

SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY

APR 10 2019



S-194327

NO. \_\_\_\_\_  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

[REDACTED]

PLAINTIFF

AND:

HYUNDAI AUTO CANADA CORP.,  
HYUNDAI MOTOR COMPANY,  
HYUNDAI MOTOR AMERICA, INC.  
HYUNDAI MOTOR MANUFACTURING ALABAMA LLC,  
KIA CANADA INC.,  
KIA MOTORS CORPORATION,  
KIA MOTORS AMERICA, INC. and  
KIA MOTORS MANUFACTURING GEORGIA, INC.

DEFENDANTS

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

**NOTICE OF CIVIL CLAIM**

This action has been started by the plaintiff(s) 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(s),

- (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,
- © 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(S)

#### **Part 1: STATEMENT OF FACTS**

##### **A. Introduction**

1. The within proposed class proceeding arises out of the Defendants, HYUNDAI AUTO CANADA CORP. ("HACC"), HYUNDAI MOTOR COMPANY ("HMC"), HYUNDAI MOTOR AMERICA, INC. ("HMA"), HYUNDAI MOTOR MANUFACTURING ALABAMA LLC ("HMMA"), KIA CANADA INC. ("KCI"), KIA MOTORS CORPORATION ("KMC"), KIA MOTORS AMERICA, INC. ("KMA") and KIA MOTORS MANUFACTURING GEORGIA, INC. ("KMMG") failure to disclose or remedy serious defects of design and/or manufacturing that can cause the engines of certain of their vehicles ("Affected Class Vehicles") equipped with the Gasoline Direct Injection ("GDI") engines to suddenly stall or to spontaneously burst into flames while in operation.

2. Affected Class Vehicles refers to the following model year Hyundai and Kia vehicles manufactured and/or assembled by the Defendants, HMC, HMMA, KMC, and/or KMMG, and marketed, advertised, distributed and/or sold by the Defendants, HACC, HMC, HMA, KCI, KMC and/or KMA, in Canada, including the Province of British Columbia, equipped with defective GDI engines:

<u>Defendant Manufacturer</u>	<u>Model</u>	<u>Model Year(s)</u>
HMMA	Sonata	2011-2016
HMMA/HMC	Santa Fe Sport	2013-2018
HMC	Tucson	2011-2015
KMC/KMMG	Optima	2011-2016
KMC	Sportage	2012-2016
KMMG	Sorento	2014-2016
KMC	Soul	2012-2016

3. The Defendants knew prior to sale of their respective Affected Class Vehicles that their engines were defective, prone to premature and catastrophic failure and posed an unreasonable risk of non-collision fires all due to inadequate lubrication. Specifically, a design and/or manufacturing defect exists in the GDI engines of the Affected Class Vehicles which contain residual metallic debris from factory machining operations that restricts or blocks oil flow to the engine's moving parts such as connecting rod bearings, prematurely wearing out those parts to the point that the engine parts seize, which stops engine operation while running (the "Engine Defect"). Engine seizure causes internal parts, such as the connecting rods, to break and knock a hole in the engine, permitting fluids to leak and ignite a fire.
4. The Defendants knew or should have known about the Engine Defect before the Affected Class Vehicles went on sale, and they failed to correct the defect or disclose it to consumers. Moreover, once the Affected Class Vehicles were on the road, the Defendants

failed to recall and/or repair them for years.

5. Only recently, after years of concealing serious safety defects, have the Defendants begun to recall the Affected Class Vehicles, but as described more fully below, such a recall will be inadequate to remedy the problem or to compensate consumers who bore the risk that their vehicles might suddenly stall or to spontaneously burst into flames while in operation.
6. As a result of the Engine Defect, proposed class members are exposed to an unreasonable and increased risk of accident, injury or death should their vehicle's engine stall or spontaneously burst into flames while in operation. The Engine Defect also exposes passengers and other drivers on the road to an unreasonable and increased risk of accident, injury or death.
7. The catastrophic engine failure and fire risk is the direct result of the defect known to and concealed by, and still unremedied by the Defendants. Not only did the Defendants actively conceal the Engine Defect from consumers, but they also did not reveal that the Engine Defect poses a serious safety hazard.
8. The Defendants knew or should have known about the Engine Defect from: (1) proposed class member complaints about this issue made directly to the Defendants; (2) technical service bulletins and safety recalls issued by the Defendants for the purpose of attempting to address the Engine Defect; (3) widespread complaints on the internet and lodged with American and Canadian government regulators, including the United States National Highway Transportation Safety Administration ("NHTSA") and Transport Canada; and (4) the Defendants own pre-sale durability testing of the Affected Class Vehicles.
9. Despite the Defendants knowledge of the Engine Defect they failed to initiate a widespread recall in a timely manner or to develop or institute a sufficient fix for the Engine Defect.
10. As a result of the Defendants unfair, misleading, deceptive, and/or fraudulent business practices, in failing to disclose the Engine Defect to the Plaintiff and proposed class members, owners and/or lessees of the Affected Class Vehicles have suffered losses in money and/or property. Had Plaintiff and the proposed class members known of the Engine

Defect, they would not have purchased or leased the Affected Class Vehicles, or would have paid substantially less for them. Engine failure and/or fire in the Affected Class Vehicles also requires expensive repairs, car rentals, car payments, towing charges, time off work, and other miscellaneous costs. Moreover, as a result of the Engine Defect and the Defendants concealment thereof, the Affected Class Vehicles have a lower market value, and are inherently worth less than they would be.

11. The Plaintiff seeks relief for all other owners and/or lessees of the Affected Class Vehicles with the Engine Defect, including, *inter alia*, recovery of damages and/or repair under various provincial consumer protection legislation, breach of implied warranty of merchantability and reimbursement of all expenses associated with the repair and/or replacement of the Affected Class Vehicles.

#### **B. The Parties**

##### **The Representative Plaintiff**

12. [REDACTED]
13. In or about January 2017 the Plaintiff purchased a pre-owned 2012 Hyundai Tucson with a GDI engine from Open Road Audi Boundary, a private car dealership, in Burnaby, British Columbia.
14. The Plaintiff's 2012 Hyundai Tucson was manufactured and/or assembled by the Defendant, HMC, in South Korea and marketed, promoted, advertised, distributed and/or sold in Canada by the Defendants, HACC, HMC and/or HMA.
15. The Plaintiff's decision to purchase the 2012 Hyundai Tucson was based upon the vehicle's purported reputation for safety, reliability and fuel economy. The vehicle came with the manufacturer's standard five year/100,000 kilometer warranty.
16. On or about December 31, 2018 the Plaintiff was driving his 2012 Hyundai Tucson with his

spouse and newborn infant as passengers in the vehicle. The Plaintiff was traveling westbound on the Coquilla Highway between the towns of Merritt and Hope, British Columbia, when suddenly and without warning, there was a loud knocking sound emanating from the vehicle's engine, which became significantly louder and ultimately resulting in a loss of power. The Plaintiff had to exit the highway, pull over and turn the vehicle's engine off. The Plaintiff had his vehicle towed to a Hyundai dealership, Mertin Hyundai, in Chilliwack, British Columbia at a cost of \$632.00.

17. Mertin Hyundai advised the Plaintiff that the engine short block in his 2012 Hyundai Tucson would have to be replaced as the connecting rod bearings had broken and there was metal debris throughout the engine. Mertin Hyundai then contacted the Defendant, HACC, to determine whether it would cover the cost for the engine short block replacement, and who refused to do so. For approximately two months the Plaintiff made repeated requests of the Defendant, HACC, that it cover the engine short block replacement costs. It was only after the Plaintiff contacted "Go Public", an investigative news segment of CBC television, about the matter did the Defendant, HACC, then agree to pay for the engine short block replacement costs of approximately \$8,213.00.
18. The Plaintiff would not have purchased his 2012 Hyundai Tucson, or he would have paid less for it, had he known about the Engine Defect. To date, the Plaintiff has not received any recall notices or any "Product Improvement Campaign" notice for his 2012 Hyundai Tucson from the Defendants, HACC, HMC and/or HMA.

