



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 21-Jan-2022  
Délivré par voie électronique  
Toronto

ROBERT CORBIN

Plaintiff

and

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.  
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date January 21, 2022 Issued by \_\_\_\_\_  
Local Registrar

Address of court office: Toronto Courthouse  
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**TO: KIA CANADA INC**  
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**TO: KIA MOTORS MANUFACTURING GEORGIA, INC**  
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**TO: HYUNDAI MOTOR AMERICA, INC**  
10550 Talbert Avenue  
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**TO:**           **HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC**  
700 Hyundai Boulevard  
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USA

## CLAIM

### DEFINED TERMS

1. The following definitions apply for the purpose of this Statement of Claim:

- (a) “**Affected Vehicles**” means all vehicles designed, developed, manufactured, marketed, distributed, leased, and/or sold by the Defendants and equipped with the **Engines**, except for **Excluded Vehicles**. Affected Vehicles include, but are not limited to, the following:

| Model        | Model Year(s) Affected |
|--------------|------------------------|
| Kia Cadenza  | 2014-2019              |
| Kia Forte    | 2014-2018              |
| Kia Optima   | 2016-2020              |
| Kia Rio      | 2011-2019              |
| Kia Rondo    | 2013-2017              |
| Kia Sedona   | 2015-2021              |
| Kia Sorento  | 2012-2020              |
| Kia Soul     | 2012-2021              |
| Kia Sportage | 2011-2021              |
| Kia Stinger  | 2018-2021              |

- (b) “**Class**” and/or “**Class Members**” means all persons, corporations or other entities resident in Canada who are current or former owners and/or lessees of an **Affected Vehicle**;
- (c) “**Engines**” means the Theta II 2.4-litre and turbocharged 2.0-litre, Nu 2.0-litre, Gamma II 1.6-litre and turbocharged 1.6-litre, and Lambda II 3.0-litre, 3.3-litre, 3.8-litre and turbocharged 3.3-litre **GDI** engines designed, developed and manufactured by the Defendants;

- (d) **“Engine Defect”** means the latent design, manufacturing, material, and/or workmanship defects in the Affected Vehicles that cause restricted oil flow, excessive oil consumption, sudden vehicle stalling, catastrophic engine failure, and/or non-collision engine fires;
- (e) **“Excluded Vehicles”** means the following vehicles equipped with Theta II 2.4-litre and turbocharged 2.0-litre **GDI** engines designed, developed and manufactured by the Defendants:

| <b>Model</b> | <b>Model Year(s) Affected</b> |
|--------------|-------------------------------|
| Kia Optima   | 2011-2019                     |
| Kia Sorento  | 2012-2019                     |
| Kia Sportage | 2011-2019                     |

- (f) **“GDI”** means gasoline direct injection;
- (g) **“Hyundai”** means Hyundai Motor Company;
- (h) **“Hyundai Alabama”** means Hyundai Motor Manufacturing Alabama, LLC;
- (i) **“Hyundai USA”** means Hyundai Motor America, Inc;
- (j) **“Kia”** means Kia Motors Corporation;
- (k) **“Kia Canada”** means Kia Canada Inc;
- (l) **“Kia Georgia”** means Kia Motors Manufacturing Georgia, Inc;
- (m) **“Kia USA”** means Kia Motors America, Inc; and,
- (n) **“Mr Corbin”** means Robert Corbin.

**RELIEF CLAIMED**

2. The Plaintiff, Mr Corbin, on his own behalf and on behalf of all Class Members, seeks:
- (a) an order certifying this action as a class proceeding and appointing him as the representative plaintiff of the Class pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6;
  - (b) a declaration that the Defendants, or any of them, were negligent in the design, research, development, testing, manufacturing, marketing, advertisement, promotion, distribution, warning, sale, leasing, warranting, servicing, and/or repair of the Affected Vehicles;
  - (c) a declaration that the Defendants, or any of them, are vicariously liable for the acts and omissions of their officers, directors, agents, employees, and representatives;
  - (d) a declaration that the Defendants, or any of them, breached the express warranties for the Affected Vehicles;
  - (e) a declaration that the Defendants, or any of them, breached the implied warranties for the Affected Vehicles contrary to Part II of the *Consumer Protection Act, 2002*, SO 2002, c 30, Schedule A, the parallel provisions of the consumer protection legislation in other Canadian provinces as described in Appendix 1 hereto, the *Sale of Goods Act*, RSO 1990, c S 1, and the parallel provisions of the sale of goods legislation in other Canadian provinces as described in Appendix 2 hereto;
  - (f) a declaration that the Defendants, or any of them, breached the *Motor Vehicle Safety Act*, SC 1993, c 16, by failing to provide notice of the latent Engine Defect to Mr Corbin and the Class Members;
  - (g) a declaration that the Defendants, or any of them, were unjustly enriched at the expense of Class Members;
  - (h) general damages and special damages in the amount of \$100,000,000;
  - (i) punitive damages in the amount of \$25,000,000;
  - (j) disgorgement of the Defendants' profits and other equitable relief;
  - (k) a reference to decide any issues not decided at the trial of the common issues;
  - (l) costs of administration and notice, plus applicable taxes, pursuant to s 26(9) of the *Class Proceedings Act, 1992*;
  - (m) costs of this action pursuant to the *Class Proceedings Act, 1992*, the *Courts of Justice Act*, and the *Rules of Civil Procedure*, RRO 1990, Reg 194;

- (n) prejudgment interest compounded and post-judgement interest in accordance with ss 128 and 129 of the *Courts of Justice Act*, RSO 1990, c C43, as amended; and,
- (o) such further and other relief as to this Honourable Court may seem just.

