

C A N A D A

S U P E R I O R C O U R T
(Class Action)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o : 500-06-001136-213

PATRICK ROY, residing and domiciled at 335
Ovila-Réhaume, in the city of Québec, Province of
Quebec, G2N 0H6;

KARINE BOLDUC, residing and domiciled at
3542 Heloise Cr, in the city of Laval, Province of
Quebec, H7P 1W7

Applicants

-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;

-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

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

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANTS STATE THE FOLLOWING:

GENERAL PRESENTATION

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

- All persons resident or situated in the Province of Quebec who have purchased or leased one or more of the following Hyundai or Kia brand vehicle(s) which was equipped with a **Nu 1.8-litre, Nu 2.0-litre, Gamma 1.6-litre, Lambda II 3-litre, Lambda II 3.3-litre, or Lambda II turbocharged 3.3-litre, gasoline direct injection engine, or a Theta II 2.4-litre multipoint fuel injection engine.**

The “**Subject Vehicles**” including but not limited to, the following vehicle models:

GDI Models	Model Year(s) Affected
Hyundai Accent	2010-2019
Hyundai Elantra	2014-2016
Hyundai Kona	2018-2019
Hyundai Santa Fe	2013-2019
Hyundai Santa Fe XL	2013-2019
Hyundai Tucson	2011, 2013, 2016, 2017, 2018
Hyundai Veloster	2011-2018
Kia Cadenza	2010-2019
Kia Forte and Forte Koup	2009-2019
Kia Rio	2011-2019
Kia Rondo	2013-2019
Kia Sedona	2015-2019
Kia Sorento	2010-2011
Kia Soul	2012-2019
Kia Sportage	2011-2019
Kia Stinger	2018-2019

MPI Models	Model Year(s) Affected
Hyundai Santa Fe	2012
Hyundai Sonata Hybrid	2011–2013
Kia Forte and Forte Koup	2012–2013
Kia Optima Hybrid	2011–2013
Kia Sorento	2012–2013
Kia Sportage	2012

"Class" and/or "Class Member(s)" and/or "Member(s)" means all persons, corporations or other entities resident or situated in the Province of Quebec who are current or former owners and/or lessees of a Subject Vehicle;

"GDI" means gasoline direct injection;

"MPI" means multipoint fuel injection

"Engines" means Nu 1.8-litre, Nu 2.0- litre, Gamma 1.6-litre, Lambda II 3-litre, Lambda II 3.3-litre, Lambda II turbocharged 3.3-litre GDI engines and Theta II 2.4-litre MPI engines, designed, developed, manufactured or sold by the Defendants ;

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 design and technical centre 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 régistrare 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 Petitioners 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. Defendants import into Canada for sale or lease newly manufactured Subject Vehicles, including the Subject Vehicles, and are responsible for ensuring that those vehicles' designs are compliant with the regulations for import into Canada.
13. Defendants sells, leases, services and repairs the Subject Vehicles in Canada through its network of dealers who are its agents. Money received by a dealer from the purchase or lease of a Subject vehicle flows from the dealer to the Defendants;
14. Defendants administers the warranties for all Subject Vehicles sold in Canada, representing that they are, inter alia, free of defects in material and workmanship;

Transport Canada and Defendants Recalls

15. Between September 25, 2015 and December 17, 2019, five separate product improvement campaigns or recalls were instituted through Transport Canada with respect to the Theta II 2.0 or 2.4 liter GDI engines in the Hyundai branded Vehicles (Transport Canada Recall # 2015428, Transport Canada Recall # 2017197, Transport Canada Recall #2019012, Transport Canada Recall # 2019130, and Transport Canada Recall # 2019640);
16. Between April 17, 2017 and December 17, 2019, four separate product improvement campaigns or recalls were instituted through Transport Canada with respect to the Theta II 2.0 or 2.4 liter GDI engines in the Kia-branded Vehicles: Transport Canada Recall # 2017199, Transport Canada Recall # 2019143, Transport Canada Recall # 2019153, and Transport Canada Recall # 2019639;
17. These engines were manufactured defectively resulting in premature wear of the connecting rod bearings. A worn connecting rod bearing may result in an abnormal knocking noise from the engine and/or illumination of the oil pressure warning light. Continually driving a vehicle with a worn connecting rod bearing can damage the engine and eventually cause catastrophic engine failure. It can also result in a damaged connecting rod puncturing the engine block, causing engine oil to leak and ignite a fire;

