET the time limit to opt out to sixty (60) days after the date of the notice to members, after which class members who had not opted out will be bound by any judgment in the class action.

ORDER the publication of a notice to the members of the group in accordance with the terms and by the method of publication to be determined by the court.

THE WHOLE with legal fees including notice fees.

Montréal, September 29, 2023

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SCHEDULE A

Defendant	Model	Year	TRANSPORT CANADA RECALL NO.
HYUNDAI	<u>Accent</u>	<u>2012, 2013, 2014, 2015</u>	<u>2023-527</u>
	<u>Elantra</u>	<u>2011, 2012, 2013, 2013, 2015</u>	<u>2023-527</u>
	<u>Equus</u>	<u>2014, 2015</u>	<u>2023-527</u>
	<u>Genesis Coupe</u>	<u>2011, 2012, 2013, 2014, 2015</u>	<u>2023-527</u>
	<u>Sante Fe</u>	<u>2013, 2014, 2015</u>	<u>2023-527</u>
	<u>Sante Fe Sport</u>	<u>2013</u>	<u>2023-527</u>
	<u>Tucson</u>	<u>2010, 2011, 2012, 2013</u>	<u>2023-527</u>
	<u>Veracruz</u>	<u>2010, 2011, 2012</u>	<u>2023-527</u>
	Sante Fe	2017, 2018	2022-046
	Santa Fe XL	2019	2022-046
	Santa Fe Sport	2017, 2018	2022-046
	Tuscon	2014, 2015	2022-046
	Sante Fe Sport	2013, 2014, 2015	2021-253
	Genesis	2015, 2016	2021-133
	Genesis G80	2017, 2018, 2019, 2020	2021-133
	Tuscon	2016, 2017, 2018, 2019, 2020, 2021	2020-648
	Elantra	2007, 2008, 2009, 2010	2020-045
	Elantra Touring	2009, 2010, 2011	2020-045
	Entourage	2007, 2008, 2009	2020-045
	Azera	2006, 2007, 2008, 2009	2018-033
Sonata	2006	2018-033	
Genesis	2009, 2010, 2011, 2012	2013-376	
KIA	<u>Borrego</u>	<u>2010, 2011</u>	<u>2023-529</u>
	<u>Cadenza</u>	<u>2014, 2015, 2016</u>	<u>2023-529</u>
	<u>Forte</u>	<u>2010, 2011, 2023, 2013</u>	<u>2023-529</u>
	<u>Forte Coup</u>	<u>2010, 2011, 2012, 2013</u>	<u>2023-529</u>
	<u>K900</u>	<u>2015</u>	<u>2023-529</u>
	<u>Optima</u>	<u>2010, 2011, 2012, 2013, 2014, 2015</u>	<u>2023-529</u>
	<u>Rio</u>	<u>2012, 2013, 2014, 2015, 2016, 2017</u>	<u>2023-529</u>

	<u>Rondo</u>	<u>2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017</u>	<u>2023-529</u>
	<u>Sorento</u>	<u>2011, 2012, 2013, 2014</u>	<u>2023-529</u>
	<u>Soul</u>	<u>2011, 2012, 2013</u>	<u>2023-529</u>
	<u>Sportage</u>	<u>2010</u>	<u>2023-529</u>
	K900	2016, 2017, 2018	2022-044
	Sportage	2014, 2015, 2016	2022-044
	Sorento	2014, 2015	2021-278
	Cadenza	2017, 2018	2021-123
	Sportage	2017, 2018, 2019, 2020, 2021	2021-123
	Stinger	2018, 2019, 2020, 2021	2020-404
	Sedona	2006, 2007, 2008, 2009, 2010	2020-064
	Sorento	2007, 2009, 2009	2020-064
	Sportage	2008, 2009	2016-562

SUMMONS

(Articles 145 and following CCP)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of Montreal.