## **THE PARTIES**

### **The Plaintiff and the Class**

- 3. Mr Corbin is an individual residing in Dundalk, Ontario. He is the current owner of a 2015 Kia Soul equipped with a Nu 2.0-litre GDI Engine.
- 4. Mr Corbin seeks to represent the following Class of which he is a member:
  - All persons, corporations or other entities resident in Canada who are current or former owners and/or lessees of an Affected Vehicle.

### **The Defendants**

- 5. The Defendant Kia Canada is a corporation incorporated pursuant to the laws of Canada with its registered office located in Mississauga, Ontario. It is a wholly-owned subsidiary of Kia Motors Corporation.
- 6. Kia Canada imports into Canada for sale or lease newly manufactured Kia vehicles, including the Affected Vehicles, and is responsible for ensuring that those vehicles' designs are compliant with the regulations for import into Canada.
- 7. Kia Canada sells, leases, services and repairs the Affected Vehicles in Canada through its network of dealers who are its agents. Money received by a dealer from the purchase or lease of a Kia vehicle flows from the dealer to the Defendants.
- 8. Kia Canada administers the warranties for all Affected Vehicles sold in Canada, representing that they are, *inter alia*, free of defects in material and workmanship.

9. The Defendant Kia is a corporation organized and existing under the laws of South Korea. Kia controls and directs Kia Canada with respect to virtually all aspects of the Affected Vehicles.
10. The Defendant Hyundai is a corporation organized and existing under the laws of South Korea.
11. The Defendants Hyundai and Kia designed, engineered, researched, developed, tested, manufactured, marketed, supplied, and distributed the Engines in the Affected Vehicles sold in Canada.
12. The Defendant Kia USA is a corporation organized and existing under the laws of California. Kia USA is and was at all material times a wholly-owned subsidiary of Kia.
13. The Defendant Hyundai USA is a corporation organized and existing under the laws of California. Hyundai USA is and was at all material times a wholly-owned subsidiary of Hyundai.
14. The Defendants Kia USA and Hyundai USA are and were at all material times responsible for exporting Affected Vehicles and parts for Affected Vehicles, including the Engines, from the United States into Canada.
15. The Defendant Kia Georgia is a corporation organized and existing under the laws of Georgia. Kia Georgia is and was at all material times a wholly-owned subsidiary of Kia.



16. The Defendant Hyundai Alabama is a corporation organized and existing under the laws of Delaware. Hyundai Alabama is and was at all material times a wholly-owned subsidiary of Hyundai and Hyundai USA.
17. The Defendants Kia Georgia and Hyundai Alabama manufactured Affected Vehicles and Engines sold, leased and/or distributed in Canada.
18. The Defendants operated and continue to operate as an integrated unit and are collectively responsible for the design, research, development, testing, manufacture, production, supply, distribution, marketing, leasing and sale of thousands of the Affected Vehicles to residents of Canada. They prepared and participated in the development of the owner's manuals, warranty booklets, and maintenance recommendations and/or schedules for the Affected Vehicles and continue to provide service and maintenance for the Affected Vehicles through their extensive network of authorized dealers and service providers.

## **THE FACTS**

### **The Engines**

19. The Engines contain a GDI fuel-delivery system, which injects gasoline directly into the combustion chamber rather than through a carburetor. The Defendants advertise that this shorter and more direct path of fuel delivery allows for greater control of the fuel mixture at the optimum moment, improving efficiency and allowing for better fuel economy, increased power, and reduced emissions.
20. In these Engines, the fuel is injected into a camshaft-driven, high-pressure pump. The Engines use a higher than normal compression ratio for increased power as well as "dished" pistons for increased combustion efficiency in the cylinder.

21. The Engines use four reciprocating pistons (six reciprocating pistons in the Lambda II Engines) to convert pressure into a rotating motion. Gasoline is mixed with air in the combustion chambers of the engine. A four-stroke sequence (the “Combustion Cycle”) is used to generate the rotating motion as follows:
- (a) the intake stroke begins with the inlet valve opening and a vaporized fuel mixture being pulled into the combustion chamber;
  - (b) the compression stroke begins with the inlet valve closing and the piston beginning its movement upward, compressing the vaporized fuel mixture in the combustion chamber;
  - (c) the power stroke begins when the spark plug ignites the vaporized fuel mixture, expanding the gases and generating power that is then transmitted to the crankshaft;
  - (d) the exhaust stroke begins with the exhaust valve opening and the piston moving back up, forcing the exhaust gases out of the cylinder; and,
  - (e) the exhaust valve then closes, the inlet valve opens, and the Combustion Cycle repeats itself.
22. The “dished” pistons in the Engines are connected to the crankshaft via the connecting rod. As the connecting rod moves up and down during the Combustion Cycle, the crankshaft rotates, providing power to the Affected Vehicles’ drive wheels. During this cycle, the crankshaft rotates several thousand times per minute within each connecting rod. A bearing placed between the connecting rod and crankshaft surfaces allows the crankshaft to rotate

within the connecting rods during the Combustion Cycle, reduces friction and prolongs longevity.