18. More recent recalls have been issued in respect to the allegedly same defect affecting some other GDI and MPI engines in the Hyundai branded Vehicles (Transport Canada Recall # 2021-034, Transport Canada Recall # 2020-592; Transport Canada Recall # 2021-033), as it appears in a copy of Transport Canada recalls, produced herein as **Exhibit P-3; (the Hyundai recalls)**;
19. More recent recalls have been issued in respect to the allegedly same defect affecting some other GDI and MPI engines in the Kia branded Vehicles (Transport Canada Recall # 2021-039, Transport Canada Recall # 2020-597, Transport Canada Recall #2020-535; Transport Canada Recall # 2021-040), as it appears in a copy of Transport Canada recalls, produced herein as **Exhibit P-4 (the Kia recall)**;
20. The Defendants have initiated recalls campaigns with respect to the latent defects in the Engines of the Subject Vehicles in Canada;
21. Between 2015 to 2019, Hyundai and Kia have recalled over 500,000 vehicles in Canada for engine-related defects, due to manufacturing debris that could cause the engines to fail. The connecting rod bearings could wear prematurely and cause abnormal knocking noise. As a result, the engine could end up failing or even catching fire;
22. On or about December 2020, the Defendants have initiated recalls following their first massive recall affecting over 300,000 of the vehicles that were sold in Canada regarding the same engine-related defects of some of their GDI and MPI engines of the Class vehicles;
23. The Defendants has been slow to recall the Subject Vehicles, if at all;
24. Despite these recalls, many of the Subject Vehicles have not yet been recalled despite (i) having the same Engines as the recalled Subject Vehicles; and, (ii) Class Members notifying the Defendants about their Engines stalling, failing, or catching fire;
25. Despite initiating recalls campaigns, the Defendants have not developed a sufficient solution, remedy, or fix for the defects. Under these recall campaigns, the defects in the Engines of the Subject Vehicles were left unaddressed; the Engines were replaced with engines containing the same and/or additional defects; or, a software update was provided to detect potential

problems caused by the defects before Engine fails. The Defendants still have no solution to correct the defects themselves;

Latent Defects: Metal Debris Circulating in the Engines of the Subject Vehicles and Improperly Installed High Pressure Fuel Pipe

26. As explained herein the 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;
27. 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;
28. 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 and engine fire;
29. 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;

30. Although the Defendants 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;
31. In particular, notwithstanding the Defendants knowledge of the potential safety concerns associated with the Engine defects, the Defendants chose to wrongfully and intentionally conceal the defect in the Engines of the Class vehicles, which can cause engine failures at any time including engine fires, which has forced or will force the Applicants 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, thereby causing damage to the Class;
32. Furthermore, KIA and Hyundai failed to provide a permanent solution to remedy all of the 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;
33. As a result of KIA and Hyundai's failure to disclose the fact that the 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;

34. Furthermore, the fact that the 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;
35. The fact that the 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;
36. The Representative Plaintiff and other members of the Class (as defined below) would not have bought the Subject Vehicles had they known that the 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;
37. Furthermore, had Kia and Hyundai disclosed to consumers the material fact that the 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;
38. On March 9, 2021, the Superior Courts of Quebec¹ and of Ontario² approved a Canada wide class action Settlement Agreement to the same latent defects of Hyundai and Kia branded vehicles equipped with the Theta II 2.0-litre or 2.4-litre engine GDI engines, copies of the Ontario and Quebec decisions approving the settlement agreement produced herein as **Exhibit P-5**;

¹ Ludovic Pelletant c. Hyundai et Kia et al. #500-06-001013-198.

