

C A N A D A

PROVINCE DE QUEBEC
DISTRICT DE MONTREAL

COUR SUPÉRIEURE
(Actions Collectives)

NO: 500-06-001124-219

JEAN NOEL

Requérant

-C.-

OTTO FUCHS Beteiligungen KG

et

Leiber Group GmbH & Co. KG

et

Strojmetal Aluminium Forging GmbH

et

Bharat Forge Aluminiumtechnik GmbH

et

Presswerk Krefeld GmbH & Co. KG

et

Hirschvogel Aluminium GmbH

Intimées

DEMANDE DE SUSPENSION TEMPORAIRE DE L'ACTION COLLECTIVE
(arts. 18, 49, 577 C.p.C. et art. 3137 C.C.Q.)

À L'HONORABLE DONALD BISSON, J.C.S, COORDONATEUR DE LA CHAMBRE DES
ACTIONS COLLECTIVES, LE REQUÉRANT EXPOSE CE QUI SUIT :

I. INTRODUCTION

1. Dans le présent dossier, la Demande d'autorisation d'exercer une action collective et pour obtenir le statut de représentant, déposée au greffe le 29 janvier 2021 dernier (ci-après « l'Action québécoise »), vise le groupe proposé suivant, considérant l'allégation que les défendeurs auraient illégalement conspiré, sous la forme d'arrangements, d'accords ou autrement, pour fixer l'approvisionnement, répartir les ventes et les marchés de production, éliminer la concurrence et truquer les offres pour certains produits en aluminium forgé qui sont indispensables à la production automobile depuis au moins 2006 :

All persons resident in Québec during the Class Period who purchased or leased an automobile, or purchased Replacement Parts, containing Forged Aluminum Products manufactured, marketed, distributed and/or sold by one or more of the Defendants (the "Class" and "Class Members")

2. Préalablement au dépôt de la demande d'autorisation dans le présent dossier, une autre action collective avait déjà été déposée en Colombie-Britannique, tel que plus amplement détaillé ci-après :
3. Pour les raisons qui suivent, le requérant demande la suspension temporaire de l'Action québécoise :

II. LITISPENDANCE

4. Le 22 janvier 2021, Adam Alteen, représenté par le cabinet Slater Vecchio LLP, a déposé un *Notice of Civil Claim* devant la Cour suprême de Colombie-Britannique en vertu du *Class Proceedings Act*, R.S.B.C. 1996, c. 50, dossier de Cour S210739, contre OTTO FUCHS Beteiligungen KG, Leiber Group GmbH & Co. KG, Strojmetal Aluminium Forging GmbH, Bharat Forge Aluminiumtechnik GmbH, Presswerk Krefeld GmbH & Co. KG et Hirschvogel Aluminium GmbH (**l'Action de Colombie-Britannique**), le tout tel qu'il appert du Notice of Civil Claim ci-joint comme **pièce R-1**. Le groupe proposé que Monsieur Alteen désire représenter est défini au paragraphe 10 de sa demande et se lit ainsi :

All persons resident in Canada during the Class Period [Note: de avril 2006 jusqu'à au moins avril 2018, para. 1 de l'Action de Colombie-Britannique] who purchased or leased an automobile, or purchased Replacement Parts, containing Forged Aluminum Products manufactured, marketed, distributed and/or sold by the Defendants (the "Class" and "Class Members")

5. Le procureur soussigné, qui est également membre du Barreau de la Colombie-Britannique, collabore avec les avocats de l'Action de Colombie-Britannique afin de faire avancer la présente action collective à portée nationale;
6. En effet, l'Action québécoise et l'Action de Colombie-Britannique soulèvent essentiellement les mêmes questions juridiques et factuelles et incluent les mêmes membres;
7. Les parties cherchent à éviter la possibilité de jugements contradictoires et à assurer une utilisation saine et efficace des ressources judiciaires, tout en protégeant les intérêts des membres proposés du groupe résidant au Québec comme l'exige l'article 577 C.p.c.;
8. Le requérant demande donc la suspension de l'Action québécoise en attendant un jugement définitif sur la certification du recours collectif putatif en Colombie-Britannique, ou plus tôt si nécessaire à la demande du requérant ou si ordonné par la Cour;

