

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MR JUSTICE GLUSTEIN

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TUESDAY, THE 9th
DAY OF MARCH, 2021

BETWEEN:

KEITH McBAIN

Plaintiff

and

HYUNDAI AUTO CANADA CORP,
HYUNDAI MOTOR COMPANY, LTD, HYUNDAI MOTOR AMERICA, INC,
and HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(SETTLEMENT APPROVAL)

THIS MOTION, made by the Plaintiff, for an order (1) approving the Settlement Agreement, dated October 22, 2020; (2) approving the form, content, and manner of dissemination of the Approval Notice; (3) approving the form and content of the Claim Form; and, (4) appointing the Claims Administrator, was heard on February 23, 2021 virtually over Zoom.

ON READING the materials filed by the parties, including the Settlement Agreement between them, dated October 22, 2020 (the "Settlement Agreement"), a copy of which is attached as Schedule "A," and any written objections filed, and on hearing the submissions of

Class Counsel and counsel for the Defendants (and any objectors), fair and adequate notice of the within hearing having been provided to Settlement Class Members in accordance with the Pre-Approval Order of this Court, dated November 5, 2020.

AND ON BEING ADVISED (1) that the Defendants consent to this Order; and, (2) that Epiq Class Action Services Canada, Inc consents to being appointed as Claims Administrator;

1. **THIS COURT ORDERS** that the capitalized terms herein have the same meaning as in the Settlement Agreement unless otherwise defined herein;
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class;
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s 29 of the *Class Proceedings Act, 1992*, SO 1992, c 6;
4. **THIS COURT ORDERS** that the Settlement Agreement shall be implemented in accordance with its terms;
5. **THIS COURT ORDERS** that the benefits set forth in the Settlement Agreement are provided in full satisfaction of the obligations of the Defendants under the terms of the Settlement Agreement;
6. **THIS COURT ORDERS** that this Order gives effect to the release and waiver in favour of the Defendants provided for in the Settlement Agreement;
7. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the Representative Plaintiff and all Settlement Class Members;

8. **THIS COURT ORDERS** that Epiq Class Action Services Canada, Inc is appointed as Claims Administrator and that the Claims Administrator shall perform the duties and responsibilities set out in the Settlement Agreement and any other related duty or responsibility as ordered by this Court;

9. **THIS COURT APPROVES** the form and content of the Approval Notice, attached as Schedule "B" to this Order;

10. **THIS COURT ORDERS** that the Approval Notice shall be published and disseminated by the Claims Administrator in accordance with the Settlement Agreement and the Notice Plan, attached as Schedules "A" and "C" to this Order, respectively;

11. **THIS COURT ORDERS** that the dissemination of the Approval Notice as set out in the Settlement Agreement and in the Notice Plan is the best notice practicable under the circumstances, and constitutes sufficient notice to all Settlement Class Members entitled to notice;

12. **THIS COURT ORDERS** that the Defendants shall pay the costs and fees of the Claims Administrator, including the costs associated with publishing and disseminating the Approval Notice, in accordance with the terms of the Settlement Agreement;

13. **THIS COURT ORDERS AND AUTHORIZES** the Defendants to provide the Claims Administrator with the names, mailing addresses and email addresses (if available) of Settlement Class Members for the purposes of disseminating the Approval Notice and otherwise implementing the Settlement Agreement;

14. **THIS COURT ORDERS** that all information provided to the Claims Administrator by or about Settlement Class Members as part of the Notice Plan or administration of the Settlement Agreement shall be collected, used, and retained by the Claims Administrator and its agents pursuant to the applicable privacy laws and solely for the purposes of providing notice of settlement and administering the Settlement Agreement; the information provided shall be treated as private and confidential and shall not be disclosed without the express written consent of the relevant Settlement Class Member, except in accordance with this Order and/or any other orders of this Court;

15. **THIS COURT APPROVES** the form and content of the Claim Form, which will be substantially the same as that which is attached as Schedule "D" to this Order;

16. **THIS COURT ORDERS** that in order to receive the eligible benefits set out in the Settlement Agreement, other than the Lifetime Warranty, Settlement Class Members must submit a Claim Form to the Claims Administrator on or before the Claims Deadline;

17. **THIS COURT ORDERS** that the Action shall be dismissed without costs and with prejudice as of the Effective Date, provided however that the Plaintiffs and Settlement Class Members are not releasing claims for personal injury; damage to property other than to a Settlement Class Vehicle; or, claims that relate to something other than a Settlement Class Vehicle and the alleged defect here;