23. Engine oil is crucial to the performance of the Engines in the Affected Vehicles. When the Affected Vehicles are in operation, engine oil:
- (a) is used to lubricate the pistons, cylinder walls, connecting rod bearings, and other rotating and moving parts as the pistons move up and down through the four-stroke sequence;
  - (b) is essential to reducing wear on the rotating and moving parts of the Engine; improving sealing; and, cooling the Engine by carrying away heat from its rotating and moving parts; and,
  - (c) cleans and transports contaminants away from the Engine to the engine oil filter.
24. An oil pump pumps and pressurizes oil throughout the Engine. The oil pump draws oil from the oil pan, located underneath the piston and crankshaft, and forces the oil through the oil filter and then through passages in the Engine to properly lubricate and reduce friction in the rotating and moving engine parts. The oil returns to the oil pan through small drainage holes located throughout the Engine before being recirculated by the oil pump.
25. In the Engines, the connecting rod bearings must be lubricated with engine oil to allow the crankshaft to rotate within the connecting rods.

### **The Latent Engine Defect**

26. This action concerns a latent Engine Defect in the Affected Vehicles, which typically manifests itself during the limited warranty period or shortly after its expiration. Latent design, manufacturing, material, and/or workmanship defects in the Affected Vehicles cause restricted oil flow, excessive oil consumption, sudden vehicle stalling, catastrophic engine failure, and/or non-collision engine fires (the “Engine Defect”).
27. As they contain a GDI fuel-delivery system, the Engines are exposed to more internal heat and significantly higher pressure while in operation, and are prone to building of carbon residue, excessive oil consumption, and flash burns in the cylinder. Furthermore, because the GDI fuel-delivery system requires pulling vaporized fuel mixture into the combustion chamber, the software of the engine control module must be carefully designed and calibrated.
28. As a result, the manufacturing, assembly, and quality control processes for producing and installing these Engines must be both precise and robust, to minimize, if not eliminate, the possibility of impurities contaminating the production of the engine components and manufacturing errors.
29. As the Defendants’ production and sales ramped up, the quality of the workmanship in manufacturing the Engines, including, but not limited to, their components, such as the engine blocks, pistons, and connecting rod bearings, to design specifications and in programming the engine control modules suffered.
30. Many of these manufacturing and workmanship defects would have been discoverable in routine quality control inspections done to ensure that manufactured pieces meet design

specifications. When engine components fail to meet design specifications, they fail to fit together properly, prematurely wear and breakdown, and are prone to damaging themselves and/or other engine components, and causing the Engine Defect.

### **Metal Debris Circulating in the Engines of the Affected Vehicles**

31. As mentioned above, when engine components fail to meet design specifications, they fail to fit together properly and prematurely wear and breakdown, causing metal debris from those components or other components to circulate throughout the Engines via the engine oil. Metal debris in the engine oil also results from, *inter alia*, (i) the failure to properly clean the engine crankshaft to remove metal debris during manufacturing; and , (ii) residual metal debris from factory machining operations.
32. The metal debris in the engine oil causes damage to the Engines' components in two ways: (i) through contact with the engine components; and, (ii) by blocking the flow of oil to rotating and moving engine components, causing premature wear due to the lack of oil lubrication.
33. As the metal debris circulates throughout the Engines via the engine oil, the connecting rod bearings in the Engines suffer damage and over time begin to fracture. Once the connecting rod bearings fracture, larger amounts of metal debris begin to accumulate in the engine oil. As a result, the engine oil becomes so contaminated with metal debris that the oil filter can no longer remove the debris and maintain the necessary oil pressure within the Engine. The oil pump recirculates the contaminated engine oil throughout the Engine, causing damage to the various engine components and eventually resulting in sudden and unexpected vehicle stalling, catastrophic engine failure, and/or non-collision engine fires.

34. Additionally, as the connecting rod bearings continue to fracture, the acceptable tolerances between the bearings, the connecting rod, and the crankshaft rapidly deteriorate, eventually causing the Engines to produce a “knocking” sound that increases in frequency as the engine speed rises. In some cases, the defective connecting rod bearings may eventually cause the piston to break through the engine block as a result of the deterioration. In other cases, connecting rods can fracture and create holes in the Engines, allowing fluids to leak in the Engines and ignite fires.
35. After the connecting rod bearings fail and more metal debris is circulated throughout the Engine via the engine oil, damage is caused to other key engine components, such as the main cap, which fastens the crankshaft to the Engine. This leads to vehicles stalling, catastrophic engine failure, and non-collision engine fires.
36. As stated above, as a result of the metal debris in the oil of the Engines, the Affected Vehicles suffer from restricted and inadequate engine oil lubrication. As explained above, it is essential that the Engines have oil distributed throughout the engine lubrication channels. When operating properly, the engine oil is distributed throughout the Engine by the oil pump and then flows back to the oil pan where it is recirculated throughout the Engine.
37. In the Affected Vehicles, the engine lubrication channels become clogged and restricted as a result of the metal debris in the engine oil – even under normal use and with proper maintenance. When the engine lubrication channels clog, the oil pump is unable to circulate oil throughout the Engine and unable to adequately return the oil to the oil pan, causing oil starvation. This insufficient lubrication causes premature wear of the engine components,

engine damage, vehicle stalling, catastrophic engine failure, and/or non-collision engine fires.