9. Pour les raisons exposées ci-dessous, le requérant soutient qu'il est dans l'intérêt de la justice et conforme aux principes de proportionnalité et d'économie judiciaire que les questions qui se chevauchent soulevées dans l'Action québécoise et l'Action de Colombie-Britannique soient tranchées par un seul tribunal, que les parties proposent d'être la Cour suprême de la Colombie-Britannique (les intimées ne s'opposent pas à cette demande);
10. Les parties soumettent qu'il y a litispendance entre l'Action québécoise et l'Action de Colombie-Britannique, car il y a identité des parties, cause et objet;
11. Il existe une identité d'objet car tant l'Action québécoise que l'Action de Colombie-Britannique visent à faire autoriser / certifier un recours collectif. La Cour d'appel du Québec a conclu que l'objet est le «bénéfice juridique immédiat qu'il veut faire reconnaître par le tribunal» (Hotte c. Servier, [1999] R.J.Q. 2598 (C.A.));
12. L'Action québécoise et l'Action de Colombie-Britannique reposent toutes les deux sur les mêmes allégations de faits essentielles et font valoir les mêmes causes d'action, à savoir l'existence alléguée d'un complot, sous la forme d'arrangements, d'accords ou autrement, pour fixer l'approvisionnement, répartir les ventes et les marchés de production, éliminer la concurrence et truquer les offres pour certains produits en aluminium forgé qui sont indispensable à la production automobile depuis au moins 2006, causant un préjudice économique aux acheteurs directs et indirects et ouvrant la porte à l'octroi de dommages punitifs;
13. Les causes d'action invoquées dans l'Action de Colombie-Britannique sont pratiquement les mêmes que les causes d'action revendiquées dans l'Action québécoise;
14. Dans les circonstances, les droits des membres putatifs dans l'Action québécoise seront mis de l'avant d'une façon similaire dans l'Action de Colombie-Britannique;
15. Les procureurs du requérant soumettent qu'en ayant recours à une seule procédure, les membres putatifs du Québec bénéficieront d'une économie judiciaire et que leurs procureurs ne consacreront pas de temps et d'argent simultanément dans plus d'une juridiction;
16. Les avocats du groupe dans le cadre de l'Action québécoise maintiendront le site internet bilingue créé pour cette action collective lors de son dépôt initial en décembre 2020 (<https://champlainavocats.com/action-collective/german-steel-car-manufacturers/> et <https://champlainlawyers.com/class-action/german-steel-car-manufacturers/>) afin de tenir les membres du groupe putatifs de l'Action québécoise informés de tous les développements importants dans l'Action de Colombie-Britannique;

17. Les procureurs soussignés s'engagent à fournir à cette Cour une mise à jour du statut de l'Action de Colombie-Britannique sur une base biannuelle et à aviser cette Cour dans les 30 jours de tout développement significatif dans l'Action de Colombie-Britannique qui pourrait affecter le cours de l'Action québécoise.

POUR CES MOTIFS, PLAISE À LA COUR:

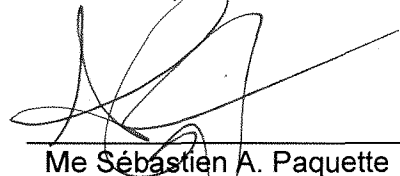
ACCORDER la présente Demande;

SUSPENDRE le présent dossier jusqu'à 90 jours suivant un jugement final sur la certification dans le recours collectif putatif déposé par Adam Alteen devant la Cour suprême de la Colombie-Britannique dans le dossier de la Cour numéro S210739, ou plus tôt à la demande du requérant ou si ordonné par la Cour;

PREND ACTE de l'engagement des avocats du groupe de fournir à cette Cour une mise à jour sur le statut de l'Action de Colombie-Britannique sur une base biannuelle et d'aviser la Cour dans les 30 jours de tout développement significatif dans l'Action de Colombie-Britannique qui pourrait affecter le cours de l'Action québécoise;

LE TOUT SANS FRAIS

Montréal, le 23 novembre 2021



Me Sébastien A. Paquette
CHAMPLAIN AVOCATS
Avocats du Requéant

CANADA

PROVINCE DE QUEBEC
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DÉCLARATION ASSERMENTÉE

Je soussigné, Sébastien A. Paquette, avocat pratiquant au 1434, rue Sainte-Catherine Ouest, Bureau 200, à Montréal (Québec), H3G 1R4, déclare solennellement ce qui suit :

1. Je suis procureur en Demande dans la présente instance;
2. Tous les éléments contenus à la Demande pour suspension temporaire de l'action collective sont vrais.

Et j'ai signé à Montréal, ce 23 novembre 2021 :


SÉBASTIEN A. PAQUETTE

Assermenté devant moi à Montréal, ce 23^e jour de novembre 2021,


Danny Ablacatoff, avocat

Avocat # 324647-7

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INVENTAIRE DES PIÈCES

PIÈCE R-1:

Copie de la Notice of Civil Claim déposée par Adam Alteen le 22 janvier 2021, portant le numéro de Cour S210739.

Montréal, le 23 novembre 2021



Me Sébastien A. Paquette

CHAMPLAIN AVOCATS

Avocats du Requérant

JAN 22 2021

S 210739

No.
Vancouver Registry*In the Supreme Court of British Columbia*

Between

ADAM ALTEEN

PLAINTIFF

and

OTTO FUCHS BETEILIGUNGEN KG, HIRSCHVOGEL ALUMINUM GMBH, LEIBER
GROUP GMBH & CO. KG, STROJMETAL ALUMINUM FORGING GMBH, PRESSWERK
KREFELD GMBH & CO. KG, AND BHARAT FORGE ALUMINUMTECHNIK GMBH

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM
(Price Fixing – Forged Aluminum Products)

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview

1. Beginning at least as early as April 2006 and continuing until at least April 2018 (“**Class Period**”), senior executive and employees of the Defendants (as described below) conspired amongst themselves and with others not presently known to the Plaintiff, to 1) fix, maintain, increase or control the price for the supply of certain Forged Aluminum Products (as defined below), 2) to allocate sales, territories, customers or markets for the production or supply of certain Forged Aluminum Products, 3) to fix, maintain, control, prevent, lessen or eliminate the production or supply of certain Forged Aluminum Products, and/or 4) to rig bids for certain Forged Aluminum Products (collectively the “**Conspiracy**”, as further defined below). In December 2020, the Defendants were fined and censured by German competition authorities for their participation in the Conspiracy.

