

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N<sup>o</sup>: 500-06-001013-198

**SUPERIOR COURT**  
**(Class Action)**

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**LUDOVIC PELLETANT**, residing and domiciled at 19th Second Avenue, in the city of Montreal, Province of Quebec, H4G 2W2;

*Applicant*

-vs-

**HYUNDAI AUTO CANADA CORP.**, a legal person, having its principal place of business at 75 Frontenac Dr. in the city of Markham, province of Ontario, L3R 6H2, Canada;

-and-

**HYUNDAI MOTORS AMERICA**, having its principal place of business at 10550 Talbert Ave., in the city of Fountain Valley state of California, , 92708, United States of America;

-and-

**KIA MOTOR AMERICA**, having its principal place of business at 111 Peters Canyon Rd. in the city of Irvine in the state of California, 92606, United-States of America;

-and-

**KIA CANADA INC.**, having its principal place of business at 180 Foster Cr. In the city of Mississauga, Ontario, L3R 6H2;

*Defendants*

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**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO  
APPOINT A REPRESENTATIVE PLAINTIFF  
(Art. 574 C.C.P. and following)**

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**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT STATES THE FOLLOWING:**

**GENERAL PRESENTATION**

1. The Applicant wishes to institute a class action on behalf of the following Class, of which he is a member, namely:

- All persons in Quebec who own or have owned, or lease or have leased, one or more of the following Hyundai or Kia brand Subject vehicles affected by the defective engines equipped with a Theta II 2.4 Liter 4 cylinder gasoline direct injection engine or a Theta II 2.0 liter 4-cylinder gasoline direct injection turbo engine asserted by this claim,

“Subject Vehicles” include: 2011 -2016 Hyundai Sonata vehicles, 2013 - 2016 Hyundai Santa Fe vehicles, 2011-2016 Kia Optima vehicles, 2012 - 2016 Kia Sportage vehicles, and the 2014-2016 Kia Sorrento vehicles (referred to herein as “Class Member(s)”, “Class Member(s)”, the “Class”, the “Class”, the “Member(s)”);

**The Defendants**

2. The Defendant, Hyundai Motor America. (**HMA**), is California Corporation with its national headquarters at 10550 Talbert Ave. Fountain Valley California 92708, organized under the laws of California. At all times HMA was a subsidiary of Hyundai Motor Company and was actively involved from its facilities and also from the Irvine California Hyundai and Kia California design and technical center in designing. Manufacturing, assembling, marketing, distributing and selling Hyundai vehicles in Canada and Quebec;
3. The Defendant, Hyundai Auto Canada Corp, (**Hyundai Canada**), is a company incorporated under the laws of Canada and is headquartered at 75 Frontenac Drive in the city of Markham in the province of Ontario, L3H 6H2 in Canada. Hyundai Canada is a subsidiary of the Hyundai Motor Company. At all relevant times, Hyundai Canada was actively involved in the designing,

manufacturing, assembling, marketing, distributing and selling vehicles in Canada and in Quebec and is registered under the Canadian Business Corporations Act and the *registre des entreprises du Québec* produced herein as **Exhibit P-1**;

4. The Defendant. Kia Canada Inc.'s (**Kia Canada**) is incorporated under the laws of Canada and its Corporate Headquarters are at 180 Foster Crescent in Mississauga, Ontario, L3R 6H2. Kia Canada is a subsidiary of Kia Motors. At all times Kia Canada was actively involved in the designing, manufacturing, assembling, marketing, distributing, and selling Kia Vehicles in Canada including the province of Quebec as it appears in a copy of an extract from the *Registraire des entreprises du Québec*, produced herein as **Exhibit P-2**;
5. The Defendant KIA Motors America, (**KMA**) is a California Corporation with its national headquarters located at 111 Peters canyon Road in Irvine California, and has been a subsidiary of Kia Motors. It operates out of its headquarters in Irvine California and has a design center in Irvine. At all times KMA was actively involved in designing, manufacturing, assembling, marketing, distributing and selling Kia Vehicles in Canada including the province of Quebec;
6. The Defendants Hyundai Motor America, Hyundai Auto Canada Corp., Kia Motor Motors America, and KIA Canada Inc., are automobile design, manufacturing, distribution, and/or servicing corporations doing business in Quebec and Canada. The Defendants design, manufacture, distribute, market, service, repair, sell and lease passenger vehicles, including the Subject Vehicles, nationwide including the province of Québec;
7. The Applicant or Class Members could not reasonably be expected to know which of the Defendants has committed which individual act or omission at this stage;
8. Each of the Defendants are part of a common enterprise, one worldwide corporate entity, acting together for common goals. Each created and executed a common business plan to manufacture and sell their vehicles throughout the world including in Quebec. The Defendants are therefore solidarily liable for the acts and omissions of the other;