#### **The Defendants**

19. The Defendant, HACC, is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0069704, and has a registered agent, BHT Management Inc., at Suite 1800-510 West Georgia Street, Vancouver, British Columbia, V6B 0M3.
20. The Defendant, HMC, is a company duly incorporated pursuant the to the laws of Korea and has an address for service at 12, Heolleung-ro, Seocho-gu, Seoul, South Korea.

21. The Defendant, HMA, is a company duly incorporated pursuant to the laws of the State of California, one of the United States of America, and has a registered agent, National Registered Agents, Inc., at 10550 Talbert, Avenue, Fountain Valley, California, United States of America.
22. The Defendant, HMMA, is a is a company duly incorporated pursuant to the laws of the State of Alabama, one of the United States of America, and has a registered agent, Richard E. Neal, at 700 Hyundai Boulevard, Montgomery, Alabama, United States of America.
23. The Defendant, KCI, is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0085732, and has a registered agent, FMD Service (B.C.) Inc., at 2900 - 550 Burrard Street, Vancouver, British Columbia, V6C 0A3.
24. The Defendant, KMC, is a company duly incorporated pursuant the to the laws of South Korea and has an address for service at 12, Heolleung-ro, Seocho-gu, Seoul, South Korea.
25. The Defendant, KMA, is a company duly incorporated pursuant to the laws of the State of California, one of the United States of America, and has a registered agent, C T Corporation System, at 111 Peters Canyon Road, Irvine, California, United States of America.
26. The Defendant, KMMG, is a company duly incorporated pursuant to the laws of the State of Georgia, one of the United States of America, and has a registered agent, C T Corporation System, at 289 S Culver Street, Lawrenceville, Georgia, United States of America.
27. At all material times to the cause of action herein, the Defendant, HACC, was, and is, a wholly owned North American subsidiary of the Defendant, HMC, which, *inter alia*, markets, advertises, distributes and/or sells Hyundai vehicles, including certain Affected Class Vehicles, as averred to in paragraph 2 herein, containing the Engine Defect in Canada, and within the Province of British Columbia.
28. At all material times to the cause of action herein, the Defendant, HMC, manufacturers,

assembles, markets, advertises, distributes and/or sells Hyundai vehicles, including certain Affected Class Vehicles, as averred to in paragraph 2 herein, containing the Engine Defect, through its related subsidiaries and/or operating units, including the Defendants, HACC, HMA and/or HMMA, independent retailers and authorized dealerships in the United States of America and Canada.

29. At all material times to the cause of action herein, the Defendant, HMA, was, and is, a wholly owned North American subsidiary of the Defendant, HMC, which, *inter alia*, markets, advertises, distributes and/or sells Hyundai vehicles, including certain Affected Class Vehicles, as averred to in paragraph 2 herein, containing the Engine Defect, in the United States of America and/or Canada, including the Province of British Columbia.
30. At all material times to the cause of action herein, the Defendant, HMMA, was, and is, a wholly owned North American subsidiary of the Defendant, HMC, which, *inter alia*, manufactures and/or assembles Hyundai vehicles, including certain Affected Class Vehicles, as averred to in paragraph 2 herein, containing the Engine Defect, at an automobile plant located in the State of Alabama, United States of America, for distribution and/or sale in the United States of America and/or Canada, including the Province of British Columbia.
31. At all material times to the cause of action herein, the Defendant, HACC, was responsible for the distribution, service, repair, installation and decisions regarding the GDI engines as they relate to the Engine Defect in Hyundai Affected Class Vehicles in Canada.
32. At all material times to the cause of action herein, the Defendants, HACC, HMC, HMA and/or HMMA, shared the common purpose of, *inter alia*, developing, manufacturing, assembling, marketing, distributing, supplying and/or selling Hyundai vehicles, including certain Affected Class Vehicles, as averred to in paragraph 2 herein, containing the Engine Defect in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendants, HACC, HMC, HMA and/or HMMA, are interwoven with that of the other as to the Engine Defect in certain Affected Class Vehicles, as averred to in paragraph 2 herein.



33. At all material times to the cause of action herein, the Defendant, KCI, was, and is, a wholly owned North American subsidiary of the Defendant, KMC, which, *inter alia*, markets, advertises, distributes and/or sells Kia vehicles, including certain Affected Class Vehicles, as averred to in paragraph 2 herein, containing the Engine Defect in Canada, and within the Province of British Columbia.
34. At all material times to the cause of action herein, the Defendant, KMC, manufacturers, assembles, markets, advertises, distributes and/or sells Kia vehicles, including certain Affected Class Vehicles, as averred to in paragraph 2 herein, containing the Engine Defect, through its related subsidiaries and/or operating units, including the Defendants, KCI, KMA and/or KMMG, independent retailers and authorized dealerships in the United States of America and Canada.
35. At all material times to the cause of action herein, the Defendant, KMA, was, and is, a wholly owned North American subsidiary of the Defendant, KMC, which, *inter alia*, markets, advertises, distributes and/or sells Kia vehicles, including certain Affected Class Vehicles, as averred to in paragraph 2 herein, containing the Engine Defect, in the United States of America and/or Canada, including the Province of British Columbia.
36. At all material times to the cause of action herein, the Defendant, KMMG, was, and is, a wholly owned North American subsidiary of the Defendant, KMC, which, *inter alia*, manufactures and/or assembles Kia vehicles, including certain Affected Class Vehicles, as averred to in paragraph 2 herein, containing the Engine Defect, at an automobile plant located in the State of Georgia, United States of America, for distribution and/or sale in the United States of America and/or Canada, including the Province of British Columbia.
37. At all material times to the cause of action herein, the Defendant, KCI, was responsible for the distribution, service, repair, installation and decisions regarding the GDI engines as they relate to the Engine Defect in Kia Affected Class Vehicles in Canada.
38. At all material times to the cause of action herein, the Defendants, KCI, KMC, KMA and/or KMMG, shared the common purpose of, *inter alia*, developing, manufacturing, assembling, marketing, distributing, supplying and/or selling Kia vehicles, including certain Affected

Class Vehicles, as averred to in paragraph 2 herein, containing the Engine Defect in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendants, KCI, KMC, KMA and/or KMMG, are interwoven with that of the other as to the Engine Defect in certain Affected Class Vehicles, as averred to in paragraph 2 herein.

39. At all material times to the cause of action herein, the Defendant, HMC, together with the Defendants, HACC, HMA, HMMA, KCI, KMC, KMA and KMMG, comprise the Hyundai Motor Group, which manufactures the defective GDI engines in the Affected Class Vehicles.
40. Hereinafter, the Defendants, HACC, HMC, HMA and HMMA, are collectively referred to as the Defendant, "HYUNDAI", and the Defendants, KCI, KMC, KMA and KMMG, are collectively referred to as the Defendant, "KIA".

**C. The Class**

41. This action is brought on behalf of members of a class consisting of the Plaintiff, all British Columbia residents, and all other persons resident in Canada, excluding the Province of Quebec, who own or owned, purchased and/or leased the Affected Class Vehicles, containing the Engine Defect, manufactured, assembled, marketed, advertised, distributed and/or sold by the Defendants, HYUNDAI and KIA, in Canada ("Class Members"), or such other class definition or class period as the Court may ultimately decide on the application for certification.

**D. Factual Allegations**

**I. The Engine Defect**

42. In 2009, the Defendants, HYUNDAI and KIA, announced their first line of Gasoline Direct Injection ("GDI") engines in the United States of America and Canada, the "Theta II" engines. The Theta II engines eventually included a turbocharged 2.0-liter ("2L") model and a naturally aspirated 2.4-liter ("2.4L") model. The Defendant, HYUNDAI, used Theta II GDI engines in certain Sonata and Santa Fe vehicles, and the Defendant, KIA, used these engines in certain Optima, Sorento and Sportage vehicles.