2. The Defendants are competitors in the worldwide market for Forged Aluminum Products, including in the European, Asian and North American automotive sectors. The Conspiracy affected Forged Aluminum Products installed in a variety of makes and models of automobiles manufactured for, exported to, purchased and driven in Canada and, specifically, in British Columbia. To the knowledge of the Defendants, the Conspiracy also affected Forged Aluminum Products sold directly to end consumers in British Columbia and Canada, as replacement parts, after-market or upgrade parts for a variety of makes and models of automobiles (“**Replacement Parts**”). The Replacement Parts were capable of direct installation on a vehicle and could be purchased by end consumers as standalone products.

3. The Conspiracy was directed at:

- a. Manufacturers of vehicles including cars, trucks and motorcycles (“**Automotive Manufacturers**”) who purchased Forged Aluminum Products directly or indirectly

from the Defendants, or one of them, to in turn sell directly to consumers as constituent parts of a vehicle;

- b. original equipment manufacturers (“OEMs”), who purchased Forged Aluminum Products directly or indirectly from the Defendants, or one of them, before further processing the Forged Aluminum Products or selling the Forged Aluminum Products to Automotive Manufacturers;
- c. component manufacturers (“Tier I Manufacturers”) who purchased the Forged Aluminum Products directly from the Defendants, or one of them, before further processing the Forged Aluminum Products or selling the Forged Aluminum Products to OEMs;
- d. purchasers of Replacement Parts.

4. As a consequence of the Defendants’ collusive conduct, the Defendants and their co-conspirators eliminated or reduced competition for Forged Aluminum Products in *inter alia* the automotive sector. Through their conduct, the Defendants effectuated an overcharge for the Forged Aluminum Products purchased by Automotive Manufacturers, OEMs and Tier I Manufacturers, and Replacement Parts purchased by end consumers.

5. The artificially inflated prices that Automotive Manufacturers, OEMs and Tier I Manufacturers paid for the Forged Aluminum Products were passed on to indirect purchasers of the Forged Aluminum Products, including persons who purchased or leased vehicles containing the Forged Aluminum Products or Replacement Parts (the “Overcharge”).

6. Persons who acquired Replacement Parts for their vehicles from re-sellers of Forged Aluminum Products were also affected by the Overcharge.

7. The Conspiracy therefore raised prices for all members of the proposed Class, all of whom suffered losses as a consequence of the Defendants’ unlawful conduct. The Defendants obtained benefits in the form of the Overcharge as a result of their wrongdoing.

8. Through this suit Canadian direct and indirect purchasers seek to hold the Defendants accountable for their unlawful conduct.

The Parties

The Plaintiff

9. The Plaintiff, Adam Alteen, is a resident of British Columbia. He leased a 2018 Audi A5 Sportback 2.0T in 2017 in British Columbia (the “**Vehicle**”). The Vehicle contains Forged Aluminum Products manufactured, marketed, distributed and/or sold by the Defendants or some of them. The Plaintiff was therefore an indirect purchaser – and ultimate consumer – of the Defendants’ Forged Aluminum Products.

10. The Plaintiff brings this claim on behalf of himself and on behalf of:

All persons resident in Canada during the Class Period who purchased or leased an automobile, or purchased Replacement Parts, containing Forged Aluminum Products manufactured, marketed, distributed and/or sold by the Defendants (the “**Class**” and “**Class Members**”)

11. The Class definition may be further refined in the Plaintiff’s application for class certification upon compliance by the Defendants with section 5(5) of the *Class Proceedings Act* in particular with respect to affected makes and models of vehicles and the identity of replacement parts sold in Canada during the Class Period.

The Defendants

12. The Defendant OTTO FUCHS Beteiligungen KG (f/k/a OTTO FUCHS – Kommanditgesellschaft) (“**OTTO FUCHS**”) is a German corporation with a registered office in Meinerzhagen, Germany. During the Class Period, OTTO FUCHS manufactured, marketed, sold, and/or distributed Forged Aluminum Products including *inter alia* vehicle wheels to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. OTTO FUCHS is a vertically-integrated company that describes itself as an OEM in addition to being an aluminum forger.

13. The Defendant Leiber Group GmbH & Co. KG (“**Leiber Group**”) is a German corporation with a registered office in Emmingen-Liptingen, Germany. During the Class Period, Leiber Group manufactured, marketed, sold, and/or distributed Forged Aluminum Products

including *inter alia* engine, chassis, body and drive flange automotive parts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

14. The Defendant Strojmetal Aluminium Forging GmbH (“**Strojmetal**”) is a German corporation with a registered office in Singen Hohentwiel, Germany. During the Class Period, Strojmetal manufactured, marketed, sold, and/or distributed Forged Aluminum Products, including *inter alia* suspension, decorative and powertrain automotive parts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

15. The Defendant Bharat Forge Aluminiumtechnik GmbH (“**Bharat**”) is a German corporation with a registered office in Brand-Erbisdorf, Germany. During the Class Period, Bharat manufactured, marketed, sold, and/or distributed Forged Aluminum Products including *inter alia* swivel and bearing automotive parts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. The Defendant Bharat cooperated with German competition authorities in their investigation of the Conspiracy.