9. Hereinafter, the Defendants Hyundai Motor America, and Hyundai Auto Canada Corp. will be collectively referred to as "Hyundai" and Kia Motors America and Kia Canada Inc. will be collectively referred to as "Kia";

General Facts:

10. At least since 2010, the Defendants tested, manufactured, marketed, sold, distributed thousands of the Subject Vehicles in North America, including in Quebec;
11. Defendants also provide service and maintenance for the Subject vehicles through their network of authorised dealers throughout Canada and Quebec;
12. The Theta II engines installed in the Subject Vehicles is composed of an internal combustion engine that uses four reciprocating pistons to convert pressure created by burning gasoline mixed with air in the combustion chambers of the engine into a rotating force. In order to generate such a rotating motion, a four step sequence is used( The combustion Cycle);
13. First the intake stroke begins with the inlet valve opening and as air is pulled into the combustion chamber, atomized fuel is sprayed directly into the combustion chamber. Second, the compressions stroke begins when the inlet valve closes and the piston moves upward, compressing the air fuel mixture. Third, the power stroke begins when the spark plug ignites the air fuel mixture. The resulting rapid heating of the gas creates extreme pressure forcing the piston down. The downward force on the piston is transmitted to the crankshaft. Fourth, the exhaust stroke begins with the exhaust valve opening. As the piston is forced back up, it forces the exhaust gases out of the cylinder;
14. Defendants' Theta II engines incorporate several new design and manufacturing design technologies that have put new stresses on the engines' lubrication systems. The Theta II engines use gasoline direct injection technology to directly spray fuel into the combustion chamber. This is a change from prior engines used by the Defendants that use to employ multiport fuel injection technology also known as port injection.

15. The Theta II engines included a piston cooling jet attached to the main oil gallery on the Cylinder block that cools the piston by spraying a mist of engine oil onto each overhead piston. This feature also results in increased oil temperatures and contributes to more engine oil being atomized into the crankcase gases;
16. The Defendants made representations about the quality of the new Theta II engines by stating that the gasoline direct injection engine helps deliver outstanding performance in both power and fuel use. The Theta II engine injects highly pressurized fuel directly into the cylinders during the engine's combustion cycle. The result is an increased quality of combustion and efficiency. The engine also make a smarter use of fuel which in turn reduces emissions. The driver then enjoys smooth powerful acceleration and a longer time between refuelling.
17. The Defendants made the following public statements regarding the design of the new engines claiming that this shorter path of fuel delivery will allow for a greater control of the fuel mixture at the optimum moment thus improving efficiency. This power plant delivers best in class fuel economy and best in class four cylinder horsepower and best in class torque;
18. On or about September 20, 2015, the Defendants issued a safety recall for 470,000 model year 2011 to 2012 Sonata vehicles manufactured between December 11, 2009 and April 12, 2012 at the Hyundai Motor Manufacturing Alabama plant and equipped with the 2.4L and 2.0T Theta II engines (**the Hyundai recall**).
19. According to the Defendants they had determined that metal debris may have been generated from factory machine operations as part of the manufacturing of their engine crankshaft during December 11, 2009 to April 2012 in the recall Hyundai explained the debris could further damage connecting rods in the engine that in turn would create a cycling noise from the engine which will create a worn connecting rod bearing which may also result in a loss or oil pressure and the warn engine light to light up in the vehicle. If the vehicle is driven with the engine light on it will cause a vehicle stall while their vehicle is in motion.
20. This safety recall known as safety recall report 15V-568, went on to say that the main issues arising out of that defect was a substantial noise from the vehicles engine as well as the engine

light being on. Many customers were advised that the warranty work was no longer available.  
(Exhibit P-3)

