CITATION:

ONTARIO SUPERIOR COURT OF JUSTICE

CIVIL ENDORSEMENT FORM

(Rule 59.02(2)(c)(i))

BEFORE:	**Justice/Associate Justice**	**Court File Number**:
	Benjamin T. Glustein	CV-22-00675588-00CP

Title of Proceeding:

BRIAN MCCLOSKEY and KRYSTAN KAPRON — Applicant(s)/ Plaintiff(s)

-v-

KIA CANADA INC; KIA MOTORS CORPORATION; KIA MOTORS AMERICA, INC.; KIA MOTORS MANUFACTURING GEORGIA, INC.; HYUNDAI AUTO CANADA CORP; HYUNDAI MOTOR COMPANY; HYUNDAI MOTOR AMERICA, INC.; HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC — Respondent(s)/ Defendant(s)

Case Management: ☒ **Yes** If so, by whom: **Justice Glustein**	☐ **No**

Participants and Non-Participants:*(Rule 59.02(2)((vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) Plaintiff	JAY STROSBERG	Jay.strosberg@swslitigation.com		**Y**
2) Plaintiff	Justin Smith	Justin.smith@swslitigation.com		**Y**
3) Defendant	Ethan Schiff	schiffe@bennettjomes.com		**Y**
4) Defendant	Cheryl Woodin	woodinc@bennettjones.com		**Y**
5) Defendant	Ilan Ishai	ishail@bennettjones.com		**Y**
6)				

Date Heard: *(Rule 59.02(2)(c)(iii))* September 24, 2026

Nature of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

☒ Motion ☐ Appeal ☐ Case Conference ☐ Pre-Trial Conference ☐ Application

Format of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

☒ In Writing ☐ Telephone ☐ Videoconference ☐ In Person

If in person, indicate courthouse address:

Relief Requested: *(Rule. 59.02(2)(c)(v))*

The Plaintiffs, on consent of the Defendants, seek an Order pursuant to the *Class Proceedings Act, 1992*, SO 1992, c. 6 (the "*CPA*"), (i) certifying this Action as a class proceeding for settlement purposes only; (ii) approving the Pre-Approval Notice and the Notice Plan for its dissemination; (iii) approving the procedures and timelines for opting out of the Settlement Class or objecting to the proposed Settlement; and (iv) appointing RicePoint Administration Inc. dba Verita Global ("Verita") as Administrator to disseminate the Pre-Approval Notice in accordance with the Notice Plan.

Disposition made at hearing or conference (operative terms ordered): *(Rule 59.02(2)(c)(vi))*

Relief to go as sought. Order to go as per attached.

Costs: On a **N/A** indemnity basis, fixed at $ are payable by to [when]

Brief Reasons, if any: *(Rule 59.02(2)(b))*

Certification for settlement purposes

I adopt the test in *Cass v WesternOne Inc*, 2018 ONSC 4794 at para. 46: "[t]he court must be satisfied that all of the requirements for certification are met, even when certification is sought for the purposes of settlement. However, the requirements 'need not be as rigorously applied in a settlement context' [. . .] given the different circumstances associated with actions which have reached settlement [. . .], and because the manageability of the proceeding is not at issue."

Similarly, the court held in *Prins v LG Electronics Canada*, 2024 ONSC 7417, at para. 15, that "in the context of settling a class action, the requirements for certification are not rigorously applied. The test is satisfied where there is a *prima facie* case favouring certification."

On that threshold, the test under s. 5 of the *CPA* is met. I find as follows:

(i) S. 5(1)(a): The Plaintiffs raise causes of action in negligence (negligent design, manufacture, and testing), negligence (failure to warn), breach of warranties, and unjust enrichment.

(ii) S. 5(1)(b): The settlement class is defined as all persons, including individuals and entities, who purchased or leased a Settlement Class Vehicle in Canada, with the exception of Excluded Persons. That definition is objective and allows Settlement Class Members to easily self-identify. Furthermore, the Defendants are in possession of data identifying a large portion of the original and/or subsequent purchasers or lessees of the Settlement Class Vehicles, including contact information for many of these Settlement Class Members. Consequently, class membership will be determined with some precision and Settlement Class Members will be directly notified.

(iii) S. 5(1)(c): The proposed common issue is "Do the Settlement Class Vehicles suffer from a defect that can cause sudden vehicle stalling, catastrophic engine failure and/or non-collision engine fires?". The answer to that question would avoid duplication of fact-finding or legal analysis and is necessary to the resolution of each member's claim.