16. The Defendant Presswerk Krefeld GmbH & Co. KG (“**Presswerk**”) is a German corporation with a registered office in Krefelt, Germany. During the Class Period, Presswerk manufactured, marketed, sold, and/or distributed Forged Aluminum Products including *inter alia* linkage and suspension, brake foundation and steering automotive parts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. The Defendant Presswerk cooperated with German competition authorities in their investigation of the Conspiracy.

17. The Defendant Hirschvogel Aluminium GmbH (“**Hirschvogel**”) is a German corporation with a registered office in Gerstungen, Germany. During the Class Period, Hirschvogel manufactured, marketed, sold, and/or distributed Forged Aluminum Products including *inter alia* chassis, wheel and transmission automotive parts to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. The Defendant Hirschvogel cooperated with German competition authorities in their investigation of the Conspiracy.

18. Each of the Defendants was an agent of the other for the purposes of manipulating the market and prices for Forged Aluminum Products. At all material times, the Defendants functioned as a joint enterprise in the Conspiracy to suppress and eliminate competition in the Forged Aluminum Products industry.

Unnamed Co-Conspirators

19. Other corporations, persons, partnerships, firms and/or individuals not named in this pleading, because their identities are currently unknown to the Plaintiff, participated as co-conspirators in the Conspiracy and performed acts and made statements and agreements in furtherance of the Conspiracy (the “Co-conspirators”). The Co-conspirators were all persons whom it is reasonable to believe would have, in the absence of the Conspiracy, been likely to have competed with the Defendants with respect to Forged Aluminum Products.

20. Whenever reference is made in this pleading to any act, communication, agreement or transaction of a corporation, the Plaintiff is alleging that the corporation engaged in the act, communication, agreement or transaction by or through its directors, officers, employees and/or agents while they were actively engaged in the direction, management and/or control of the corporation’s business.

The Automobile Industry

21. The automobile industry has certain important economic characteristics. In particular, demand for components used by Automotive Manufacturers is inelastic. Demand is said to be “inelastic” if an increase in the price of a product results in only a small decline in the quantity sold of that product, if any. Customers have nowhere to turn for alternative products of similar quality. Demand for Forged Aluminum Products is highly inelastic because there are no close substitutes for these products.

22. In addition, the ultimate purchaser of a vehicle must purchase components made of Forged Aluminum Products as an essential part of the vehicle. Because of the intensely competitive nature of the automobile industry, the costs of inputs, including Forged Aluminum Products, are passed on by the Automotive Manufacturers to the ultimate purchasers of vehicles, in whole or in part.

Forged Aluminum Products

23. Forged Aluminum Products include forged aluminum and aluminum alloys in various states of processing, from semi-finished aluminum products in need of further machine processing to finished aluminum products that require no further machine processing (the **“Forged Aluminum Products”**).

24. Forging is a manufacturing process whereby a solid block of metal is pressed, pounded and squeezed under pressure to produce high-strength parts.

25. Raw aluminum requires processing before it is suitable for forging. Aluminum is particularly well-suited to forging for use in countless applications due to its light weight, resistance to corrosion, and its durability. Aluminum may be forged from a relatively pure state or in conjunction with other metals to form aluminum alloy products. Forged aluminum components are commonly found at points of stress and shock, including, but not limited to, pistons, gears and wheel spindles in automobiles and aircraft.

26. There are a number of costs associated with producing Forged Aluminum Products. In addition to the raw materials and labour, considerable amounts of energy costs are required to produce the high temperatures and pressure required to make Forged Aluminum Products. A variety of equipment is required, including dies, hammers, mechanical and screw presses and hydraulic presses. Materials such as water, caustic soda, nitric acid, lubricant and cleaning products are required. Collectively these costs are the **“Production Costs”**.

27. The Production Costs create a high barrier to entry that made it less likely that new competitors would enter the Forged Aluminum Product market and undercut the Defendants' cartel prices.

28. The Defendants' collusive activity described herein engages all aspects of the manufacture of Forged Aluminum Products from partial forging of aluminum and aluminum alloys to be further processed by Tier 1 Manufacturers and OEMs to the design and manufacture of semi-finished and finished aluminum products to be included in vehicles and other machines.

29. The Defendants' Forged Aluminum Products are sold in the automotive, aviation and technology sectors worldwide, including in Canada.

30. The sale of the Forged Aluminum Products and the Conspiracy which led to the Overcharge resulted in substantial revenues for the Defendants during the Class Period.

31. The Forged Aluminum Products at issue are standard features of every new vehicle and are installed by OEMs in new vehicles as part of the manufacturing process. Replacement Parts are also installed in vehicles to replace worn out, defective or damaged Forged Aluminum Products. Forged Aluminum Products are typically manufactured for specific automobiles, and are developed over a year in advance of an automobile model entering the market.

32. Before ordering Forged Aluminum Products, prospective purchasers such as Automotive Manufacturers, OEMs and, in some circumstances, Tier I Manufacturers, request pricing from part suppliers through requests for quotation ("RFQs").

33. Once a supplier is awarded a contract to supply parts for a particular automobile model or other machine, the supplier typically supplies the parts for the duration of the model. Once production of the model-specific part has begun, purchasers issue annual price reduction requests ("APRs") to the part suppliers throughout the term of the supply contract.