21. In April 2017, the Defendants issued another recall this time for 1.4 million vehicles with the Theta II engines because they received widespread reports that the engines could fail and stall and gave the same reasons as the initial 2015 recall. This second recall included that 2013-2014 Hyundai Santa Fe, the 2011-2014 Kia Optima, the 2011- Kia Sportage and the 2012-2014 Kia Sorentos. (Exhibit P-4)
22. As of this date the class vehicles have not been recalled despite having the same Theta II engines and despite the fact that the Plaintiff and Members of the Class have notified the Defendants about their engines stalling and failing while being operated including possible fires in the engines, as described in the CBC News article dated March 6, 2019 (Exhibit P-5)..

**Latent Defect:**

23. As explained herein the Theta II engines are designed to have oil distributed throughout the engine through lubrication channel. When operating properly, the engine oil is distributed throughout the engine by the oil pump and then flows back to the oil pan where it is redistributed throughout the engine. As a result of the defect, the Class vehicles suffer restricted and inadequate engine oil distribution;
24. In the Class vehicles, the lubrication channels become clogged and restricted as a result of the engine defect, even under normal use and proper maintenance. When the lubrication channels clog, the engine oil is unable to be both pumped throughout the engine and is also unable to adequately return to the oil pan. This causes a condition known as oil starvation. This results in insufficient lubrication throughout the Class Vehicle's engine, which cause premature wear of the engine components and catastrophic engine failure;
25. Moreover, the connecting rod bearings throughout the engine via the engine oil. Overtime and as a result of insufficient lubrication due to oil contamination, the connecting rod bearings begin to fracture. Once the connecting rod bearings fracture, large amounts of metal debris begin to

accumulate in the engine oil. As a result the engine oil filter becomes so contaminated with metal debris that the oil filter becomes clogged. Excessive pressure then builds up in the oil filter causing the oil filter bypass valve to open, allowing unfiltered contaminated oil to recirculate throughout the engine, causing even more damage to the various engine components. This eventually results in a sudden and unexpected catastrophic engine failure. If the vehicle is being operated on the highway at the time of the engine failure, it may ultimately result in a high speed stalling event or even an engine fire;

26. The Defendants researched, designed, tested, manufactured, marketed, distributed and promoted the Class vehicles in Canada and in Quebec:
  - a) Each created and executed a common business plan to design, manufacture, and sell Class vehicles, in Quebec and in Canada and throughout the world for profits;
  - b) Their businesses are inextricably interwoven. Each contributed money, effort, knowledge and other assets to the common enterprise; and
  - c) Each undertook to be bound by the warranties given to class members on the sale of the Class vehicles in Quebec and Canada;
27. Although Hyundai and KIA were sufficiently aware of the problem as a result of pre-production testing, design failure mode analysis, and customer complaints made to dealers, all of this knowledge and information was exclusively in the possession of the Defendants and its network of dealers and therefore, it was unavailable to consumers;
28. In particular, notwithstanding the Defendants knowledge of the potential safety concerns associated with the Theta II engine defects, the Defendants chose to wrongfully and intentionally conceal the defect in the Theta II engines of the Class vehicles, which can cause engine failures at any time including engine fires, which has forced or will force the Plaintiff and Members of the Class to incur out of pocket costs to repair or replace the damaged engine parts or their entire engine or will result in a diminished resale value of the Class vehicles causing damage to the Class;
29. Furthermore, KIA and Hyundai failed to provide a permanent solution to remedy all of the Theta II engine defects. Instead, they concealed its knowledge of the issues and failed to develop

a permanent solution so that the warranty period on the Subject Vehicles would expire before owners become aware of the problem. Through this practice, KIA and Hyundai unlawfully transfers the cost of replacement from itself to the owners of the Subject Vehicles;