43. In 2010, the Defendants, HYUNDAI and KIA, debuted another smaller GDI engine, the "Gamma" 1.6-liter engine. The Defendant, HYUNDAI, began using the Gamma GDI engine in certain Accent vehicles.
44. In 2013, the Defendants, HYUNDAI and KIA, introduced another GDI engine to its lineup, the "Nu" 2.0-liter model. Although first introduced in a 1.8-liter size in 2010, the Nu GDI engine line was expanded in 2012 to include this 2.0-liter version. The Defendant, KIA began using the Nu 2.0-liter GDI engines in certain Soul vehicles, while the Defendant, HYUNDAI, used these engines in certain Tucson, Elantra, and Sonata Hybrid vehicles.
45. In 2012, the Defendants, HYUNDAI and KIA, also added GDI engines to their "Lambda II" engine lineup with 3.0-liter, 3.3-liter, and turbocharged 3.3-liter GDI models. The Defendant, HYUNDAI, used the Lambda II GDI engines in certain Genesis, Azera, and Santa Fe vehicles.
46. The Affected Class Vehicles are equipped with various GDI engines that contain the Engine Defect. The Engine Defect restricts oil flow to vital engine parts, including but not limited to, the connecting rod and connecting rod bearings. Without proper oil lubrication these engine parts will prematurely wear and eventually fail. This means the worn engine parts will seize and/or break, immediately ceasing engine operation and often knocking a hole in the engine block. Engine fluids then leak through the hole and ignite, causing a sudden engine fire. Along with creating a significant driving hazard and increasing the chance of injury or death, the end result of the Engine Defect is serious, extensive and expensive damage to the engine and/or total loss of the Affected Class Vehicle.

**ii The Engine Defect results in catastrophic engine failure or serious risk of fire**

47. Complaints submitted to NHTSA via Vehicle Owner Questionnaire ("VOQ") reveal a large number of the Defendants, HYUNDAI and KIA, vehicles catching on fire. The NHTSA's VOQ database records more than 350 drivers who have reported fires in the Affected Class Vehicles in the United States of America.

48. According to the Center for Auto Safety's, a consumer advocacy non-profit group focused on the United States automotive industry, review of non-collision vehicle fire data, in NHTSA's VOQ database alone, at least 120 vehicle owners have reported that their 2011-2014 Optima, Sorento, Sonata, or Santa Fe caught fire without a preceding collision. There are also 229 separate complaints regarding melted wires in the engine bay, smoke, and burning odors, indicating potential fires. The vast majority of complaints that discuss the origins of the vehicle fires state that smoke and/or flames are first seen emanating from the engine bay, and then the vehicle is quickly engulfed.
49. Based on the high volume of non-collision vehicle fires, on June 11, 2018, the Center for Auto Safety petitioned the NHTSA to investigate a fire causing defect in 2011-2014 Kia Optima and Sorento, and Hyundai Sonata and Santa Fe vehicles. On July 24, 2018, the Center for Auto Safety filed an addendum to its original petition requesting that the NHTSA expand the investigation to include 2010-2015 Kia Soul vehicles.
50. In October 2018, as reports of these fires continued to increase, the Center for Auto Safety publically called on the Defendants, HYUNDAI and KIA, to recall these vehicles. The Center for Auto Safety reported that between June 12 and October 12, 2018, it had learned of 103 additional fire reports, amounting to an 85% increase.
51. The Defendants, HYUNDAI and KIA, were aware of the alarming failure rate of the Affected Class Vehicles engines because of the Engine Defect, through, but not limited to: (1) their own records of customer complaints; (2) dealership repair records; and (3) NHTSA complaints.
52. In November 2018, the Defendants, HYUNDAI and KIA, denied United States Senator Bill Nelson's request that they testify at a senate committee hearing regarding these rampant reports of engine fires involving their respective vehicles.

**iii. Defendants, HYUNDAI and KIA, issue inadequate and incomplete recalls**

53. In June 2015, the NHTSA contacted the Defendant, HYUNDAI, regarding instances of stalling events in 2011-2012 Hyundai Sonatas, and who did not consider the issue to be safety related. The NHTSA's Office of Defects Investigation advised the Defendant, HYUNDAI, of its concern over the potential for high speed stalling events.
54. As a result of NHTSA's prodding, in September 2015, the Defendant, HYUNDAI, issued Recall Number 15V568000 for 470,000 MY 2011-2012 Hyundai Sonata vehicles equipped with 2.4L and 2.0L turbo GDI engines for a defect described as connecting rod wear that may result in engine stall.
55. In its NHTSA filings, the Defendant, HYUNDAI, described the Recall Number 15V568000 defect and manifestation as follows:

Hyundai has determined that metal debris may have been generated from factory machining operations as part of the manufacturing of the engine crankshaft during the subject production period. As part of the machining processes, the engine crankshaft is cleaned to remove metallic debris. If the debris is not completely removed from the crankshaft's oil passages, it can be forced into the connecting rod oiling passages restricting oil flow to the bearings. Since bearings are cooled by oil flow between the bearing and journal, a reduction in the flow of oil may raise bearing temperatures increasing the potential of premature bearing wear. A worn connecting rod bearing will produce a metallic, cyclic knocking noise from the engine which increases in frequency as the engine rpm increases. A worn connecting rod bearing may also result in illumination of the oil pressure lamp in the instrument cluster. If the vehicle continues to be driven with a worn connecting rod bearing, the bearing can fail, and the vehicle could stall while in motion.

56. In or about September 2015 the Defendants, HYUNDAI and/or HACC, issued Transport Canada Recall Number 2015428 for 33,786 2011-2012 Hyundai Sonata vehicles equipped

with the 2.4L and 2.0L turbo GDI engines for a defect described as connecting rod wear that may result in engine stall. The Defendants, HYUNDAI and/or HACC, described the defect and manifestation as follows:

On certain vehicles, the engine crankshaft may have not been properly cleaned to remove metallic debris during manufacturing. If the debris is not completely removed from the crankshaft's oil passages, it can be forced into the connecting rod oil passages restricting oil flow to the bearings, increasing the potential of premature bearing wear. If the vehicle continues to be driven with a worn connecting rod bearing, the bearing could fail, which would cause an engine stall while the vehicle is in motion, resulting in loss of motive power which could increase the risk of a crash causing injury and/or property damage. A worn connecting rod bearing could also result in the illumination of the oil pressure lamp in the instrument cluster.

57. Subsequently, in December 2015, the Defendant, HYUNDAI, issued a Technical Service Bulletin (TSB) to dealers about Recall Number 15V568000 and the steps for performing recall procedures. The TSB instructed dealers to conduct an Engine Noise Inspection to confirm the engine's normal operation and that the sound test would help indicate if the engine is operating normally or if an excessive connecting rod bearing wear condition in the engine crankcase may be present. The TSB went on to describe the consequences if the defect manifested such that if the vehicle continued to be driven with a worn connecting rod bearing, the bearing could fail, and the vehicle could stall while in motion, increasing the risk of a crash.
58. The Defendant, HYUNDAI's, December 2015 TSB in Recall Number 15V568000 only called for engine replacement if the vehicle did not pass the sound test. If the engine did pass, no actual repair was made to the vehicle, its engine, or any other parts. The Defendant, HYUNDAI, simply instructed dealerships to swap out the vehicle's dipstick and top off the oil. This left "passing" vehicles and their owners and/or lessees vulnerable to future development and manifestation of the Engine Defect and its consequences.