38. In many circumstances, the Affected Vehicles' check engine light may not turn on to alert drivers to the engine damage being caused by the metal debris and/or to warn drivers of impending vehicle stalling, catastrophic engine failure, and/or non-collision engine fires.

### **The Life-Threatening and Dangerous Nature of the Latent Engine Defect**

39. The Engine Defect is life-threatening and dangerous. As a result of latent design, manufacturing, material, and/or workmanship defects, the Affected Vehicles are prone to excessive oil consumption and/or the restriction of oil flow through the connecting rod bearings as well as to other vital areas of the Engine, causing the Affected Vehicles to experience sudden vehicle stalling, catastrophic engine failure, and/or non-collision engine fires during operation.
40. The Engine Defect poses a significant risk of personal injury and/or property damage to Mr Corbin and the other Class Members, occupants of the Affected Vehicles, and other members of the Canadian public because it can cause sudden vehicle stalling, catastrophic engine failure, and non-collision engine fires while the Affected Vehicles are in operation at any time and under any driving conditions and/or speed.
41. Numerous current and former owners and lessees of the Affected Vehicles have experienced engine damage, catastrophic engine failure, and/or non-collision engine fires while operating the Affected Vehicles, placing them and those around them in immediate danger.

42. Some current and former owners and lessees of the Affected Vehicles have experienced non-collision engine fires while the Affected Vehicles were not in operation, also placing them and those around them in immediate danger.

### **The Defendants' Knowledge of the Latent Engine Defect**

43. The Defendants have long been aware of the Engine Defect but have intentionally, negligently and/or recklessly concealed the Engine Defect from Mr Corbin and other Class Members; failed to warn Mr Corbin and the other Class Members of the serious personal safety risks from the latent Engine Defect; and, failed to adequately notify the appropriate authorities of the safety risk.
44. At all material times, the Defendants had notice and knowledge of the Engine Defect through, *inter alia*, (i) numerous complaints they received from consumers, including Mr Corbin and the Class Members; (ii) information received from dealers, including dealership repair records; (iii) Transport Canada and US National Highway Traffic Safety Administration complaints and records; (iv) warranty and post-warranty claims; (v) the high number of replacement parts ordered from the Defendants; and, (vi) their own internal records, including pre-sale durability testing.
45. The Defendants' customer relations departments routinely monitor the Internet for customer complaints and regularly receive and respond to customer calls concerning, *inter alia*, product defects. Through these activities, the Defendants were made aware of the Engine Defect and its potential danger.



46. The Defendants also became aware of the Engine Defect from the substantial volume of reports of engine problems relating to the connecting rod bearings, lubrication channels, and fuel leakage.
47. For example, Kia Canada's customer relations department works closely with Kia-authorized service technicians to identify potentially widespread vehicle problems and assist in the diagnosis of vehicle issues. Kia Canada has received numerous reports of engine problems in the Engines relating to the connecting rod bearings, lubrication channels, and fuel leakage.
48. The Defendants also collect and analyze field data, including, but not limited to, repair requests made at dealerships and service centres, technical reports prepared by engineers who have reviewed vehicles for which warranty coverage is requested, parts sales reports, and warranty claims data.
49. The Defendants' warranty departments similarly review and analyze warranty claims data submitted by their dealerships, agents and authorized service technicians to identify defect trends in their vehicles.
50. The Defendants knew or ought to have known about the Engine Defect because of the high number of replacement parts ordered from the Defendants.
51. In Canada, Kia service centres are required to order replacement parts, including engines, piston assemblies, and connecting rod bearings, directly from Kia Canada. Other independent vehicle repair shops that service Affected Vehicles also order replacement

parts directly from Kia Canada. Kia Canada routinely monitors part sales reports and is responsible for the shipping of parts requested by dealerships and technicians.

52. Kia Canada had detailed, accurate, and real-time data regarding the number and frequency of replacement part orders. The sudden increase in orders for the Engines and engine components used in the Affected Vehicles was known to Kia Canada and ought to have alerted it to the scope and severity of the Engine Defect.
53. The Defendants knew or ought to know about the Engine Defect from Transport Canada and US National Highway Traffic Safety Administration complaints and records. The Defendants routinely monitor these complaints and records to identify potential defects in their vehicles.
54. Although the Defendants became aware of the Engine Defect much earlier, US National Highway Traffic Safety Administration complaints establish that the Defendants knew, or ought to have known, of the Engine Defect at least as early as August 2, 2010, the date upon which the first US National Highway Traffic Safety Administration complaint in relation to the Engines was filed. This was before the majority of the Affected Vehicles were sold.
55. The Defendants are experienced in the design, testing, and manufacturing of passenger vehicles. As an experienced manufacturer, the Defendants conduct testing on incoming batches of components, including the Engines, to verify that the components are free from defects and comply with the Defendants' specifications.