34. In response to RFQs for certain Forged Aluminum Products, the Defendants and their Co-conspirators submitted price quotes to various Automotive Manufacturers, OEMs and Tier I Manufacturers. In response to their submitted quotes, the Defendants and their Co-conspirators were awarded certain supply contracts.

35. Pursuant to these supply contracts, the Defendants and their Co-conspirators manufactured certain Forged Aluminum Products and then supplied the Forged Aluminum Products to various Automotive Manufacturers, OEMs and Tier I Manufacturers for installation 1) in vehicles manufactured in Europe and elsewhere and sold worldwide, including in Canada, and/or 2) as Replacement Parts.

36. The identities of all affected Automotive Manufacturers, OEMs and Tier I Manufacturers who entered into supply contracts with the Defendants and their Co-conspirators are currently

unknown to the Plaintiff but well-known to the Defendants. A list of makes and models of vehicles sold in Canada and known by the Plaintiff to contain the Defendants' Forged Aluminum Products is included as **Schedule "A"** to this pleading.

The Conspiracy

37. The Defendants willingly colluded as between themselves and with their Co-conspirators to use unlawful means to injure the economic interests of

- a. Automotive Manufacturers;
- b. OEMs;
- c. Tier I Manufacturers;
- d. indirect purchasers of Forged Aluminum Products and Replacement Parts.

38. Beginning at least as early as April 2006 and continuing until at least April 2018, the exact dates being unknown to the Plaintiff but well known to the Defendants, the Defendants and their Co-conspirators knowingly entered into a continuing agreement, understanding and concert of action to: increase or maintain the prices of certain Forged Aluminum Products; suppress and eliminate competition with respect to the manufacture, marketing, sale and/or distribution of certain Forged Aluminum Products; and to conceal their collusive conduct from Automotive Manufacturers, OEMs, Tier I Manufacturers, industry stakeholders, regulators, and consumers (the "**Agreement**").

39. The substantial terms of the Agreement included:

- a. fixing, maintaining, increasing or controlling the price for the supply of certain Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- b. allocating sales, territories, customers or markets for the production or supply of certain Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I

Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;

- c. fixing, maintaining, controlling, preventing, lessening or eliminating the production or supply of certain Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere, and/or
- d. engaging in bid-rigging with respect to quotes for the supply of certain Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere.

40. With respect to the Conspiracy, "price" includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of the Forged Aluminum Products.

41. Bid-rigging, with respect to the Conspiracy, means

- a. an agreement or arrangement between or among the Defendants and their Co-conspirators whereby one or more of those persons agreed or undertook not to submit a bid or tender in response to a call or request for bids or tenders, or agreed or undertook to withdraw a bid or tender submitted in response to such a call or request; or
- b. the submission, in response to a call or request for bids or tenders, of bids or tenders arrived at by the agreement or arrangement between or among the Defendants and their Co-conspirators;

where the agreement or arrangement was not made known to Automotive Manufacturers, OEMs Tier I Manufacturers and/or purchasers of Replacement Parts calling for or requesting the bids or tenders for Forged Aluminum Products at or before the time when any bid or tender was submitted or withdrawn by the Defendants or their Co-conspirators.

42. For the purpose of carrying out the Conspiracy, the Defendants and their Co-conspirators engaged in conduct that included, among other things:

- a. participating in meetings, conversations and other communications to discuss the bids and price quotations to be submitted to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- b. participating in meetings, conversations and other communications to discuss the allocation among the companies of certain sales, territories, customers or markets for the production or supply of Forged Aluminum Products;
- c. agreeing, during those meetings, conversations and communications on bids and price quotations (including APRs) to be submitted to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere or, alternatively, agreeing that one or more of the companies not submit bids in response to RFQs or that one or more companies withdraw bids submitted in response to RFQs;
- d. agreeing, during those meetings, conversations and communications to fix, maintain, increase or control the price (including APRs) for the supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- e. agreeing, during those meetings, conversations and communications to allocate among the companies certain sales, territories, customers or markets for the production or supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- f. agreeing, during those meetings, conversations and communications to fix, maintain, control, prevent, lessen or eliminate the production or supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- g. in order to effectuate the Agreement, exchanging information on:

- i. bids and price quotations (including APRs) to be submitted to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
 - ii. the allocation of certain sales, territories, customers or markets for the production or supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere; and/or
 - iii. the production and supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- h. in accordance with the Agreement, submitting bids and price quotations (including APRs) to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere or, alternatively, declining to submit bids in response to RFQs or withdrawing bids submitted in response to RFQs;
- i. in accordance with the Agreement, fixing, maintaining, increasing and/or controlling the price (including APRs) for the supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- j. in accordance with the Agreement, allocating among the companies certain sales, territories, customers and/or markets for the production or supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- k. in accordance with the Agreement, fixing, maintaining, controlling, preventing, lessening and/or eliminating the production and/or supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or

purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;

- l. selling Forged Aluminum Products to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere at collusive and non-competitive prices; and
- m. accepting payment for Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere at collusive and non-competitive prices which resulted in increased revenues for the Defendants.

43. The acts in furtherance of the Conspiracy were carried out, at least in part, within Canada and were an unreasonable restraint of trade and commerce.

44. Each of the Defendants aided, abetted and/or counselled the other Defendants and Co-conspirators in the commission of the Conspiracy.