² McBain v. Hyundai Auto Canada Corp., et al., Ontario Superior Court of Justice, Court File No. CV-19-00001186-000T, and Asselstine v. Kia Canada Inc., et al., Ontario Superior Court of Justice, Court File No. CV-19-00001302-000T

The “Settlement Class Vehicle” included the following models:

Hyundai Vehicles	
MODEL	MODEL YEARS
Sonata	2011-2019
Santa Fe Sport	2013-2019
Tucson	2014-2015; 2019
Kia Vehicles	
MODEL	MODEL YEARS
Optima	2011-2019
Sorento	2012-2019
Sportage	2011-2019

Negligence:

39. 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 the Engines, 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 Engines;

40. As a result of Hyundai’s and Kia’s faults, the Applicants and Class Members have sustained economic and moral damages, and faced unreasonable danger;

41. Although the Defendants has recalled some of the Subject Vehicles due to the latent defects in their Engines, (1) many of the Subject Vehicles have not been recalled; and, (2) the engine repairs and/or replacements completed under these recall campaigns did not offer sufficient

solutions to the defects, and in some cases, caused new defects in the Engines of the Subject Vehicles;

Breach of Warranties

42. The Defendants expressly or impliedly warranted to the Applicants and the Class Members that the Subject Vehicles were reasonably fit for the purpose of safe driving, that the Subject Vehicles were of merchantable quality, that the Subject Vehicles were free from defects and/or that the Subject Vehicles were of acceptable quality. The warranties included the Engines;
43. The Defendants provided the purchasers and lessees of the Subject Vehicles with a written warranty that provides and represents, among other things, that each Subject Vehicle will be free of defects in material and workmanship. In addition, an implied warranty applies to each transaction between the purchasers of the Subject Vehicles and Hyundai Canada to the same effect pursuant to the Consumer Protection Act, 2002, the parallel provisions of the consumer protection legislation in other Canadian provinces, the Sale of Goods Act, the parallel provisions of the sale of goods legislation in other Canadian provinces, the Motor Vehicle Safety Act, and the common law;
44. Despite and contrary to the foregoing warranties and representations, the Defendants sold and leased the Subject Vehicles when they knew or ought to have known of the latent defects and the Defendants concealed or failed to disclose the latent defects to the Applicants and the Class Members;
45. The Defendants has breached its warranties with the Class Members, and as a result, the Class Members have suffered damages.

DAMAGES

46. The Applicants and the Class Members have suffered loss and damage caused by the wrongful and negligent acts of the Defendants.

47. The Class Members face the loss of the ability to sell, or exercise lease purchase options for, the Subject Vehicles at the Class Members' anticipated fair market value;
48. The Class Members have suffered or will suffer inconvenience and have incurred or will incur special damages arising from any necessary repairs to the Subject Vehicles, including loss of income, loss of use of the Subject Vehicles during any such repair periods, diminished value of the Subject Vehicles, the costs associated with the use of other automobiles or other expenses during such periods;
49. The Defendants' conduct described above was deliberate, arrogant, high-handed, outrageous, reckless, wanton, entirely without care, secretive, callous, willful, disgraceful and in contemptuous disregard of the rights, personal safety and interests of the Applicants, the Class Members and the public;
50. This conduct renders the Defendants liable to pay punitive damages to the Applicants and the Class Members;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANTS :

PATRICK ROY

51. The Applicant, Patrick Roy, is a resident of the city of Quebec, Quebec;
52. On April 2014, the Applicant purchased a 2014 Kia Soul brand new from a Kia dealer in Cap-Santé, Québec;
53. His vehicle is equipped with the defected Gamma 1.6 liter GDI engine, as it is shown at page 15 of the Kia Soul 2014 Owner's Manual, published online by the defendants at <https://www.kia.ca/content/ownership/ownersmanual/14soul-en.pdf>;
54. On and around September 28, 2015, the Applicant started experiencing noises and knocks coming out of the vehicle engine. The Applicant rushed his vehicle to his dealer to get his

vehicle diagnosed and repaired. The problem could not be fixed and the Applicant incurred cost despite his vehicle being still covered with the guarantee;

55. By then the odometer indicated 42 366 kilometers. The Applicant is adamant that he followed all the proper oil changes as recommended by Kia that is every 6000 kms;
56. As early as July 2015, the check engine light of the Applicant vehicle came on. The Applicant took his car to his dealer. The problem was fixed only temporarily, as the light check engine came on soon after;
57. Despite more or less five (5) visits to his dealer and to his mechanics trying to repair the issue of the check engine light, trying to understand the problem affecting his engine and incurring costs, the Applicant is still experiencing the same issue;
58. At no material time, the Applicant Dealer warned him of any potential and present safety risks of using his vehicle;
59. The Applicant could incur costs to replace the engine of his vehicle and repair bills to his vehicle;
60. The Applicant therefore has suffered and continues to suffer damages due to the defect affecting his vehicle;
61. In addition, due to the defect in the engine, the Applicant's vehicle's resale value has diminished considerably;
62. Had the Applicant known about this serious danger and/or defect, he would not have purchased this vehicle;
63. The damages suffered by the Applicant are a direct and proximate result of the Defendants' conduct;
64. As a consequence of the foregoing, the Applicant is justified in claiming damages;

KARINE BOLDUC

65. The Applicant, Karine Bolduc, is a resident of the city of Laval, Quebec;
66. On and around 2015, the Applicant Bolduc purchased a used 2011 Hyundai Tucson;
67. Her vehicle is equipped with the 2.4 GDI engine, one of the defected Engine of the Class Vehicle ;
68. In the winter and later in the fall of 2020, the Applicant Bolduc received two safety recalls letters informing her of the alleged defect of the engine of her vehicle increasing the risk of crash and fire. But, despite that she initiative to call the dealer to get the defective engine of her vehicle to repaired or replaced, the dealer as the time of the present Application did not took any steps to fix the Applicant engine;
69. The Applicant Bolduc could incur costs to replace the engine of his vehicle and repair bills to his vehicle;
70. The Applicant Bolduc therefore has suffered and continues to suffer damages due to the defect affecting his vehicle;
71. In addition, due to the defect in the engine, the Applicant's vehicle's resale value has diminished considerably ;
72. Had the Applicant Bolduc known about this serious danger and/or defect, he would not have purchased this vehicle;
73. The damages suffered by the Applicant Bolduc are a direct and proximate result of the Defendants' conduct;
74. As a consequence of the foregoing, the Applicant Bolduc is justified in claiming damages;

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

75. Every Member of the Class owns, leases or otherwise possesses one of the motor vehicles comprised in the Subject Vehicles;

76. 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.
77. 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

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

78. 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 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?

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

(2) The facts alleged justify the conclusions sought

80. The action that the Applicants wish to institute for the benefit of the members of the Class is an action in damages for latent defect and negligence;

81. The conclusions that the Applicants wish to introduce by way of an application to institute proceedings are:

GRANT Applicants 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 the Applicants 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;

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

82. The number of persons included in the Class is estimated to be in the thousands;
83. The names and addresses of all persons included in the Class are not known to the Applicants but are known to the Defendants;

84. 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;
85. 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;
86. 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;

(4) The Representative Plaintiff is in a position to properly represent the class members:

87. The Applicants, who are requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Class, since Applicants:
- a) own a Subject vehicles affected by the defect alleged above, and are thus Members of the Class;
 - b) understand 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) are 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) are ready and available to manage and direct the present action in the interest of the Class Members that the Applicants wish to represent, and are determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
 - e) do not have interests that are antagonistic to those of other members of the Class;
 - f) have 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) are, 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;