59. Similarly, Transport Canada Recall Number 2015428 called for Hyundai dealerships to inspect, and if necessary, to replace the engine assembly.
60. In March 2017, the Defendant, HYUNDAI, issued Recall Number 17V226000 for 572,000 MY 2013-2014 Hyundai Sonata and Santa Fe Sport vehicles equipped with 2.0L and 2.4L turbo GDI engines for a defect described as bearing wear that may result in engine seizure.
61. In its NHTSA filings, the Defendant, HYUNDAI, described the Recall Number 17V226000 defect and manifestation as follows:

The subject engines may contain residual debris from factory machining operations, potentially restricting oil flow to the main bearings and leading to premature bearing wear. A worn connecting rod bearing will produce a cyclic knocking noise from the engine and may also result in the illumination of the oil pressure lamp in the instrument panel. Over time, the bearing may fail and the vehicle could lose motive power while in motion.

62. In or about April 2017 the Defendants, HYUNDAI and/or HACC, issued Transport Canada Recall Number 2017197 for 76,683 2013-2014 Hyundai Santa Fe Sport and Sonata vehicles equipped with the 2.4L and 2.0L turbo GDI engines for a defect described as bearing wear that may result in engine stall. The Defendants, HYUNDAI and/or HACC, described the defect and manifestation as follows:

On certain vehicles equipped with 2.0L and 2.4L engines, the engine may contain residual metallic debris from factory machine operations. If debris is present, it could potentially restrict oil flow to the main bearings and rod bearings and could lead to premature wear. If the vehicle continues to be driven with worn bearings, the bearings could fail, which could cause an engine stall while the vehicle is in motion, resulting in loss of motive power which could increase the risk of a crash causing injury and/or property damage. Worn bearings could also result in the illumination of the oil pressure lamp in the instrument cluster.

63. In June 2017, the Defendant, HYUNDAI, issued a TSB and Dealer Best Practice Guide to dealers addressing the issue in the 2013-2014 Sonata and Santa Fe vehicles. The documents describe a defect identical to that in the earlier Sonata model years and orders the same purported fix:

The engines in certain 2013-2014 model year Sonata (YF) and Santa Fe Sport (AN) vehicles equipped with 2.4L and 2.0T GDI engines may contain residual debris from factory machining operations, potentially restricting oil flow to the main bearings and leading to premature bearing wear. Over time, a bearing may fail and the vehicle could lose power while in motion.

Indications of a worn connecting rod bearing include:

1. Knocking noise from the engine;
2. Reduced power and/or hesitation;
3. Illumination of the "Check Engine" warning lamp; and
4. Illumination of engine oil pressure warning lamp

The service process consists of an inspection and dipstick, oil and oil filter replacement. If the vehicle does not pass the inspection, the dealer will replace the engine.

64. Much like its earlier 2011-2012 Sonata recall, in its Part 573 Safety Recall Report for NHTSA Recall Number 17V226000, the Defendant, HYUNDAI, advised that over time, the bearing may fail and the vehicle could lose motive power while in motion.
65. Notably, in its chronology submission for the recall associated with subsequent model year Sonata's (NHTSA Recall Number 17V226000), the Defendant, HYUNDAI, conceded that its recall was the result of its continuing to monitor engine related field data from the original 15V568000 recall group and had noted an increase in claims relating to the subsequent



model years.

66. Again attempting to mitigate the gravity of the Engine Defect, the Defendant, HYUNDAI, noted in its chronology submission to NHTSA that the majority of claims for engine replacement indicated that customers were responding to substantial noise or the vehicle's check engine or oil pressure warning lights, and bringing their vehicles to service as a result of those warnings. In other words, the Defendant, HYUNDAI, was relying on customers to prevent their own catastrophic engine failure that could at best result in a moving stall and at worst result in a vehicle fire.
67. In March 2017, the Defendant, KIA, also issued a recall virtually identical to that of the Defendant, HYUNDAI, Recall Number 17V224000 for 618,160 MY 2011-2014 Optima, 2012-2014 Sorento, and 2011-2013 Sportage vehicles equipped with 2.0L turbo GDI or 2.4L GDI engines for a defect described as bearing wear that may result in engine seizure.
68. In its NHTSA filings, the Defendant, KIA, described the Recall Number 17V224000 defect and manifestation as follows:

Metal debris may have been generated from factory machining operations as part of the manufacturing of the engine crankshaft which may not have been completely removed from the crankshaft oil passages during the cleaning process. In addition, the machining processes of the crankpins caused an uneven surface roughness. As a result, the metal debris and uneven surface roughness can restrict oil flow to the bearings, thereby increasing bearing temperatures causing premature bearing wear. A worn connecting rod bearing will produce a cyclic knocking noise from the engine and may also result in the illumination of the engine warning lamp and/or oil pressure lamp in the instrument panel. If the warnings are ignored and the vehicle is continued to be driven, the bearing may fail and the vehicle could stall while in motion.

69. In or about April 2017 the Defendants, KIA and/or KCI, issued Transport Canada Recall Number 2017199 for 37,504 2011-2013 Kia Optima, 2012-2014 Sorento and 201-2013

Sportage vehicles equipped with the 2.4L and 2.0L turbo GDI engines for a defect described as bearing wear that may result in engine stall. The Defendants, KIA and/or KCI, described the defect and manifestation as follows:

On certain vehicles equipped with 2.0L and 2.4L engines, the engine may contain residual metallic debris from factory machine operations. If debris is present, it could potentially restrict oil flow to the main bearings and rod bearings and could lead to premature wear. If the vehicle continues to be driven with worn bearings, the bearings could fail, which could cause an engine stall while the vehicle is in motion, resulting in loss of motive power which could increase the risk of a crash causing injury and/or property damage. Worn bearings could also result in the illumination of the oil pressure lamp in the instrument cluster.

70. The Defendant, KIA's recall procedures mirrored that of the Defendant, HYUNDAI's, recalls: perform the sound test, and if the engine passes, simply change out the color-coded dipstick and change the oil. If the car does not pass, replace the engine.
71. In its chronology submitted to NHTSA regarding Recall Number 17V224000, the Defendant, KIA, noted that when it learned of the Defendant, HYUNDAI, 15V568000 recall in September 2015, it had checked Theta engine manufacturing process for Optima on a separate assembly line and identified different procedures and there being no issues. However, the chronology goes on to state that in January to April 2016, the engine re-manufacturer, Translead, had conducted a detailed review of all recent Kia warranty returned engines and identified an oil delivery issue with the Theta GDI engines in Optima, Sportage and Sorento vehicles. As the Defendant, KIA, warranty claims increased through 2016, it extended the warranties on these vehicles, but still waited until March 2017 to issue a formal recall.
72. As problematic as these recalls and purported fixes were already, they also left out swaths of vehicles with GDI engines that have been marked by reports of non-collision fires, like the Kia Soul and later model years of the Santa Fe. In October 2018, the Defendant, KIA, began sending owners and lessees of 2011-2014 Optima, 2012-2014 Sorento, and

2011-2013 Sportage vehicles letters regarding a "Product Improvement Campaign" in response to widespread reports of non-collision vehicle fires, which read as follows:

Kia Motors America, Inc. is conducting an important Product Improvement Campaign to perform a software update on all 2011-2013 MY Optima vehicles equipped with 2.4L Gasoline Direct Injection ("DI" and 2.0L Turbocharged GDI ("-GDI" engines, and some 2014 MY Optima vehicles equipped with 2.4L GDI and 2.0L T-GDI engines to protect the engine from excessive connecting rod bearing damage. The update will be done free of charge and will only involve the addition of newly developed computer software for the Engine Control Unit ("CU".

Kia recently developed a Knock Sensor Detection System ("KSDS" that detects vibrations indicating the onset of excessive connecting rod bearing wear in the engine. The KSDS is designed to alert a vehicle driver at an early stage of bearing wear before the occurrence of severe engine damage including engine failure.

73. On March 11, 2019 the Defendants, HYUNDAI and/or HACC, issued Transport Canada Recall Number 2019130 for 255,370 2013-2018 Santa Fe Sport, 2011-2018 Sonata and 2014-2015 Tucson vehicles, which states the following:

Issue: Hyundai Auto Canada is conducting a Product Improvement Campaign that provides an update to the engine control module to detect potential problems before an engine fails. An engine failure would cause a sudden loss of power with an inability to restart. Safety Risk: A sudden loss of engine power could increase the risk of an accident. Corrective Actions: The company will notify owners by mail. Owners will be instructed to take their vehicle to a dealer to update the software for the engine control module.