30. As a result of KIA and Hyundai's failure to disclose the fact that the Theta II engines installed in the Subject Vehicles are prone to unavoidable premature failure, consumers are required to spend thousands of dollars in the early years of ownership to repair or replace the engines or to repair or replace the damaged or destroyed engines, or sell their vehicles without repair at a substantial loss.
31. Furthermore, the fact that the Theta II engines are prone to sudden premature failure presents a serious safety issue to consumers and places the driver and passengers at a risk of harm;
32. The fact that the Theta II engines are prone to premature failure is also material to consumers because there is no safe alternative way for owners of the Subject Vehicles to avoid the risk of potential harm;
33. The Representative Plaintiff and other members of the Class (as defined below) would not have bought the Subject Vehicles had they known that the Theta II engines installed are prone to unavoidably dangerous and premature failure. When the Representative Plaintiff and other members of the Class purchased the Subject Vehicles, they relied on their reasonable expectations that the Subject Vehicles would not pose an unavoidable safety risk;
34. Furthermore, had Kia and Hyundai disclosed to consumers the material fact that the Theta II engines are prone to premature failure and required replacement, Kia and Hyundai vehicle owners would have required them to replace the defective engines before they failed as a result of the latent defect. Nevertheless, notwithstanding KIA and Hyundai's awareness of the safety defect, they never disclosed these material facts to consumers at the time at the time of purchase, before the warranty expired, nor anytime thereafter;



Negligence:

35. Hyundai and Kia were negligent, inter alia, through the following acts and omissions:
- a) Failure to properly and adequately design and/or manufacture vehicles equipped with a Theta II engine, components, and parts thereof;
  - b) Failure to properly and adequately disclose the engine defects to potential and present customers of the affected vehicles;
  - c) Failure to furnish a long-term repair and/or recall solution to the defects;
  - d) Failure to properly and adequately warn potential and present customers of the safety risks of using vehicles equipped with the Theta II engines;
36. As a result of Hyundai's and Kia's faults, the Applicant and Class Members have sustained economic and moral damages, and faced unreasonable danger;

**FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT**

37. The Applicant, Ludovic Pelletant, is a resident of Montreal, Quebec;
38. The Applicant purchased a 2012 Kia Sportage brand new from a Kia dealer equipped with the 2.4 liter engine in Lasalle Québec sometime in 2012;
39. Two weeks ago, he was driving the vehicle on a highway in Montreal, Quebec, when he suddenly experienced a power loss and engine shutdown on the highway while he was driving;
40. Mr. Pelletant had his vehicle towed to and examined by his mechanic who told him it was an engine problem and that he should take it to his dealer to be examined;

41. He then had the vehicle towed from his mechanic to the Kia dealer in Lasalle Québec where after an examination he was told that the engine was finished and that it was not repairable and that the engine had to be replaced;
42. The Applicant is still awaiting a final determination as to whether Kia will be replacing his engine. His vehicle has only 109,000 kms as mileage and he is adamant that he followed all the proper oil changes as recommended by Kia that is every 6000 kms;
43. The Applicant could incur costs to replace the engine of his vehicle and repair bills to his vehicle depending on what Kia decides to do. His vehicle has been at the Kia dealership for two weeks since his shutdown;
44. The Applicant therefore has suffered and continues to suffer damages due to the defect affecting his vehicle;
45. In addition, due to the defect in the engine, the Applicant's vehicle's resale value has diminished considerably;
46. Had the Applicant known about this serious danger and/or defect, he would not have purchased this vehicle;
47. The damages suffered by the Applicant are a direct and proximate result of the Defendants' conduct;
48. As a consequence of the foregoing, the Applicant is justified in claiming damages;

**FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE CLASS**

49. Every Member of the Class owns, leases or otherwise possesses one of the motor vehicles comprised in the Subject Vehicles;
50. Each Member of the Class is justified in claiming at least one or more of the following:

- a) Resiliation of the sale or lease of the Vehicle and reimbursement of the purchase price or lease amounts paid, including but not limited to taxes, license and registration fees, security deposit, down payment, etc., or subsidiarily, damages for the diminished value (or resale value) of the Subject Vehicles;
- b) Damages for the costs associated with the defects or repairs to the Subject Vehicles;
- c) Damages for any injury suffered and costs related to said injuries;
- d) Damages for loss of use and enjoyment of their Subject Vehicles;
- e) Damages for trouble, inconvenience and loss of time;
- f) Damages for anxiety and fear;
- g) Punitive and/or exemplary damages;
- h) Such further and other relief as counsel may advise and this Honourable Court may allow.

51. All of these damages to the Class Members are a direct and proximate result of the Defendants' conduct;

### **CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

**The composition of the Class makes the application of Article 91 or 143 C.C.P. impractical or impossible for the reasons detailed below:**

- 52. The number of persons included in the Class is estimated to be in the thousands;
- 53. The names and addresses of all persons included in the Class are not known to the Applicant but are known to the Defendants;
- 54. In addition, 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 the Class Members themselves could afford such individual litigation, the Court system could not as it would be

overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Defendants would increase delay and expense to all parties and to the Court system;

55. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Class to obtain mandates and to join them in one action;
56. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Class to effectively pursue their respective rights and have access to justice;

**The questions of fact and law which are identical, similar, or related with respect to each of the Class Members:**

57. The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:
- a) Is there a latent defect in the Theta II engines of the Subject Vehicles?
  - b) Is there a safety defect in the Subject Vehicles?
  - c) Are the Subject Vehicles fit for the purpose they were intended?
  - d) Did the Defendants know or should the Defendants have known about these defects affecting the Subject Vehicles?
  - e) Did the Defendants fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or leased the Subject Vehicles, or thereafter?
  - f) Have the Class Members suffered damages as a result of the defect in question?
  - g) Are the Defendants liable to pay compensatory damages to Class Members stemming from the defect?
  - h) What are the categories of damages for which the Defendants are responsible to pay to Class Members, and in what amount?

- i) Are Defendants liable to pay any other compensatory, moral, punitive and/or exemplary damages to Class Members, and if so in what amount?

58. The interests of justice favour that this application be granted in accordance with its conclusions;

**NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

59. The action that the Applicant wishes to institute for the benefit of the members of the Class is an action in damages for latent defect and negligence;

60. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:

**GRANT** Plaintiff's action against Defendants;

**ORDER** the resiliation of the sale or lease of the Subject Vehicles purchased or leased by the Class Members;

**ORDER and CONDEMN** Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Class Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Class Members equivalent to the amount of loss of resale value or diminished value of the Class Vehicle as a result of the existence and/or repair of the defect;

**CONDEMN** Defendants to reimburse to the Class Members any costs or fees paid in relation to the defect or repair thereof;

**CONDEMN** Defendants to pay compensatory damages to the Class Members for the loss of use and enjoyment of the Subject Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

**CONDEMN** Defendants to pay punitive and/or exemplary damages to the Class Members, to be determined by the Court;

**GRANT** the class action of Applicant on behalf of all the Members of the Class;

**ORDER** the treatment of individual claims of each Member of the Class in accordance with articles 599 to 601 C.C.P.;

**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 interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

61. Applicant suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a) Many Class Members are domiciled in the District of Montreal;
  - b) The Defendants have a business establishment in the District of Montreal;
  - c) Many of the Subject Vehicles were purchased or leased by Class Members in the District of the Montreal;
  - d) The Applicant's counsel is domiciled in the District of Montreal;
62. The Applicant, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Class, since Applicant:
- a) owns a 2012 Kia Sportage which is affected by the defect alleged above, and is thus a Member of the Class;
  - b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Class;

- c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;
- d) is ready and available to manage and direct the present action in the interest of the Class Members that the Applicant wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
- e) does not have interests that are antagonistic to those of other members of the Class;
- f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
- g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Class and to keep them informed;

63. The present application is well-founded in fact and in law;

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an application to institute proceedings in damages;