45. The conduct of the Defendants and their Co-conspirators was also contrary to the competition laws of the United States, Japan and various European nations including Germany, where it was illegal and contrary to Section 1 of the *Sherman Antitrust Act*, Article 101 of the *Treaty of the Functioning of the European Union*, Article 53 of the *European Economic Area Agreement*, section 1 of the *German Act Against Restraint of Competition*, and Article 19 of the *Japanese Antimonopoly Act*.

46. Further, for the purpose of giving effect to the Conspiracy, beginning at least as early as April 2006 and continuing until at least April 2018, the exact dates being unknown to the Plaintiff but well known to the Defendants, the Defendants wherever incorporated who carried on business in Canada, implemented, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication to the corporation or any person from a person in a country other than Canada who was in a position to direct or influence the policies of the corporation, which communication was for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada, whether or not any director or officer of the corporation in Canada had knowledge of the conspiracy, combination, agreement or arrangement.

47. The conduct of the Defendants and their Co-conspirators increased the price of Forged Aluminum Products in Canada, including in the province of British Columbia, and in Europe, the United States, Mexico, Japan and elsewhere. The Plaintiff and Class Members were overcharged for Forged Aluminum Products.

48. As a consequence of the Overcharge, economic losses and damages were incurred by direct purchasers of the Forged Aluminum Products, including the Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts.

49. Economic losses and damages were also incurred by indirect purchasers of Forged Aluminum Products who 1) purchased and/or leased vehicles containing Forged Aluminum Products, and/or 2) purchased Replacement Parts for their vehicles, including the Plaintiff and Class Members.

50. The Defendants and their Co-conspirators intended to cause damage to the Plaintiff and Class Members. Alternatively, the Defendants and their Co-conspirators knew or ought to have known that their actions would injure the Plaintiff and Class Members as the ultimate purchasers and consumers of the Forged Aluminum Products.

51. The conduct of the Defendants in furtherance of the Conspiracy was unlawful and inequitable. The increased revenues that the Defendants realized as a consequence of artificially inflating the prices of Forged Aluminum Products are ill-gotten profits.

52. The Defendants are each responsible for the actions of all of the Co-conspirators, even if a particular Defendant did not manufacture a particular Forged Aluminum Product, because the Conspiracy affected all the Forged Aluminum Products.

Investigations into Cartel and Resulting Fines

53. On December 23, 2020, the German Bundeskartellamt announced that it had imposed fines totaling approximately €175 million on the Defendants OTTO FUCHS, Leiber Group, Strojmetal, Bharat and Presswerk in relation to their participation in the Conspiracy. No fine was imposed on the Defendant Hirschvogel for its participation in the Conspiracy in accordance with German whistleblower protection legislation, under which Hirschvogel successfully applied for

leniency. The Defendants Bharat and Presswerk received partial leniency in the form of reduced fines for their cooperation with German authorities in uncovering the Conspiracy.

Discoverability

54. Forged Aluminum Products are not exempt from competition regulation and thus, the Plaintiff reasonably considered the Forged Aluminum Products industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the Defendants' prices for Forged Aluminum Products. Accordingly, the Plaintiff and Class Members did not discover, and could not discover through the exercise of reasonable diligence, the existence of the Conspiracy before its initial public disclosure on December 23, 2020.

55. The Defendants and their Co-conspirators actively, intentionally and fraudulently concealed the existence of the Conspiracy from the public, including the Plaintiff and Class Members. The Defendants and their Co-conspirators represented to customers and others that their pricing and bidding activities were unilateral, thereby misleading the Plaintiff. The affirmative acts of the Defendants alleged herein, including acts in furtherance of the Conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

56. The Defendants and their Co-conspirators' anti-competitive Conspiracy was self-concealing. The Defendants took active, deliberate and wrongful steps to conceal their participation in the Conspiracy. Because of the Defendants and their Co-conspirators' agreements, understandings and conspiracies were kept secret, the Plaintiff and Class Members were unaware of the Defendants and their Co-conspirators' unlawful conduct during the relevant period, and they did not know, at the time, that they were paying supra-competitive prices for Forged Aluminum Products and/or new vehicles containing Forged Aluminum Products.

Part 2: RELIEF SOUGHT

57. The Plaintiff claims, on his own behalf and on behalf of a Class of similarly situated persons:

- (a) an order certifying this action as a class proceeding and appointing him as representative plaintiff under the *Class Proceedings Act*, RSBC 1996, c 50;
- (b) general damages and special damages for civil conspiracy;
- (c) statutory damages pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34;
- (d) restitution for unjust enrichment or, alternatively, disgorgement;
- (e) punitive damages;
- (f) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 79;
- (g) investigative costs and the costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34; and
- (h) such further and other relief this Honourable Court deems just.

Part 3: LEGAL BASIS

Generally

58. The Plaintiff pleads and relies *inter alia* on the *Class Proceedings Act*, the *Competition Act*, the *Court Order Interest Act*, the *Court Jurisdiction and Proceedings Transfer Act*, the *Limitation Act*, the *Criminal Code*, and the common law generally, including civil conspiracy and unjust enrichment.

Breaches of Part VI of the *Competition Act*

59. The conduct of the Defendants and their Co-conspirators was contrary to Part VI of the *Competition Act*. In particular, the Defendants have breached the *Competition Act*, s 45, as amended from time to time, through their actions and the Conspiracy.