74. On March 21, 2019 the Defendants, KIA and/or KCI, issued Transport Canada Recall Number 2019153 for 29,501 2011-2013 Optima, 2012-2104 Sorento and 2011-2013

Sportage vehicles, which was identical to the Defendant, HYUNDAI's, Transport Canada Recall Number 20191430 relating to the Product Improvement Campaign updating the engine control module.

75. This purported solution does not fix any inherent engine defect and nor does it prevent the Affected Class Vehicles from the Engine Defect manifesting premature engine failure and the resulting need for engine replacement.

**iv Pre-sale durability testing**

76. The Defendants, HYUNDAI and KIA, are experienced in the design and manufacture of consumer vehicles. As such, the Defendants, HYUNDAI and KIA, conduct tests, including pre-sale durability testing, on incoming components, including the engine, to verify the parts are free from defects and align with their specifications.
77. The Defendant, KIA, conducts expansive pre-sale durability testing on its vehicles to make sure they endure over a long period of time without fault. This pre-sale testing includes seven different types of durability tests: (1) an item durability test; (2) a module durability test; (3) a Belgian road test; (4) a high-speed test; (5) a corrosion test; (6) a P/T test; and (7) a vehicle test. The Defendant, KIA, conducts these tests in extreme hot and cold weather conditions.
78. Further, the Defendant, KIA, conducts extensive driving and road tests on its vehicles so as to determine their endurance under diverse harsh conditions. The Defendant, KIA, also conducts validation testing which runs the engine at maximum throttle while under full load and nonstop for hundreds of hours. The Defendant, KIA, then does overrun specification testing where it runs the engine over specification for 10-20 hours to make sure it can survive past the red line limits.
79. The Defendant, KIA, also uses a rigorous vehicle testing program which stimulates stop-and-go driving repeated over several times so as to put additional strain on the engine, transmission and HVAC systems so as to eliminate any possible flaws. At its Mojave Proving Grounds test site, the Defendant, KIA, utilizes a high-speed oval, gravel off-road tracks, high-vibration road surfaces, brake test facilities and different gradients that enable

its engineers to evaluate and refine the ride, handling, brakes and NVH of prototype and production vehicles.

80. The Defendant, HYUNDAI, conducts durability testing on its vehicles that is similar to the Defendant, KIA's, testing of its vehicles.

## **Part 2: RELIEF SOUGHT**

1. The Plaintiff, on his own behalf and on behalf of the Class Members, claims against each of the Defendants, jointly or severally, as follows:
  - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the named representative;
  - (b) a declaration that the Affected Class Vehicles contain the Engine Defect;
  - © a declaration that the Defendants, HYUNDAI and KIA, were negligent in the design and/or manufacturing of the GDI engines in their respective Affected Class Vehicles causing the Plaintiff and Class Members to suffer damages;
  - (d) a declaration that the Defendants, HYUNDAI, KIA, HACC and/or KCI:
    - (i) breached their duty of care to the Plaintiff and Class Members;
    - (ii) fraudulently concealed material information from the Plaintiff and Class Members;
    - (iii) breached express and implied warranties as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages pursuant to the *Sale of Goods Act*, R.S.B.C. 1996, c.410 ("SGA");
    - (iv) breached the *Business Practices and Consumer Protection Act*, SBC 2004, c.2 ("BPCPA") and are consequently liable to the Plaintiff and Class Members for damages;

- (v) breached the *Competition Act*, R.S.C 1985, c. C-34 and are consequently liable to the Plaintiff and Class Members for damages; and
- (vi) were unjustly enriched at the expense of the Plaintiff and Class Members.
- (e) an order enjoining the Defendants, HYUNDAI, KIA, HACC and/or KCI from continuing the unlawful, unfair and fraudulent business practices as alleged herein;
- (f) injunctive and/or declaratory relief requiring the Defendants, HYUNDAI, KIA, HACC and/or KCI to recall, repair, replace and/or buy back all Affected Class Vehicles and to fully reimburse and make whole all Class Members for all costs and economic losses associated therewith;
- (g) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("*CPA*") directing an aggregate assessment of damages;
- (h) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;
- (i) general damages, including actual, compensatory, incidental, statutory and consequential damages;
- (j) special damages;
- (k) punitive damages;
- (l) costs of investigation pursuant to section 36 of the *Competition Act*;
- (m) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (n) such further and other relief as to this Honourable Court may seem just.

### **Part 3: LEGAL BASIS**

#### **Jurisdiction**

1. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c.28 (the “*CJPTA*”) in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (e)(I), (e)(iii)(A)(B), (f), (g), (h) and (I) of the *CJPTA* because this proceeding:

- (e)(I) concerns contractual obligations to a substantial extent, were to be performed in British Columbia;
- (e)(iii)(A)(B) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser’s trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;
- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia; and
- (I) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

#### **Causes of Action**

##### **Negligence**

2. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

3. At all material times to the cause of action herein, the Plaintiff and Class Members were using the Affected Class Vehicles for the purposes and manner for which they were intended.
4. The Plaintiff and Class Members had no knowledge of the Engine Defect in the Affected Class Vehicles and had no reason to suspect the Engine Defect.
5. The Defendants, HYUNDAI and KIA, knew or ought to have known that the Affected Class Vehicles contained a defect which, in the absence of reasonable care in the manufacture and/or assembly of the Affected Class Vehicles, presented a serious safety hazard, which could cause the Affected Class Vehicles to suddenly stall or spontaneously burst into flames while in operation.
6. The defective condition of the Affected Class Vehicles consisted of a defect in the design and/or manufacture of the GDI engine.
7. In the alternative, the Defendants, HYUNDAI and KIA, failed to meet the reasonable standard of care expected of an automobile manufacturer in the circumstances in that:
  - (a) they knew or ought to have known about the Engine Defect in the Affected Class Vehicles and should have timely informed or warned the Plaintiff and Class Members;
  - (b) they designed, developed, tested, manufactured, assembled, marketed, advertised, distributed and/or sold vehicles with a defective engine;
  - © they failed to timely warn the Plaintiff, Class Members and/or consumers about the Engine Defect in the Affected Class Vehicles, which presented a serious safety hazard;
  - (d) they failed to change the design, manufacture and/or assembly of the defective GDI engines in the Affected Class Vehicles in a reasonable and timely manner;



- (e) they failed to properly test the GDI engines in the Affected Class Vehicles;
  - (f) they knew or ought to have known about the Engine Defect in the Affected Class Vehicles but kept it a secret;
  - (g) they failed to timely issue and implement safety, repair and/or replacement recalls of the Affected Class Vehicles;
  - (h) the Engine Defect presented a serious safety hazard which could cause the Affected Class Vehicles to suddenly stall or spontaneously burst into flames while in operation; and
  - (I) they failed to exercise reasonable care and judgment in matters of design, materials, workmanship and/or quality of product which would reasonably be expected of them as an automobile manufacturer.
8. As a result of the Engine Defect in the Affected Class Vehicles by reason of the Defendants, HYUNDAI's and KIA's, negligence, and their failure to disclose and/or adequately warn of, the Engine Defect, the Plaintiff and the Class Members have suffered damages and will continue to suffer damages. The value of each of the Affected Class Vehicles is reduced. The Plaintiff and each Class Member must expend the time to have his/her vehicle repaired and be without their vehicle. The Defendants, HYUNDAI and KIA, should compensate the Plaintiff and each Class Member for their incurred out-of-pocket expenses for, among other things, alternative transportation, tow charges, vehicle payments and prior repairs to the Affected Class Vehicles as a result of the Engine Defect.