**ASCRIBE** the Applicant the status of representative of the persons included in the Class herein described as:

- All persons in Quebec, who own or have owned, or lease or have leased, one or more of the following KIA/Hyundai Vehicles affected by the Theta II engine defect:
  - 2011 - 2016 Hyundai Sonata vehicles,
  - 2013 - 2016 Hyundai Santa Fe vehicles,
  - 2011 - 2016 Kia Optima vehicles,
  - 2012 - 2016 Kia Sportage vehicles, and

- 2014 - 2016 Kia Sorrento

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Is there a latent defect in the Theta II engines of Subject Vehicles?
- b) Is there a safety defect in the Subject Vehicles?
- c) Are the Subject Vehicles fit for the purpose they were intended?
- d) Did the Defendants know or should the Defendants have known about these defects affecting the Subject Vehicles?
- e) Did the Defendants fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or leased the Subject Vehicles, or thereafter?
- f) Have the Class Members suffered damages as a result of the defect in question?
- g) Are the Defendants liable to pay compensatory damages to Class Members stemming from the defect?
- h) What are the categories of damages for which the Defendants are responsible to pay to Class Members, and in what amount?
- i) Are Defendants liable to pay any other compensatory, moral, punitive and/or exemplary damages to Class Members, and if so in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** Plaintiff's action against Defendants;

**ORDER** the rescission of the sale or lease of the Subject Vehicles purchased or leased by the Class Members;

**ORDER and CONDEMN** Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Class Members in



connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Class Members equivalent to the amount of loss of resale value or diminished value of the Class Vehicle as a result of the existence and/or repair of the defect;

**CONDEMN** Defendants to reimburse to the Class Members any costs or fees paid in relation to the defect or repair thereof;

**CONDEMN** Defendants to pay compensatory damages to the Class Members for the loss of use and enjoyment of the Subject Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

**CONDEMN** Defendants to pay punitive and/or exemplary damages to the Class Members, to be determined by the Court;

**GRANT** the class action of Applicant on behalf of all the Members of the Class;

**ORDER** the treatment of individual claims of each Member of the Class in accordance with articles 599 to 601 C.C.P.;

**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 interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

**DECLARE** that all Members of the Class that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

**SUMMONS**

(Articles 145 and following C.C.P.)

**Filing of a Judicial Application**

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

**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 Street Est, Montréal, Québec, H2Y 1B6, 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 cases 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 Applicant.

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.

### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint a Representative Plaintiff, the Applicant intends to use the following exhibits:

**Exhibit P-1:** Hyundai Canada Auto Corps. – extract from the *Registraire des entreprises du Québec*;

**Exhibit P-2:** KIA Canada Inc. extract from the *Registraire des entreprises du Québec*;

**Exhibit P-3:** Safety recall 2015;

**Exhibit P-4:** Safety recall 2017;

**Exhibit P-5:** CBC Article (March 6, 2019)

These Exhibits are available upon request.

### **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.

**NOTICE OF PRESENTATION**  
**(Articles 146 and 574 al.2 C.P.C.)**

**TO: HYUNDAI AUTO CANADA CORP.**  
75 Frontenac Drive  
Markham Ontario  
L3R 6H2

and

**TO: HYUNDAI MOTOR AMERICA**  
10550 Talbert Ave.  
Fountain Valley, California  
92708  
United States of America

and

**TO: KIA MOTORS AMERICA**  
111 Peters Canyon Rd.  
Irvine, California  
92606  
United States of America

and

**TO: KIA CANADA INC.**  
180 FOSTER CRESCENT  
MISSISSAUGA, ONTARIO  
L3R 6H2

**TAKE NOTICE** that the present APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO APPOINT A REPRESENTATIVE PLAINTIFF will be presented before one of the Honourable Judges of the Superior Court of Québec, at the Montreal courthouse, located at 1, rue Notre-Dame Est, in the city and District of Montréal, on the date set by the coordinator of the class actions chamber.

PLEASE ACT ACCORDINGLY.

Montreal, July 30, 2019.

  
**Merchant Law Group LLP**  
Attorneys for the Applicant