From the beginning of the Class Period up to and including March 11, 2010

60. The Defendants were “persons” within the meaning of the Competition Act, s 45 as it stood prior to its amendment on March 12, 2010 (the “Former Competition Act”).

61. Forged Aluminum Products were “products” within the meaning of the Former Competition Act, ss 2(1) and 45.

62. As set out above, by means of the Conspiracy, the Defendants conspired, combined, agreed and arranged to:

- a. limit unduly the facilities for supplying or dealing in Forged Aluminum Products;
- b. unreasonably enhance the price of Forged Aluminum Products;
- c. prevent or lessen unduly competition in the sale and supply of Forged Aluminum Products; and
- d. otherwise restrain or injure competition unduly in the market for Forged Aluminum Products;

whether or not the Conspiracy eliminated all or virtually all competition in the market for Forged Aluminum Products.

63. As a result of the Defendants’ breaches of the former *Competition Act*, s 45(1) the Plaintiff and Class Members suffered loss and damage in the form of the Overcharge.

64. The Plaintiff and Class Members are entitled to recover from the Defendants an amount equal to the loss or damage suffered by them in the full amount of the Overcharge, under the former Competition Act, s 36(1)(a), as well as the costs of investigation for the portion of the Class Period ending March 11, 2010.

From March 12, 2010 to the end of the Class Period

65. The Defendants are and were “competitors” within the meaning of the *Competition Act*, s-ss 45(1) and (8).

66. Forged Aluminum Products are “products” within the meaning of the *Competition Act*, ss 2 and 45(1).

67. The worldwide, European, German, and Canadian automotive sectors are “territories” or “markets” in the worldwide market for Forged Aluminum Products, within the meaning of the *Competition Act*, s 45(1)(b).

68. As set out above, by means of the Conspiracy, the Defendants have conspired, agreed and arranged to:

- a. fix, maintain, increase or control the price for the supply of Forged Aluminum Products;
- b. allocate sales, territories, customers or markets for the supply of Forged Aluminum Products; and
- c. fix, maintain, control, prevent, lessen or eliminate the supply of Forged Aluminum Products.

69. As a result of the Defendants’ breaches of the *Competition Act*, s 45, the Plaintiff and Class Members have suffered loss and damage in the form of the Overcharge.

70. The Plaintiff and Class Members are entitled to recover from the Defendants an amount equal to the loss or damage suffered by them in the full amount of the Overcharge, under the *Competition Act*, s 36(1)(a), as well as the costs of investigation for the portion of the Class Period beginning March 12, 2010.

Civil Conspiracy

71. Civil conspiracy requires 1) an agreement between two or more persons, 2) concerted action taken pursuant to the agreement, and 3) actual damage suffered by the plaintiff. If the defendant’s action is lawful, the conspirators must have intended to cause damage to the plaintiff. If the defendant’s action is unlawful, the conspirators must have or ought to have known that their action would injure the plaintiff.

72. In this case, each of the Defendants entered into a continuing agreement with each of the other Defendants to 1) increase or maintain the prices of Forged Aluminum Products, and/or 2) suppress and eliminate competition with respect to the manufacture, marketing, sale and/or distribution of Forged Aluminum Products, and to conceal their Agreement from Automotive Manufacturers, OEMs, Tier I Manufacturers, purchasers of Replacement Parts and industry stakeholders.

73. The Defendants also entered into a continuing agreement with their Co-conspirators, who were their competitors with respect to Forged Aluminum Products, to:

- a. increase or maintain the prices of Forged Aluminum Products, and/or
- b. suppress and eliminate competition with respect to the manufacture, marketing, sale and/or distribution of Forged Aluminum Products, and to conceal their Agreement from Automotive Manufacturers, OEMs, Tier I Manufacturers, purchasers of Replacement Parts and industry stakeholders.

74. Pursuant to the Agreement, the Defendants and their Co-conspirators:

- a. fixed, maintained, increased and/or controlled the price for the supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere,
- b. allocated sales, territories, customers or markets for the production and/or supply of the Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere;
- c. fixed, maintained, controlled, prevented, lessened and/or eliminated the production or supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere; and/or

- d. engaged in bid-rigging with respect to quotes for the supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs, Tier I Manufacturers, and/or purchasers of Replacement Parts in Europe, Canada, the United States, Japan and elsewhere.

75. The conduct of the Defendants and their Co-conspirators was unlawful, in breach of the *Competition Act* and the U.S., European and Japanese legislation set out in Part 1, and the Defendants and their Co-conspirators knew or ought to have known that their actions would injure the Plaintiff and Class Members.

76. The Plaintiff and Class Members suffered loss and damage as a consequence of the Agreement and the concerted action of the Defendants taken pursuant to the Agreement.

77. The Plaintiff and Class Members should be compensated for their losses by an award of damages.

Unjust Enrichment

78. As a result of the unlawful conduct of the Defendants and their Co-conspirators, the Defendants benefited from the increased prices of Forged Aluminum Products which resulted in increased revenue for the Defendants or some of them.

79. The Plaintiff and Class Members suffered a corresponding deprivation as a consequence of the inflated prices of Forged Aluminum Products.

80. There was no juristic reason or justification for the enrichment of the Defendants; conversely, the conduct of the Defendants and their Co-conspirators was unlawful. In particular, any contracts by which the Defendants received their enrichment are void or voidable as a result of the breaches of the *Competition Act*, the U.S., European and Japanese legislation set out in Part 1, the *Criminal Code*, and as a common law restraint of trade.