#### **Fraud by Concealment**

9. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
10. The Defendants, HYUNDAI and KIA, intentionally concealed, suppressed, and failed to disclose the material fact that the Affected Class Vehicles had a design and/or manufacturing defect that could result in sudden and catastrophic engine stalling, failure,

and fire. The Defendants, HYUNDAI and KIA, knew or should have known the true facts, due to their involvement in the design, installation, calibration, manufacture, durability testing, and warranty service of the engines and electronic control module programming in the Affected Class Vehicles. At no time did the Defendants, HYUNDAI and KIA, reveal the truth to the Plaintiff and Class Members. To the contrary, the Defendants, HYUNDAI and KIA, concealed the truth, intending for the Plaintiff and Class Members to rely on these omissions. The Plaintiff and Class Members purchased or leased the Affected Class Vehicles believing, in reliance on the Defendants, HYUNDAI's and KIA's, statements and/or omissions, them to be safe and free from major engine defects.

11. A reasonable consumer would not know that the Affected Class Vehicles contained the Engine Defect which could result in catastrophic engine failure or fire. The Plaintiff and Class Members did not know of the facts which were concealed from them by Defendants, HYUNDAI and KIA. Moreover, as ordinary consumers, the Plaintiff and Class Members did not, and could not, unravel the deception on their own.
12. The Defendants, HYUNDAI and KIA, had a duty to disclose the Engine Defect in the Affected Class Vehicles as the true facts were known and/or accessible only to them and because they knew these facts were not known to or reasonably discoverable by the Plaintiff and Class Members unless and until the defect manifested in their vehicle. As alleged herein, the Defendants, HYUNDAI and KIA, denied and concealed the Engine Defect in the face of consumer complaints and regulatory investigations. The Plaintiff and Class Members did not, and could not, unravel the Defendants, HYUNDAI's and KIA's, deception on their own.
13. The Defendants, HYUNDAI and KIA, also had a duty to disclose the true nature of the Affected Class Vehicles as a result of their prior recalls. By issuing recalls of certain vehicles and representing that these represented the full population of affected vehicles, Defendants, HYUNDAI and KIA, led consumers and safety regulators to believe, at least for a time, that they were remedying the engine stalling or fire problems. In fact, these recalls, in addition to being unsuccessful, failed to include hundreds of thousands of additional vehicles that suffered from similar major defects.

14. Had the material facts been timely revealed, the Plaintiff and Class Members would not have purchased the Affected Class Vehicles, or would have paid less for them. Affected Class Vehicles have also diminished in value as a result of Defendants, HYUNDAI's, and KIA's, alleged fraud. Accordingly, the Defendants, HYUNDAI and KIA, are liable to Plaintiff and Class Members for damages in an amount to be proven at trial.
15. The Defendants, HYUNDAI's and KIA's, acts were committed wantonly, maliciously, oppressively, deliberately, with intent to defraud and in reckless disregard of the rights of the Plaintiff and Class Members so as to enrich themselves. Their misconduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount shall be determined according to proof at trial.

#### **Breach of Express Warranty**

16. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
17. As an express warrantor, manufacturer, merchant and/or seller, the Defendants, HYUNDAI and KIA, had certain obligations under the SGA, and to equivalent legislative provisions in the rest of Canada, as described in Schedule "A", to conform the Affected Class Vehicles to their express warranties.
18. The Defendants, HYUNDAI and KIA, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through independent retail dealers and/or authorized dealerships. Such representations formed the basis of the bargain in the Plaintiff's and Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
19. In connection with the purchase and/or lease of each of the Affected Class Vehicles, the Defendants, HYUNDAI and KIA, provided warranty coverage for the Affected Class Vehicles for five years or 100,000 kilometers, which obliges them to repair or replace any part that is defective under normal use.

20. The Defendants, HYUNDAI's and KIA's, warranty formed a basis of the bargain that was reached when the Plaintiff and Class Members purchased and/or leased their Affected Class Vehicles.
21. The Plaintiff and Class Members owned and/or leased Affected Class Vehicles with the Engine Defect within the warranty period but had no knowledge of the existence of the Engine Defect, which was known and concealed by the Defendants, HYUNDAI and KIA.
22. Despite the existence of the warranty, the Defendants, HYUNDAI and KIA, failed to inform the Plaintiff and Class Members that the Affected Class Vehicles contained the Engine Defect during the warranty periods and thus, wrongfully transferred the costs of repair or replacement to the Plaintiff and Class Members.
24. The Defendants, HYUNDAI and KIA, breached their express warranty promising to repair and correct a design or manufacturing defect or defect in materials or workmanship of any parts they supplied as to the Affected Class Vehicles.
25. The Defendants, HYUNDAI and KIA, knew about the Engine Defect in the Affected Class Vehicles, allowing them to cure their breach of warranty if they chose.
26. However, the Defendants, HYUNDAI and KIA, concealed the Engine Defect and have neglected, failed and/or refused to repair or replace the Engine Defect outside of the warranty periods despite the Engine Defect's existence at the time of sale and/or lease of the Affected Class Vehicles.
27. Any attempt by the Defendants, HYUNDAI and KIA, to disclaim or limit recovery to the terms of the express warranties is unconscionable and unenforceable. Specifically, the Defendants, HYUNDAI's and KIA's, warranty limitation is unenforceable because they knowingly sold or leased a defective product without informing the Plaintiff, Class Members and/or consumers about the Engine Defect in the Affected Class Vehicles. The time limits contained in the Defendants, HYUNDAI's and KIA's, warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. Among other things, the Plaintiff and Class Members had no meaningful choice in determining these time

limitations, the terms of which unreasonably favored the Defendants, HYUNDAI and KIA. A gross disparity in bargaining power existed between the Defendants, HYUNDAI and KIA, and Class Members and the Defendants, HYUNDAI and KIA, knew that the Affected Class Vehicles were defective at the time of sale.

28. Further, the limited warranty promising to repair and/or correct a design and/or manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and Class Members whole because the replacement engine used by the Defendants, HYUNDAI and KIA, contains the same defect. Affording the Defendants, HYUNDAI and KIA, a reasonable opportunity to cure the breach of written warranties, therefore, would be unnecessary and futile.

**Breach of the Implied Warranty or Condition of Merchantability pursuant SGA**

29. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
30. The Defendants, HYUNDAI and KIA, are a "seller" with respect to motor vehicles within the meaning of the SGA. and to equivalent legislative provisions in the rest of Canada, as described in Schedule "A".
31. A warranty that the Affected Class Vehicles were in merchantable condition was implied by law pursuant to the SGA and to equivalent legislative provisions in the rest of Canada, as described in Schedule "A".
32. The Defendants, HYUNDAI and KIA, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through independent retail dealers and/or authorized dealerships. Such representations formed the basis of the bargain in the Plaintiff's and Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
33. The Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles from the Defendants, HYUNDAI and KIA, through their subsidiaries, authorized agents for retail

sales, through private sellers or were otherwise expected to be the eventual purchasers and/or lessees of the Affected Class Vehicles when bought or leased from a third party. At all relevant times, the Defendants, HYUNDAI and KIA, were the manufacturer, distributor, warrantor and/or seller of the Affected Class Vehicles. As such, there existed privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendants, HYUNDAI and KIA, as to their respective Affected Class Vehicles.

34. The Defendants, HYUNDAI and KIA, knew or had reason to know of the specific use for which the Affected Class Vehicles were purchased or leased.
35. As a result of the Engine Defect, the Affected Class Vehicles were not in merchantable condition when sold and are not fit for the ordinary purpose of providing safe and reliable transportation.
36. The Defendants, HYUNDAI and KIA, knew about the Engine Defect in the Affected Class Vehicles, allowing them to cure their breach of warranty if they chose.
37. The Defendants, HYUNDAI's and KIA's, attempt to disclaim or limit the implied warranty of merchantability vis-à-vis the Plaintiff, Class Members and/or consumers is unconscionable and unenforceable here. Specifically, the Defendants, HYUNDAI's and KIA's, warranty limitation is unenforceable because they knowingly sold or leased a defective product without informing the Plaintiff, Class Members and/or consumers about the Engine Defect. The time limits contained in the Defendants, HYUNDAI's and KIA's, warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. Among other things, the Plaintiff and Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendants, HYUNDAI and KIA. A gross disparity in bargaining power existed between the Defendants, HYUNDAI and KIA, and the Plaintiff and Class Members, and the Defendants, HYUNDAI and KIA, knew of the Engine Defect at the time of sale of the Affected Class Vehicles.
38. The Plaintiff and Class Members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of the Defendants, HYUNDAI's and KIA's, conduct alleged herein. Affording the Defendants,

HYUNDAI and KIA, a reasonable opportunity to cure their breach of written warranties, therefore, would be unnecessary and futile.