56. In fact, the Defendants represent to its customers and the public that they put their vehicles, their engines and their engine components, through very stringent and tough tests.
57. Accordingly, the Defendants knew or ought to have known that the Engines used in the Affected Vehicles are defective and likely to fail prematurely, costing Mr Corbin and the Class Members thousands of dollars in expenses and presenting a serious safety risk to Mr Corbin, the Class Members and the public.

### **The Defendants' Conduct While Knowing About the Engine Defect**

58. Despite their knowledge of the Engine Defect:
- (a) the Defendants continued to market the Affected Vehicles as being safe and of a high quality;
  - (b) Kia Canada routinely refused to repair the Affected Vehicles free of charge when the Engine Defect manifested – even within the warranty period;
  - (c) Kia Canada routinely refused to offer to reimburse its customers who incurred out-of-pocket expenses to repair the Engine Defect – even within the warranty period;
  - (d) Kia Canada and its agents refused to disclose the existence of the Engine Defect when Affected Vehicles displaying symptoms consistent with the Engine Defect were brought in for service;
  - (e) Kia Canada and its agents ignored the Engine Defect in Affected Vehicles until it caused significant mechanical problems necessitating costly repairs;

- (f) Kia Canada has attempted to circumvent its warranty obligations related to the Engine Defect by faulting Class Members for use of aftermarket oil filters or for a lack of maintenance;
- (g) the Defendants did not inform Class Members of the true cause of the engine damage, excessive oil consumption, vehicle stalling, catastrophic engine failure, and non-collision engine fires;
- (h) despite knowing that the Engine Defect manifests even if the Class Members followed Kia's oil change guidelines, Kia Canada and its agents attempted to evade Kia Canada's warranty obligations by requiring Class Members to produce the entire maintenance history of the Affected Vehicles, including proof that all oil changes were completed at a Kia dealership, before determining whether to make the necessary repairs under warranty;
- (i) the Defendants have refused to take any action to correct the Engine Defect when it manifests in the Affected Vehicles after the expiration of the warranty period; and,
- (j) Kia Canada has failed to recall and/or offer adequate engine repairs and/or replacements for every Affected Vehicle.

59. Although Kia Canada has recalled some of the Affected Vehicles due to Engine Defect, (1) many of the Affected Vehicles have not been recalled; and, (2) the engine repairs and/or replacements completed under these recall campaigns did not offer sufficient solutions to the Engine Defect.

### **Transport Canada Recalls**

60. Kia Canada has been slow to recall the Affected Vehicles, if at all.
61. Since December 17, 2019, Kia Canada has initiated eight recalls with respect to the Engine Defect in the Affected Vehicles in Canada.
62. Despite the eight recalls, many of the Affected Vehicles have not yet been recalled despite (i) having the same Engines as the recalled Affected Vehicles; and, (ii) Class Members notifying the Defendants about their Engines stalling, failing, or catching fire.
63. On December 17, 2019, Kia Canada announced that it would be conducting a Product Improvement Campaign for 26,082 model year 2019 Kia Optima vehicles, model year 2019 Kia Sorento vehicles, and model year 2019-2020 Kia Sportage vehicles (Transport Canada Recall # 2019-639).
64. Under this Product Improvement Campaign, Kia Canada is providing a software update to the engine control module to detect potential problems before the Engine fails. This recall campaign indicates that engine failure could cause a sudden loss of power with an inability to restart and could increase the risk of a crash.
65. On November 11, 2020, Kia Canada announced that it would be conducting a Product Improvement Campaign for 27,879 model year 2014-2016 Kia Soul vehicles equipped with Nu 2.0-litre Engines (Transport Canada Recall # 2020-535).
66. Under this Product Improvement Campaign, Kia Canada is providing a software update to the engine control module to detect potential problems before the Engine fails. This recall

campaign indicates that engine failure could cause a sudden loss of power with an inability to restart and could increase the risk of a crash.

67. On December 4, 2020, Kia Canada initiated a recall of 39,658 model year 2012-2015 Kia Forte vehicles, model year 2011-2013 Kia Optima vehicles, model year 2012 Kia Sorento vehicles, model year 2014-2015 Kia Soul vehicles, and model year 2012 Kia Sportage vehicles equipped with Nu 2.0-litre Engines (Transport Canada Recall # 2020-597).
68. This recall campaign indicates (i) that in these vehicles, an engine compartment fire could occur while driving, due to potential fuel leaks, oil leaks and/or engine damage; (ii) that in some situations, the following symptoms might appear in advance of engine failure and/or a fire: an abnormal knocking noise from the engine; illumination of the check engine light and/or the oil pressure warning light; a fuel, burning or smoke smell; and/or, oil leaks; (iii) that if the vehicle continues to be driven with these symptoms, the engine could fail and/or a fire could occur; (iv) that an engine failure could cause a sudden loss of power with an inability to restart; (v) that a sudden loss of engine power could increase the risk of a crash; and, (vi) that an engine compartment fire could create a risk of injury.
69. Under this recall campaign, dealers are to inspect the Engine and engine compartment for fuel and/or engine oil leaks, perform an engine test, and make any repairs, including replacing the Engine, if necessary. The recall campaign also involves performing the Knock Sensor Detection System (KSDS) software update – designed to detect engine damage from worn connecting rod bearings –, if it is available for the vehicle.
70. On February 1, 2021, Kia Canada announced that it would be conducting a Product Improvement Campaign for 30,938 model year 2016-2018 Kia Forte vehicles and model

year 2014-2015 Kia Rondo vehicles equipped with Nu 2.0-litre Engines (Transport Canada Recall # 2021-039).