81. Restitution should be made to the Plaintiff and Class Members. Alternatively, the Defendants should be compelled to disgorge the profits of their wrongdoing in the form of the Overcharge.

Joint and Several Liability

82. The Defendants are jointly and severally liable for the actions of all of the Co-conspirators and for the damages allocated to each Defendant.

Punitive Damages

83. A punitive damage award in this case is necessary to express society's condemnation of the conduct engaged in by the Defendants and to achieve the goals of both specific and general deterrence.

84. The Defendants and their Co-conspirators intentionally engaged in unlawful conduct for their personal financial gain. The conduct of the Defendants was planned and deliberate. It lasted for years. The Defendants profited from their misconduct. Their conduct was high-handed and represented a marked departure from ordinary standards of decent behaviour.

85. Compensatory damages are insufficient in this case. The conduct of the Defendants merits punishment and warrants a claim for punitive damages.

Limitation Period

86. The Defendants willfully concealed the unlawfulness of their scheme and actions from the Plaintiff and Class Members, and the public. The Plaintiff and Class Members rely on the doctrine of fraudulent concealment and *Pioneer Corp. v. Godfrey*, 2019 SCC 42.

87. In addition, the Plaintiffs or Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by acts of the Defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until December 23, 2020.

88. The Plaintiff and Class Members rely on the doctrines of postponement and discoverability to postpone the running of the limitation period until December 23, 2020.

89. The Plaintiffs and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular ss 8, 21(3). In the alternative, or in addition, the Plaintiffs and Class Members rely on the *Limitation Act*, SBC 2012, c 13, s 30 and the *Limitation Act*, RSBC 1996, c

266. In addition, the Plaintiffs and Class Members plead and rely on the *Emergency Program Act*, Ministerial Order No. M089 and related enactments to suspend the running of the limitation period from March 26, 2020 to March 25, 2021.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this pleading on the Defendants outside British Columbia on the grounds that:

- (a) this action concerns restitutionary obligations that, to a substantial extent, arose in British Columbia section 10(f) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28;
- (b) this action concerns a tort committed in British Columbia pursuant to section 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28; and
- (c) this action concerns a business carried on in British Columbia, pursuant to section 10(h) of the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28.

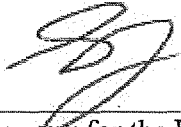
Plaintiff's address for service:

Slater Vecchio LLP
18th Floor, 777 Dunsmuir Street
Vancouver, BC
V7Y 1K4

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

Date: January 22, 2021



For: Lawyer for the Plaintiff
Anthony A. Vecchio, Q.C.
Slater Vecchio LLP

And

Mathew Good
Mathew P Good Law Corp

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

SCHEDULE A

Vehicles Sold in Canada Containing the Forged Aluminum Products at Issue

Alfa Romeo			
Stelvio	Giulia		
Aston Martin			
V12			
Audi			
A3	A4	A5	A6
A7	A8	Q3	Q5
Q7	Q8	S3	S6
S8	SQ8	RS4	RS5
RS6 Avant	RS7	R8	TT
TT RS	E-TRON		
Bentley			
Continental GT			
BMW			
3-Series/M3	5-Series/M5	6-Series/M6	7-Series
M2	M4	X2	X3
X5	X6	i3	i8
Chevrolet			
Colorado			
Ferrari			
California	Portofino		
Ford			
Fusion			
Jaguar			
X-Type	XJ		

Lamborghini			
Gallardo	Huracan	Urus	
Mercedes-Benz			
S-Class	SL	SLK	SLC
ST	C-Class	CL	CLS
G-Class	GLC	GLK	GT
GT4	E-Class	Maybach	
MINI			
Clubman	Mini	Countryman	
Porsche			
911S	914	918 Spyder	944
997 Turbo	Boxster	Cayman	Cayenne
Macan	Panamera	Taycan	
Rolls-Royce			
Cullinan	Dawn	Ghost	Phantom
Wraith			
Volkswagen			
Golf	Jetta	Passat	Phaeton
Touareg			
Volvo			
S60	S80	V70	

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This action is a proposed class proceeding concerning violations of Part VI of the *Competition Act*, RSC 1985, c C-34 as well as civil conspiracy, unjust enrichment in the forged aluminum products market.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

Class Proceedings Act, RSBC 1996, c 50

Competition Act, RSC 1985, c C-34

Court Order Interest Act, RSBC 1996, c 79

Court Jurisdiction and Proceeding Transfer Act, SBC 2003, c 28

Nº 500-06-001124-219

COUR SUPÉRIEURE
(Actions collectives)
DISTRICT DE MONTREAL

JEAN NOEL

Requérant

c.

OTTO FUCHS Beteiligungen KG

et

Leiber Group GmbH & Co. KG

et

Strojmetal Aluminium Forging GmbH,

et

Bharat Forge Aluminiumtechnik GmbH

et

Presswerk Krefeld GmbH & Co. KG

et

Hirschvogel Aluminium GmbH

Intimées

**DEMANDE DE SUSPENSION
TEMPORAIRE DE L'ACTION
COLLECTIVE**

(arts. 18, 49, 577 C.p.C. et art.
3137 C.C.Q.)

ORIGINAL

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