**Violation of the *BPCPA***

39. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
40. The Affected Class Vehicles are consumer "goods" within the meaning of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".
41. The Plaintiff and Class Members are "consumers" within the meaning of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".
42. The Defendants, HYUNDAI and KIA, are a "supplier" within the meaning of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".
43. The purchase and/or lease of the Affected Class Vehicles by the Plaintiff and Class Members constitutes a "consumer transaction" within the meaning of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".
44. By failing to disclose and actively concealing the Engine Defect, the Defendants, HYUNDAI and KIA, engaged in unfair and deceptive trade practices prohibited by the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".
45. As alleged herein, the Defendants, HYUNDAI and KIA, made misleading representations and omissions concerning the benefits, performance, and safety of the Affected Class Vehicles.

46. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and Class Members were deceived by the Defendants, HYUNDAI's and KIA's, failure to disclose their knowledge of the Engine Defect.
47. The Defendants, HYUNDAI's and KIA's, conduct as alleged herein was, and is, in violation of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B" in particular by:
  - (a) representing that goods have sponsorship, approval, characteristics, uses, benefits or quantities that they do not have;
  - (b) representing that goods are of a particular standard, quality or grade if they are of another;
  - © advertising goods with intent not to sell them as advertised; and
  - (d) representing that goods have been supplied in accordance with a previous representation when they have not.
48. The Defendants, HYUNDAI and KIA, intentionally and knowingly misrepresented and omitted material facts regarding their respective Affected Class Vehicles, specifically regarding the Engine Defect, with an intent to mislead the Plaintiff and Class Members.
49. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and Class Members were deceived by the Defendants, HYUNDAI's and KIA's, failure to disclose their knowledge of the Engine Defect.
50. The Plaintiff and Class Members had no way of knowing of the Defendants, HYUNDAI's and KIA's, representations were false, misleading and incomplete or knowing the true nature of the Engine Defect in the Affected Class Vehicles. As alleged herein, the Defendants, HYUNDAI and KIA, engaged in a pattern of deception in the face of a known Engine Defect in the Affected Class Vehicles. The Plaintiff and Class Members did not, and could not,



unravel the Defendants, HYUNDAI's and KIA's, deception on their own.

51. The Defendants, HYUNDAI and KIA, knew or should have known their conduct violated the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".
52. The Defendants, HYUNDAI and KIA, owed the Plaintiff and Class Members a duty to disclose the truth about the Engine Defect in the Affected Class Vehicles as it created a serious safety hazard and the Defendants, HYUNDAI and KIA:
  - (a) possessed exclusive knowledge of the Engine Defect in the Affected Class Vehicles;
  - (b) intentionally concealed the foregoing from the Plaintiff and Class Members; and/or
  - © failed to warn consumers or to publicly admit that the Affected Class Vehicles had an Engine Defect.
53. The Defendants, HYUNDAI and KIA, had a duty to disclose the Engine Defect in the Affected Class Vehicles was fundamentally flawed, as described herein, because it created a serious safety hazard and the Plaintiff and Class Members relied on the Defendants, HYUNDAI's and KIA's, material misrepresentations and omissions regarding the Affected Class Vehicles and the Engine Defect.
54. The Defendants, HYUNDAI's and KIA's, conduct proximately caused injuries to the Plaintiff and Class Members that purchased and/or leased the Affected Class Vehicles and suffered harm as alleged herein.
55. The Plaintiff and Class Members were injured and suffered ascertainable loss, injury-in-fact and/or actual damage as a proximate result of the Defendants, HYUNDAI's and KIA's, conduct in that Plaintiff and Class Members incurred costs related the Engine Defect, including repair, service and/or replacement costs, rental car costs, towing charges, and overpaid for their Affected Class Vehicles that have suffered a diminution in value.

56. The Defendants, HYUNDAI'S and KIA's, violations cause continuing injuries to the Plaintiff and Class Members. The Defendants, HYUNDAI's and KIA's, unlawful acts and practices complained of herein affect the public interest.
57. The Defendants, HYUNDAI and KIA, knew of the defective engine design and/or manufacture defect and that the Affected Class Vehicles were materially compromised by the Engine Defect.
58. The facts concealed and omitted by the Defendants, HYUNDAI and KIA, from the Plaintiff and Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase a Hyundai or Kia vehicle or pay a lower price. Had the Plaintiff and Class Members known about the defective nature of the Affected Class Vehicles, they would not have purchased and/or leased the Affected Class Vehicles or would not have paid the prices they paid.
59. The Plaintiff's and Class Members' injuries were directly or proximately caused by the Defendants, HYUNDAI's and KIA's, unlawful and deceptive business practices.

**Breach of the *Competition Act***

60. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
61. By making representations to the public as to the quality, character, reliability, durability and safety of the Affected Class Vehicles, the Defendants, HYUNDAI and KIA, breached section 52 of the *Competition Act*, in that their representations:
  - (a) were made to the public in the form of advertising brochures, statements and/or other standardized statements claiming the reliability, durability and/or safety of the Affected Class Vehicles;
  - (b) were made to promote the supply or use of a product or for the purpose of promoting their business interests;

© stated a level of performance and safety of the Affected Class Vehicles; and

(d) were false and misleading in a material respect.

62. The Defendants, HYUNDAI and KIA, engaged in unfair competition and unfair, unlawful or fraudulent business practices through the conduct, statements, and omissions described herein, and by knowingly and intentionally concealing the Engine Defect in the Affected Class Vehicles from Plaintiff and Class Members, along with concealing the risks, costs, and monetary damage resulting from the Engine Defect. The Defendants, HYUNDAI and KIA, should have disclosed this information because they were in a superior position to know the true facts related to the Engine Defect, and Plaintiff and Class members could not reasonably be expected to learn or discover the true facts related to the Engine Defect.
63. The Engine Defect causing inadequate engine oil lubrication and resulting in catastrophic engine failure and fire in the Affected Class Vehicles constitutes a safety issue that triggered Defendants, HYUNDAI's and KIA's, duty to disclose the safety issue to consumers.
64. These acts and practices have deceived the Plaintiff and Class Members. In failing to disclose the Engine Defect and suppressing other material facts from the Plaintiff and Class Members, the Defendants, HYUNDAI and KIA, breached their duties to disclose these facts, violated the *Competition Act*, and caused injuries to the Plaintiff and Class Members. The Defendants, HYUNDAI's and KIA's, omissions and concealment pertained to information that was material to the Plaintiff and Class Members, as it would have been to all reasonable consumers.
65. The Plaintiff and other Class Members have therefore suffered damages and are entitled to recover damages pursuant to section 36(1) of the *Competition Act*.