71. Under this Product Improvement Campaign, Kia Canada is providing a software update to the engine control module to detect potential problems before the Engine fails. This recall campaign indicates that engine failure could cause a sudden loss of power with an inability to restart and could increase the risk of an accident and/or create the risk of a fire.
72. On April 6, 2021, Kia Canada announced that it would be conducting a Product Improvement Campaign for 8,908 model year 2012-2016 Kia Soul vehicles equipped with Gamma II 1.6-litre Engines (Transport Canada Recall # 2021-204).
73. Under this Product Improvement Campaign, Kia Canada is providing a software update to the engine control module to detect potential problems before the Engine fails. This recall campaign indicates that engine failure could cause a sudden loss of power with an inability to restart and could increase the risk of a crash and/or create the risk of a fire.
74. On November 1, 2021, Kia Canada initiated a recall of 712 model year 2017-2018 Kia Optima vehicles equipped with Nu 2.0-litre Engines (Transport Canada Recall # 2021-666).
75. This recall campaign indicates (i) that the connecting rod bearings can become damaged; (ii) that if the connecting rod bearings become damaged, the Engine could make abnormal knocking noises and/or the oil pressure warning light may turn on; (iii) that if the vehicle continues to be driven with these symptoms, the Engine could fail and/or a fire could occur; (iv) that engine failure can cause a sudden loss of power with an inability to restart; (v) that

a sudden loss of engine power could increase the risk of a crash; and, (vi) that engine failure could also create the risk of a fire.

76. Under this recall campaign, dealers are to inspect the Engines for connecting rod bearing damage and replace the Engine if connecting rod bearing damage is found. The recall campaign also involves a software update for the engine control module. The recall campaign also involves installing the Knock Sensor Detection System (KSDS) software update designed to detect engine damage from excessive connecting rod bearing wear.
77. On December 7, 2021, Kia Canada announced that it would be conducting a Product Improvement Campaign for 19,923 model year 2017-2019 Kia Soul vehicles equipped with Nu 2.0-litre Engines (Transport Canada Recall # 2021-733).
78. Under this Product Improvement Campaign, Kia Canada is providing a software update to the engine control module to detect potential problems before the Engine fails. This recall campaign indicates that engine failure could cause a sudden loss of power with an inability to restart and could increase the risk of an accident and/or create the risk of a fire.
79. On January 11, 2022, Kia Canada announced that it would be conducting a Product Improvement Campaign for 200 model year 2019-2020 Kia Optima vehicles equipped with Nu 2.0-litre Engines (Transport Canada Recall # 2022-004).
80. Under this Product Improvement Campaign, Kia Canada is providing a software update to the engine control module to detect potential problems before the Engine fails. This recall campaign indicates that a sudden loss of engine power could increase the risk of an accident and that engine failure could also create the risk of a fire.



81. Despite initiating the eight recall campaigns described above, the Defendants have not developed a sufficient solution, remedy, or fix for the Engine Defect. Under these recall campaigns, the Engine Defect was left unaddressed; the Engines were replaced with GDI engines containing the same Engine Defect; or, a software update was provided to detect the Engine Defect before the Engine fails. The Defendants still have no solution to correct the Engine Defect itself.

### **The Plaintiff's Experience**

82. In April 2016, Mr Corbin purchased a used 2015 Kia Soul from Barrie Ford in Barrie, Ontario. He purchased this vehicle for personal, family and/or household uses.
83. Mr Corbin's 2015 Kia Soul is equipped with a Nu 2.0-litre GDI Engine.
84. On January 18, 2019 at approximately 5:30 pm, Mr Corbin's wife, Susan Corbin ("Ms Corbin"), was returning home from a trip to Costco Wholesale in Orillia, Ontario. While driving in the left lane on Highway 93 through Midland, Ontario at a speed of approximately 50 km/h, Ms Corbin experienced catastrophic engine failure in Mr Corbin's 2015 Kia Soul.
85. The catastrophic engine failure was sudden and unexpected and came without warning: no warning lights, no history of strange sounds from the Engine, and no previous problems with the vehicle. The vehicle abruptly emitted a loud bang, which was followed by a consistent grinding noise, a sudden loss of power, and a lot of smoke coming out from under the vehicle and its front grill.