Exhibits supporting the application

In support of the *Application for authorization to Institute a Class Action*, the Applicant relies on the following exhibits:

- Exhibit P-1:** Copy of the Contract of Sale dated November 3, 2021
- Exhibit P-2:** Copy of a corporate search for Defendant Hyundai Auto Canada Corporation;
- Exhibit P-3:** Copy of the CIDREQ profile search for Defendant Hyundai Auto Canada Corporation;
- Exhibit P-4:** Copy of a corporate search for Defendant Hyundai Motor America Inc.;
- Exhibit P-5:** Copy of a corporate search for Defendant Hyundai Motor Manufacturing Alabama LLC;
- Exhibit P-6:** Copy of a corporate search for Defendant Hyundai Motor Company;
- Exhibit P-7:** Copy of a corporate search for Defendant Kia Canada Inc.;
- Exhibit P-8:** Copy of the CIDREQ profile search for Kia Canada Inc.;
- Exhibit P-9:** Copy of a corporate search for Defendant Kia America, Inc.;
- Exhibit P-10:** Copy of a corporate search for Defendant Kia Georgia Inc.;
- Exhibit P-11:** Copy of a corporate search for Defendant Kia Corporation;
- Exhibit P-12:** Copy of Transport Canada Recall no. 2022-046
- Exhibit P-13:** Copy of Transport Canada Recall no. 2022-044
- Exhibit P-14:** Copy of Transport Canada Recall no. 2013-376
- Exhibit P-15:** Copy of NHTSA Press Release dated August 7, 2014

- Exhibit P-16:** Copy of Transport Canada Recall no. 2016-562
- Exhibit P-17:** Copy of Transport Canada Recall no. 2018-033
- Exhibit P-18:** Copy of Transport Canada Recall no. 2020-045
- Exhibit P-19:** Copy of Transport Canada Recall no. 2020-064
- Exhibit P-20:** Copy of Transport Canada Recall no. 2020-404
- Exhibit P-21:** Copy of Transport Canada Recall no. 2020-648
- Exhibit P-22:** Copy of Transport Canada Recall no. 2021-133
- Exhibit P-23:** Copy of Transport Canada Recall no. 2021-123
- Exhibit P-24:** Copy of Transport Canada Recall no. 2021-253
- Exhibit P-25:** Copy of Transport Canada Recall no. 2021-278
- Exhibit P-26:** Copy of Recall Notice Letter dated April 2021
- Exhibit P-27:** Copy of Repairs Receipt dated July 7, 2021
- Exhibit P-28** Copy of Transport Canada Recall no. 2022-616
- Exhibit P-29** Copy of Transport Canada Recall no. 2023-527
- Exhibit P-30** Copy of Transport Canada Recall no. 2023-529

The exhibits in support of the application are available upon request.

Defendants' answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame Est, Montreal, Québec, H2Y 186, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the case required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montréal, September 29, 2023

Slater Vecchio

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NOTICE OF PRESENTATION

TO:

HYUNDAI AUTO CANADA CORPORATION, legal person duly constituted, having its address of service at 75 Frontenac Drive, Markham, Ontario, L3R 6H2, Canada

HYUNDAI MOTOR AMERICA INC., legal person duly constituted, having its address for service at 10550 Talbert Avenue, Fountain Valley, California, 92708, United States of America

HYUNDAI MOTOR MANUFACTURING ALABAMA LLC, legal person duly constituted, having its address for service at 1209 Orange Street, Wilmington, Delaware 19801, United States of America

HYUNDAI MOTOR COMPANY., legal person duly constituted, having its address for service at 12, Heolleung-ro, Seocho-gu, Seoul, South Korea.

KIA CANADA INC., legal person duly constituted, having its address for service at 180 Foster Crescent, Mississauga, Ontario, L5R 4J5, Canada

KIA AMERICA, INC., legal person duly constituted, having its address for service at 111 Peters Canyon Road, Irvine, California, 92606, United States of America

KIA MOTORS MANUFACTURING GEORGIA, INC., legal person duly constituted, having its address for service at 1209 Orange Street, Wilmington, Delaware 19801, United States of America

KIA MOTOR COMPANY, legal person duly constituted, having its address for service at 12, Heolleung-ro, Seocho-gu, Seoul, South Korea

TAKE NOTICE that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELF ACCORDINGLY.

Montréal, September 29, 2023

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