### **Unjust Enrichment**

66. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

67. The Defendants, HYUNDAI and KIA, have unjustly profited from the Engine Defect in the Affected Class Vehicles whose value was inflated by their active concealment and the Plaintiff and Class Members have overpaid for the Affected Class Vehicles.
68. The Defendants, HYUNDAI and KIA, have received and retained unjust benefits from the Plaintiff and Class Members and an inequity has resulted. It is inequitable and unconscionable for the Defendants, HYUNDAI and KIA, to retain these benefits.
69. As a result of the Defendants, HYUNDAI's and KIA's, fraud and/or deception, the Plaintiff and Class Members were not aware of the true facts concerning the Engine Defect in the Affected Class Vehicles and did not benefit from Defendants, HYUNDAI's and KIA's, misconduct.
70. The Defendants, HYUNDAI and KIA, knowingly accepted the unjust benefits of their fraudulent conduct. There is no juristic reason why the amount of their unjust enrichment should not be disgorged and returned to the Plaintiff and Class Members, in an amount to be proven at Trial.
71. Further, the purchase of both new and/or used Affected Class Vehicles from authorized or affiliated dealerships of the Defendants, HYUNDAI and KIA, or third party sellers, conferred a benefit on the Defendants, HYUNDAI and KIA, as such vehicles required use of manufacturers' parts, as called for in the Defendants, HYUNDAI's and KIA's, recalls and Product Improvement Campaigns as to repair of the Engine Defect.

**Tolling of the *Limitation Act*, S.B.C. 2012, c. 13**

72. The Plaintiff and Class Members had no way of knowing about the Engine Defect in the Affected Class Vehicles. The Defendants, HYUNDAI and KIA, concealed their knowledge of the Engine Defect while continuing to market and sell the Affected Class Vehicles.
73. Within the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada, as described in Schedule "C", the Plaintiff and Class Members could not have discovered through the exercise of reasonable diligence that the Defendants, HYUNDAI and KIA, were

concealing the conduct complained of herein and misrepresenting the true qualities of the Affected Class Vehicles.

74. The Plaintiff and Class Members did not know facts that would have caused a reasonable person to suspect or appreciate that there was a defect in the GDI engines of the Affected Class Vehicles.
75. For these reasons, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada, as described in Schedule "C", has been tolled by operation of the discovery rule with respect to the claims in this proposed class proceeding.
76. Further, due to Defendants, HYUNDAI's and KIA's, knowing and active concealment throughout the time period relevant to this proposed class proceeding, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada, as described in Schedule "C", has been tolled.
77. Instead of publicly disclosing the Engine Defect in the Affected Class Vehicles, the Defendants, HYUNDAI and KIA, kept the Plaintiff and Class Members in the dark as to the Engine Defect and the serious safety hazard it presented.
78. The Defendants, HYUNDAI and KIA, were under a continuous duty to disclose to the Plaintiff and Class Members the existence of the Engine Defect in the Affected Class Vehicles.
79. The Defendants, HYUNDAI and KIA, knowingly, affirmatively, and actively concealed or recklessly disregarded the true nature, quality and character of the Affected Class Vehicles.
80. As such, the Defendants, HYUNDAI and KIA, are estopped from relying on the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada, as described in Schedule "C", in defense of this proposed class proceeding.

Plaintiff's(s') address for service:

Garcha & Company  
Barristers & Solicitors  
#405 - 4603 Kingsway  
Burnaby, BC V5H 4M4

Fax number address for service (if any):

604-435-4944

E-mail address for service (if any):

none

Place of trial:

Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC V6Z 2E1

Dated: April 9, 2019

A handwritten signature in black ink, appearing to read 'K. Garcha', written over a horizontal line.

Signature of K.S. Garcha  
lawyer for plaintiff(s)

**Schedule "A"**  
**Sale of Goods Legislation Across Canada**

<b>Province or Territory</b>	<b>Legislation</b>
Alberta	<i>Sale of Goods Act</i> , RSA 2000, c. S-2
Saskatchewan	<i>Sale of Goods Act</i> , RSS 1978, c. S-1
Manitoba	<i>The Sale of Goods Act</i> , CCSM 2000, c. S10
Ontario	<i>Sale of Goods Act</i> , RSO 1990, c. S.1
Newfoundland and Labrador	<i>Sale of Goods Act</i> , RSNL 1990, c. S-6
Nova Scotia	<i>Sale of Goods Act</i> , RSNS 1989, c. 408
New Brunswick	<i>Sale of Goods Act</i> , RSNB 2016, c. 110
Prince Edward Island	<i>Sale of Goods Act</i> , RSPEI 1988, c. S-1
Yukon	<i>Sale of Goods Act</i> , RSY 2002, c. 198
Northwest Territories	<i>Sale of Goods Act</i> , RSNWT 1988, c. S-2
Nunavut	<i>Sale of Goods Act</i> , RSNWT (Nu) 1988, c. S-2

**Schedule "B"**

**Consumer Protection Legislation Across Canada**

<b>Province or Territory</b>	<b>Legislation</b>
Alberta	<i>Consumer Protection Act</i> , RSA 2000, c. C-26.3
Saskatchewan	<i>The Consumer Protection and Business Practices Act</i> , SS 2014, c. C-30.2
Manitoba	<i>Consumer Protection Act</i> , CCSM c. C200
Ontario	<i>Consumer Protection Act</i> , 2002, SO 2002, c. 30, Sch. A
Newfoundland and Labrador	<i>Consumer Protection and Business Practices Act</i> , SNL 2009, c. C-31.1
Nova Scotia	<i>Consumer Protection Act</i> , RSNS 1989, c. 92
New Brunswick	<i>Consumer Product Warranty and Liability Act</i> , SNB 1978, c. C-18.1
Prince Edward Island	<i>Consumer Protection Act</i> , RSPEI 1988, c. C-19
Yukon	<i>Consumers Protection Act</i> , RSY 2002, c. 40
Northwest Territories	<i>Consumer Protection Act</i> , RSNWT 1988, c. C-17
Nunavut	<i>Consumer Protection Act</i> , RSNWT (Nu) 1988, c. C-17



**Schedule "C"**  
**Limitation Act Legislation Across Canada**

<b>Province or Territory</b>	<b>Legislation</b>
Alberta	<i>Limitations Act</i> , RSA 2000, c. L-12
Saskatchewan	<i>The Limitations Act</i> , SS 2004, c. L-16.1
Manitoba	<i>The Limitation of Actions Act</i> , CCSM c. L150
Ontario	<i>Limitations Act</i> , 2002, SO 2002, c. 24, Sch. B
Newfoundland and Labrador	<i>Limitations Act</i> , SNL 1995, c. L-16.1
Nova Scotia	<i>Limitation of Actions Act</i> , SNS 2014, c. 35
New Brunswick	<i>Limitation of Actions Act</i> , SNB 2009, c. L-8.5
Prince Edward Island	<i>Statute of Limitations</i> , RSPEI 1988, c. S-7
Yukon	<i>Limitation of Actions Act</i> , RSY 2002, c. 139
Northwest Territories	<i>Limitation of Actions Act</i> , RSNWT 1988, c. L-8
Nunavut	<i>Limitation of Actions Act</i> , RSNWT (Nu) 1988, c. L-8

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

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28 (the "CJPTA") in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10(e)(I), (iii)(a) & (b), (f), (g), (h) and (I) of the *CJPTA* because this proceeding:

(e)(I) concerns contractual obligations to a substantial extent, were to be performed in British Columbia:

(e) (iii)(a) & (b) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;

(f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;

(g) concerns a tort committed in British Columbia;

(h) concerns a business carried on in British Columbia;

(I) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Appendix

*[The following information is provided for data collection purposes only and is of no legal effect.]*

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

The within proposed class proceeding arises out of the Defendants failure to disclose or remedy defects of design and/or manufacturing that can cause the engines of certain of their vehicles to suddenly stall or to spontaneously burst into flames while in operation so as to create a serious safety hazard.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- ☐ 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:**

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50
  2. *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c. 28
  3. *Business Practices and Consumer Protection Act*, S.B.C. 2004 ;
  4. *Sale of Goods Act*, R.S.B.C 1996, c. 410
  5. *Motor Vehicle Safety Act* , R.S.C. 1993, c.16
  6. *Court Order Interest Act*, R.S.B.C., c. 79
  7. *Competition Act*, R.S.C 1985, c. C-34
  8. *Limitation Act*, S.B.C. 2012, c.13
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