86. The sudden and unexpected engine fire that Ms Corbin experienced in Mr Corbin's 2015 Kia Soul was a life-threatening and dangerous occurrence. When the vehicle's Engine failed, the vehicle was in the left lane on Highway 93 with other vehicles speeding by. Ms Corbin could not safely enter the right lane to perform a right-hand turn and stopping the vehicle on the road would have exposed her to further risk of personal injury, especially given that it was dark outside. Fortunately, Ms Corbin was able to coast the vehicle into a nearby parking lot on the left and avoid serious personal injury.
87. From the parking lot, Ms Corbin phoned a friend to pick her up and arranged for Mr Corbin's 2015 Kia Soul to be towed to Precision Auto in Penetanguishene, Ontario – an auto repair shop with which Mr and Ms Corbin had a relationship of trust and rapport.
88. The next day, a trusted service technician at Precision Auto phoned Mr and Ms Corbin to report that the Engine in Mr Corbin's 2015 Kia Soul had suffered a catastrophic engine failure and could not be repaired. If the vehicle was ever to be driven again, its Nu 2.0-litre Engine would either need to be completely rebuilt or wholly replaced.
89. Mr and Ms Corbin canvassed friends, wreckers and dealerships extensively for a replacement engine, but did not find an economically viable option. For this reason, and after incurring significant out-of-pocket expenses on rental cars and other related expenses, Mr and Ms Corbin leased a 2013 Ford Fusion in February 2019. Mr and Ms Corbin continue to make bi-weekly payments on Mr Corbin's 2015 Kia Soul despite the vehicle sitting dormant and unusable on their residential property.

90. As a result of the defect in his Affected Vehicle's Engine, Mr Corbin has suffered, and will continue to suffer, damages, including, but not limited to, the diminished value of his vehicle.
91. At all material times, Mr Corbin followed Kia Canada's maintenance recommendations and/or schedules for his 2015 Kia Soul. He had his vehicle serviced primarily at Precision Auto in Penetanguishene, Ontario, but occasionally at Midland Victory Lube in Midland, Ontario.
92. Mr Corbin's Affected Vehicle had been serviced shortly before the catastrophic engine failure and had approximately 145,000 km on its odometer at the time of the January 18, 2019 catastrophic engine failure.
93. Ms Corbin had checked the engine oil level in Mr Corbin's Affected Vehicle approximately one week before the January 18, 2019 catastrophic engine failure and it had been fine at that time. The day after the January 18, 2019 catastrophic engine failure, the service technician at Precision Auto reported to Mr and Ms Corbin that there was only half a litre of engine oil in the Engine.
94. Neither the Defendants nor any of their agents, affiliates, predecessors, or subsidiaries informed Mr Corbin of the existence of the latent Engine Defect prior to his purchase of the vehicle. Had Mr Corbin known of the Engine Defect in the 2015 Kia Soul at the time of purchase, he would not have purchased the vehicle or would have paid substantially less to purchase the vehicle.

## CAUSES OF ACTION

### Negligence

95. The Defendants are and were in a relationship of proximity to Mr Corbin and the Class Members. It was reasonable foreseeably that if the Affected Vehicles contained the Engine Defect, harm to Mr Corbin and the Class Members would result.
96. At all material times, the Defendants, or any of them, owed a duty of care to Mr Corbin and the Class Members to:
- (a) exercise reasonable care in the design, research, development, testing, manufacturing, marketing, advertisement, promotion, distribution, leasing, sale, warranting, servicing, and repair of the Affected Vehicles;
  - (b) ensure that the Affected Vehicles were fit for intended and/or reasonably foreseeable use;
  - (c) conduct appropriate testing to determine that the Affected Vehicles were fit for intended and/or reasonably foreseeable use;
  - (d) take all reasonable steps necessary to manufacture, promote, lease, and/or sell a product that was not unreasonably dangerous to those who use it;
  - (e) properly, adequately, and fairly warn of the magnitude and scope of the Engine Defect;
  - (f) ensure that consumers and the public were kept fully and completely informed of all defects associated with the Affected Vehicles in a timely manner;

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- (g) not withhold from consumers and the public material facts concerning the safety, performance, and reliability of the Affected Vehicles;
  - (h) monitor, investigate, evaluate, and follow up on reports of defects in the Affected Vehicles; and,
  - (i) provide a timely and effective fix to rectify the Engine Defect.
97. The reasonable standard of care expected in the circumstances required the Defendants to act fairly, reasonably, honestly, candidly and with due care in the course of designing, developing, testing, and manufacturing the Affected Vehicles and having them certified, imported, marketed and distributed. The Defendants, through their employees, officers, directors and agents, failed to meet the reasonable standard of care in that regard and similarly failed to warn Mr Corbin and the Class Members of the latent Engine Defect.
98. Mr Corbin's and the Class Members' damages were caused by the negligence of the Defendants. Such negligence includes, but is not limited to, the following:
- (a) the Defendants failed to adequately design, research, develop, test, and/or manufacture the Affected Vehicles before marketing, advertising, promoting, warranting, leasing, and selling the Affected Vehicles as suitable and safe for use in an intended and/or reasonably foreseeable manner;
  - (b) the Defendants failed to ensure that the Affected Vehicles were free of defects and of merchantable quality;

- (c) the Defendants failed to adequately test the Affected Vehicles and their Engines in a manner that would fully disclose the magnitude and scope of the Engine Defect;
- (d) the Defendants failed to provide Mr Corbin and the Class Members with proper, adequate, and/or fair warning of the Engine Defect;
- (e) the Defendants failed to design and establish an effective and timely procedure for repair of the Engine Defect;
- (f) the Defendants failed to adequately monitor, evaluate, and act upon reports of the Engine Defect;
- (g) the Defendants failed to provide any or any adequate updates and/or current information to Mr Corbin and the Class Members in a timely fashion respecting the Engine Defect as such information became available;
- (h) after becoming aware of problems with the Affected Vehicles, the Defendants failed to issue adequate warnings, failed to issue a timely recall, failed to publicize the problems, and failed to otherwise act properly in a timely manner to alert the public to the Engine Defect;
- (i) the Defendants represented that the Affected Vehicles were fit for their intended purposes and of merchantable quality when the Defendants knew or ought to have known that these representations were false;
- (j) the Defendants made misrepresentations that were unreasonable given that the Defendants knew or ought to have known of the Engine Defect;