88. Applicants suggest 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 Applicants’ counsel is domiciled in the District of Montreal;

89. 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 Applicants the status of representative of the persons included in the Class herein described as:

- All persons resident or situated in the Province of Quebec who have purchased or leased one or more of the following Hyundai or Kia brand vehicle(s) which was equipped with a **Nu 1.8-litre, Nu 2.0-litre, Gamma 1.6-litre, Lambda II 3-litre, Lambda II 3.3-litre, or Lambda II turbocharged 3.3-litre, gasoline direct injection engine, or a Theta II 2.4-litre multipoint fuel injection engine.**

The “**Subject Vehicles**” including but not limited to, the following vehicle models:

GDI Models	Model Year(s) Affected
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Hyundai Elantra	2014-2016

Hvundai Kona	2018-2019
Hyundai Santa Fe	2013-2019
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Hyundai Tucson	2011, 2013, 2016, 2017, 2018
Hyundai Veloster	2011-2018
Kia Cadenza	2010-2019
Kia Fortem and Forte Koup	2009-2019
Kia Rio	2011-2019
Kia Rondo	2013-2019
Kia Sedona	2015-2019
Kia Sorento	2010-2011
Kia Soul	2012-2019
Kia Sportage	2011-2019
Kia Stinger	2018-2019

MPI Models	Model Year(s) Affected
Hyundai Santa Fe	2012
Hyundai Sonata Hybrid	2011–2013
Kia Forte and Forte Koup	2012–2013
Kia Optima Hybrid	2011–2013
Kia Sorento	2012–2013
Kia Sportage	2012

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

- a) Is there a latent defect in 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?

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

GRANT Applicants' 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 Applicants 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;

ORDER the publication of a notice to the Members of the Class in accordance with Article 579 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, March 15, 2021

Merchant Law Group.

MERCHANT LAW CLASS LLP

Attorneys for the Applicants

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: copy of Hyundai Transport Canada recalls (2020-2021) ;

Exhibit P-4: copy of Kia Transport Canada recalls (2020-2021)

Exhibit P-5: copies of the Ontario and Quebec decisions approving the settlement agreement in *Ludovic Pelletant c. Hyundai et Kia et al.* #500-06-001013-198 and *McBain v. Hyundai Auto Canada Corp., et al.*, Ontario Superior Court of Justice, Court File No. CV-19-00001186-00OT, and *Asselstine v. Kia Canada Inc., et al.*, Ontario Superior Court of Justice, Court File No. CV-19-00001302-00OT.

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.

Montreal, March 15, 2021

Merchant Law Group.

Merchant Law Class LLP
10 rue Notre Dame Est, suite 200
Montréal (Québec) H2Y 1B7
Phone : 514-842-7776
Fax: 514-842-6687
Notifications : cnasraoui@merchantlaw.com
Attorneys for the Applicants

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 REPRESENTATIVE PLAINTIFFS 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, March 15, 2021.

Merchant Law Group

Merchant Law Group LLP
Attorneys for the Applicants

N^o: 500-06-001136-213

SUPERIOR COURT OF QUÉBEC
(CLASS ACTION)
DISTRICT OF MONTRÉAL

PATRICK ROY, and

KARINE BOLDUC

Applicants

- vs -

HYUNDAI AUTO CANADA CORP.

-AND-

HYUNDAI MOTORS AMERICA

-AND-

KIA MOTOR AMERICA

-AND-

KIA CANADA INC.

Defendants

**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS
ACTION AND TO APPOINT A REPRESENTATIVE
PLAINTIFF**

COPY

Me Christine Nasraoui

cnasraoui@merchantlaw.com

MERCHANT LAW GROUP LLP

10 Notre-Dame E., Suite 200

Montréal, Québec H2Y 1B7

Telephone: (514) 842-7776 (ext: 2201)

Telecopier: (514) 842-6687

BC 3841