18. **THIS COURT ORDERS** that each Settlement Class Member shall be deemed to have consented to the dismissal as against the Releasees, without costs and with prejudice, of any and all proceedings asserting the Settlement Class Members' Released Claims;

19. **THIS COURT ORDERS** that any and all proceedings asserting the Settlement Class Members' Released Claims commenced in Ontario by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice;

20. **THIS COURT ORDERS** that Settlement Class Members shall be deemed to release and forever discharge the Releasees of and from any and all Released Claims;

21. **THIS COURT ORDERS** that the Settlement Class Members shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or other person, any action, suit, cause of action, claim or demand against any Releasee, or against any other person who is entitled to claim contribution or indemnity from any Releasee, in respect of any Released Claim;

22. **THIS COURT ORDERS** that neither the Settlement Agreement, including all terms thereof, nor performance under the terms of the Settlement Agreement by the Parties is, or shall be, construed as any admission by the Plaintiffs, the Settlement Class Members, or the Defendants, including, but not limited to: (1) the validity of any claim, theory, or fact; (2) any liability, fault, or responsibility; (3) the existence, cause, or extent of any damages or losses alleged or suffered by the Plaintiffs or any Settlement Class Member; or, (4) the appropriateness of class certification in the Action;

23. **THIS COURT ORDERS** that neither the Settlement Agreement, including all terms thereof, nor performance under the terms of the Settlement Agreement by any Party thereto is, or shall be construed as, an admission by the Plaintiffs, Settlement Class Members, or the Defendants of the validity of any fact or defence asserted in the Action, or in any other litigation;

24. **THIS COURT ORDERS** that if the Settlement Agreement fails to become effective on its terms, or this Order is not entered or is vacated, reversed or materially modified on appeal (and, in the event of material modification, one of the Parties elects to terminate the said Agreement), then this Order shall become null and void, the Settlement Agreement shall be deemed terminated in accordance with its terms, and the Parties shall return to their positions without prejudice in any way, as provided in the said Agreement;

25. **THIS COURT ORDERS** that this Order is contingent upon:

- (i) a parallel order being made by this Court in the action titled *Asselstine v Kia Canada Inc, et al*, bearing Ontario Superior Court of Justice Court File No CV-19-627149-00CP;
- (ii) a parallel order being made by the Superior Court of Québec in the action titled *Pelletant v Hyundai Auto Canada Corp et al*, bearing Superior Court of Québec Court File No 500-06-0010103-198;
- (iii) the dismissal and/or discontinuance of the action titled *Papp v Kia Motors America Inc, et al*, bearing Court of Queen's Bench for Saskatchewan Court File No QBG 795/19; and,
- (iv) the dismissal and/or discontinuance of the action titled *Killoran v Hyundai Auto Canada Corp, et al*, bearing Supreme Court of British Columbia Court File No S-194327.

26. **THIS COURT ORDERS** that the terms of this Order shall not be effective unless and until such orders mentioned in paragraph 25 above have been made;

27. **THIS COURT ORDERS** that this Court will retain an ongoing supervisory role for the purpose of implementing, administering and enforcing the Settlement Agreement, subject to the terms and conditions set out in the Settlement Agreement;

28. **THIS COURT DIRECTS** Ontario Class Counsel to contact the Court diligently in the event that the content of the informational pamphlet suffers major discrepancies when compared to the stipulations of the Settlement Agreement;

29. **THIS COURT ORDERS** that any Party may bring a motion to this Court at any time for directions with respect to the implementation or interpretation of the Settlement Agreement on notice to all other Parties;

30. **THIS COURT ORDERS** that if the Case-Management Judge originally assigned in this Action is, for any reason, unable to fulfill any of the duties set out in the Settlement Agreement, another Judge of this Court shall be appointed in his stead;

31. **THIS COURT DECLARES** that where any term of this Order and the Settlement Agreement conflict, the term contained in this Order shall govern;

32. **THIS COURT ORDERS** that there shall be no costs of this motion.


The Honourable Justice Benjamin Glustein

KEITH McBAIN
Plaintiff

-and-

HYUNDAI AUTO CANADA CORP et al
Defendants

Cv -
Court File No. 19-00627147-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
LONDON

ORDER

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