- (k) the Defendants knowingly and intentionally concealed from Mr Corbin and the Class Members that the Affected Vehicles suffered from the Engine Defect (and the costs, risks, and diminished value of the Affected Vehicles as a result of the Engine Defect); and,
- (l) the Defendants failed to timely cease the manufacturing, marketing, distribution, leasing, and/or sale of the Affected Vehicles when it knew or ought to have known of the Engine Defect.

99. As a result of the Defendants' negligence, Mr Corbin and the Class Members suffered and will continue to suffer damages.

#### **Breach of Warranties**

100. The Defendants expressly or impliedly warranted to Mr Corbin and the Class Members that the Affected Vehicles were reasonably fit for the purpose of safe driving, that the Affected Vehicles were of merchantable quality, that the Affected Vehicles were free from defects and/or that the Affected Vehicles were of acceptable quality. The warranties included the Engines.
101. Kia Canada provided the purchasers and lessees of the Affected Vehicles with a written warranty that provides and represents, among other things, that each Affected Vehicle will be free of defects in material and workmanship. In addition, an implied warranty applies to each transaction between the purchasers of the Affected Vehicles and Kia Canada to the same effect pursuant to the *Consumer Protection Act, 2002*, the parallel provisions of the consumer protection legislation in other Canadian provinces, the *Sale of Goods Act*, the

parallel provisions of the sale of goods legislation in other Canadian provinces, the *Motor Vehicle Safety Act*, and the common law.

102. Despite and contrary to the foregoing warranties and representations, the Defendants sold and leased the Affected Vehicles when they knew or ought to have known of the latent Engine Defect and the Defendants concealed or failed to disclose the latent Engine Defect to Mr Corbin and the Class Members.
103. Kia Canada has breached its warranties with the Class Members, and as a result, the Class Members have suffered damages.

### **Unjust Enrichment**

104. The Defendants caused Class Members to pay for a product that they would not have otherwise purchased or leased; or, in the alternative, for which they should have paid less than they did.
105. As a result, the Defendants were enriched by the payment or overpayment.
106. Class Members suffered a deprivation equal to the Defendants' enrichment.
107. There is no juristic reason for the Defendants' enrichment and the Class Members' corresponding deprivation. The Class Members are entitled to restitution for the Defendants' unjust enrichment.

### **DAMAGES**

108. Mr Corbin and the Class Members have suffered losses and damages caused by the wrongful and negligent acts of the Defendants.



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

**PLACE OF TRIAL**

113. Mr Corbin proposes that this action be tried in Toronto, Ontario.

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January 21, 2022

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## APPENDIX 1

Alberta: *Consumer Protection Act*, RSA 2000, c C-26.3.

British Columbia: *Business Practices and Consumer Protection Act*, SBC 2004, c 2.

Manitoba: *The Business Practices Act*, CCSM c B120 and *The Consumer Protection Act*, CCSM c C200.

New Brunswick: *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1.

Newfoundland and Labrador: *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1.

Northwest Territories: *Consumer Protection Act*, RSNWT 1988, c C-17.

Nova Scotia: *Consumer Protection Act*, RSNS 1989, c 92.

Nunavut: *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17.

Prince Edward Island: *Consumer Protection Act*, RSPEI 1988, c C-19 and the *Business Practices Act*, RSPEI 1988, c B-7.

Quebec: *Consumer Protection Act*, CQLR c P-40.1.

Saskatchewan: *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2.

Yukon: *Consumers Protection Act*, RSY 2002, c 40.

## APPENDIX 2

Alberta: *Sale of Goods Act*, RSA 2000, c S-2.

British Columbia: *Sale of Goods Act*, RSBC 1996, c 410.

Manitoba: *The Sale of Goods Act*, CCSM c S10.

New Brunswick: *Sale of Goods Act*, RSNB 2016, c 110.

Newfoundland and Labrador: *Sale of Goods Act*, RSNL 1990, c S-6.

Northwest Territories: *Sale of Goods Act*, RSNWT 1998, c S-2.

Nova Scotia: *Sale of Goods Act*, RSNS 1989, c 408.

Nunavut: *Sale of Goods Act*, RSNWT (Nu) 1998, c S-2.

Prince Edward Island: *Sale of Goods Act*, RSPEI 1988, c S-1.

Quebec: *Civil Code of Quebec*, CQLR c CCQ-1991.

Saskatchewan: *Sale of Goods Act*, RSS 1978, c S-1.

Yukon: *Sale of Goods Act*, RSY 2002, c 198.

ROBERT CORBIN  
Plaintiff

-and- KIA CANADA INC et al  
Defendants

Court File No.

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

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**STATEMENT OF CLAIM**

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