(iv) S. 5(1)(d): A class proceeding is the preferable procedure in this case because it provides a fair, efficient, and manageable method of resolving the common issue and because it will advance the goals of class proceedings. This Action as a class proceeding is much more manageable than the alternative of potentially hundreds or thousands of individual actions. Pursuing individual actions would be prohibitively expensive.

(v) S. 5(1)(e): The proposed representative plaintiffs are Settlement Class Members with no interests conflicting with the class. They have vigorously prosecuted the claim. The Settlement Agreement and Notice Plan set out a workable method for resolving the proceeding on behalf of the Settlement Class and for notifying Settlement Class Members of the certification for settlement purposes only, the Settlement Approval Hearing, and the process for making a Claim under the Settlement Agreement.

For the above reasons, I certify this action on consent.

Approval of the Pre-Approval Notice

The purpose of the Pre-Approval Notice is to notify Settlement Class Members of the proposed Settlement and to provide them with an opportunity to consider the terms of the Settlement Agreement and to address any of their concerns or objections at the Settlement Approval Hearing. Since the Plaintiffs must also provide notice of certification, the Pre-Approval Notice combines the traditional elements found in a notice of certification with those found in one providing notice of a settlement approval hearing.

The Pre-Approval Notice outlines the following for Settlement Class Members, in plain language: (i) a plain and concise description of the nature of the Action; (ii) that the Action has been certified as a class proceeding for settlement purposes only; (iii) the details of the Settlement Agreement, including information with respect to the benefits available to Settlement Class Members under the proposed Settlement; (iv) the date and location of the Settlement Approval Hearing; (v) that court approval of Class Counsel Fees will be sought at the Settlement Approval Hearing, and that those amounts, if approved, will be paid separately and will not reduce the benefits available to Settlement Class Members under the proposed Settlement; (vi) a description of the right of Settlement Class Members to opt out of the Settlement Class, including the Opt-Out Deadline and the procedure for exercising this right; (vii) a description of the right of Settlement Class Members to file an objection to the proposed Settlement, including the Objection Deadline and the procedure for exercising this right. (viii) the contact information for the Administrator and Class Counsel to whom Settlement Class Members may direct inquiries about the Action and/or the proposed Settlement; and (ix) where to access the Settlement Websites, where more information (including the Settlement Agreement and the Opt-Out Form) is available.

Given that the Defendants have the last-known contact information for a large portion of the original and/or subsequent purchasers and lessees of the Settlement Class Vehicles, disseminating the Pre-Approval Notice by direct email and regular mail is the best means to ensure that the majority of Settlement Class Members are advised of the proposed Settlement and provide the foundation for the Notice Plan.

The proposed Notice Plan also includes indirect notice via digital Internet and social media advertising and through posting on the Settlement Websites and The Canadian Bar Association Class Action Database to help ensure that any Settlement Class Members whose last-known coordinates in possession of the Defendants are no longer current are able to learn of the certification of this Action and the proposed Settlement.

The Settlement Agreement and Notice Plan provide that a further notice (the Approval Notice) will be disseminated if the court decides to approve the proposed Settlement. This second notice will advise Settlement Class Members of the court's approval of the Settlement Agreement and the process for making a Claim under the Settlement Agreement.

Consequently, I am satisfied that the Pre-Approval Notice and the Notice Plan comply with the applicable requirements under the *CPA*. I approve them both.

Approval of the Administrator

I approve the appointment of Verita as the Administrator to, *inter alia*, disseminate the Pre-Approval Notice as provided in the Settlement Agreement and Notice Plan and receive Opt-Out Forms and/or written objection statements from Settlement Class Members prior to the Settlement Approval Hearing, and, more generally, be subject to all of the other terms and conditions set out in the Settlement Agreement, if approved. Verita has consented to this appointment and has extensive experience and expertise in providing notice and other class action

administration services.

Approval of the opt-out process

I approve of the proposed opt-out process. The Pre-Approval Notice contains specific instructions regarding the right to opt out of the Settlement Class pursuant to s 9 of the *CPA*. The Pre-Approval Notice provides these instructions in straightforward and plain language and directs Settlement Class Members to contact the Administrator and/or Class Counsel to learn more about their right to opt out and/or to obtain a copy of the Opt-Out Form.

Conclusion

For the above reasons, I approve the relief sought. Order to go as per attached.

Additional pages attached: ☒ Yes ☐ No

September 25, 2026 , 2026

Date of Endorsement *(Rule 59.02(2)(c)(ii))*



Signature of Judge/Associate Judge *(Rule 59.02(2)(c)(i))*

Justice Glustein