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Toronto

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

KRYSTAN KAPRON

Plaintiff

and

HYUNDAI AUTO CANADA CORP,
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 March 2, 2022 Issued by _____
Local Registrar

Address of court office: Toronto Courthouse
330 University Avenue
Toronto, ON M5G 1R7

TO: HYUNDAI AUTO CANADA CORP
75 Frontenac Drive
Markham, ON L3R 6H2

TO: HYUNDAI MOTOR COMPANY
12, Heolleung-ro, Seocho-gu
Seoul 06797
South Korea

TO: HYUNDAI MOTOR AMERICA, INC
10550 Talbert Avenue
Fountain Valley, CA 92708
USA

TO: HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC
700 Hyundai Boulevard
Montgomery, AL 36015
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
Hyundai Accent	2011-2018
Hyundai Elantra	2014-2018
Hyundai Elantra GT	2014-2019
Hyundai Kona	2018-2021
Hyundai Palisade	2020-2021
Hyundai Santa Fe (Sport)	2012-2020
Hyundai Santa Fe XL	2013-2018
Hyundai Sonata	2015-2019
Hyundai Sonata Hybrid	2015-2019
Hyundai Tucson	2009-2021
Hyundai Veloster	2012-2021

- (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;

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- (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:

Model	Model Year(s) Affected
Hyundai Sonata	2011-2019
Hyundai Santa Fe (Sport)	2013-2019
Hyundai Tucson	2014-2015, 2019

- (f) **“GDI”** means gasoline direct injection;
- (g) **“Hyundai”** means Hyundai Motor Company;
- (h) **“Hyundai Alabama”** means Hyundai Motor Manufacturing Alabama, LLC;
- (i) **“Hyundai Canada”** means Hyundai Auto Canada Corp;
- (j) **“Hyundai USA”** means Hyundai Motor America, Inc; and,
- (k) **“Ms Kapron”** means Krystan Kapron.

RELIEF CLAIMED

2. The Plaintiff, Ms Kapron, on her own behalf and on behalf of all Class Members, seeks:

- (a) an order certifying this action as a class proceeding and appointing her 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 Ms Kapron and the Class Members;
- (g) a declaration that the Defendants, or any of them, were unjustly enriched at the expense of Ms Kapron and the 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-judgment 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. Ms Kapron is an individual residing in Beamsville, Ontario. She previously owned a 2017 Hyundai Tucson equipped with a Nu 2.0-litre GDI Engine.

4. Ms Kapron seeks to represent the following Class of which she 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 Hyundai Canada is a corporation incorporated pursuant to the laws of Canada with its registered office located in Markham, Ontario. Hyundai Canada is and was at all material times a wholly-owned subsidiary of Hyundai and Hyundai USA.

6. Hyundai Canada imports into Canada for sale or lease newly manufactured Hyundai vehicles, including the Affected Vehicles, and is responsible for ensuring that those vehicles' designs are compliant with the regulations for import into Canada.

7. Hyundai 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 Hyundai vehicle flows from the dealer to the Defendants.

8. Hyundai 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 Hyundai is a corporation organized and existing under the laws of South Korea. Hyundai controls and directs Hyundai Canada with respect to virtually all aspects of the Affected Vehicles.
10. The Defendant Hyundai designed, engineered, researched, developed, tested, manufactured, marketed, supplied, and distributed the Engines in the Affected Vehicles sold in Canada.
11. 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 and controls and directs Hyundai Canada with respect to virtually all aspects of the Affected Vehicles.
12. The Defendant Hyundai USA is and was at all material times responsible for exporting Affected Vehicles and parts for Affected Vehicles, including the Engines, from the United States into Canada.
13. 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.
14. The Defendant Hyundai Alabama manufactured Affected Vehicles and Engines sold, leased and/or distributed in Canada.
15. 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

16. 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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

23. 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”).
24. 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.

25. 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.
26. 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.
27. 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

28. 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.

29. 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.
30. 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.
31. 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.
32. 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.

33. 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.
34. 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.
35. 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

36. 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.

37. The Engine Defect poses a significant risk of personal injury and/or property damage to Ms Kapron 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.
38. 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.
39. 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

40. The Defendants have long been aware of the Engine Defect but have intentionally, negligently and/or recklessly concealed the Engine Defect from Ms Kapron and other Class Members; failed to warn Ms Kapron 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.

41. 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 Ms Kapron 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.
42. 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.
43. 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.
44. For example, Hyundai Canada's customer relations department works closely with Hyundai-authorized service technicians to identify potentially widespread vehicle problems and assist in the diagnosis of vehicle issues. Hyundai Canada has received numerous reports of engine problems in the Engines relating to the connecting rod bearings, lubrication channels, and fuel leakage.
45. 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.

46. 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.
47. The Defendants knew or ought to have known about the Engine Defect because of the high number of replacement parts ordered from the Defendants.
48. In Canada, Hyundai service centres are required to order replacement parts, including engines, piston assemblies, and connecting rod bearings, directly from Hyundai Canada. Other independent vehicle repair shops that service Affected Vehicles also order replacement parts directly from Hyundai Canada. Hyundai Canada routinely monitors part sales reports and is responsible for the shipping of parts requested by dealerships and technicians.
49. Hyundai 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 Hyundai Canada and ought to have alerted it to the scope and severity of the Engine Defect.
50. 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.

51. 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 25, 2013, 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.
52. 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.
53. 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.
54. 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 Ms Kapron and the Class Members thousands of dollars in expenses and presenting a serious safety risk to Ms Kapron, the Class Members and the public.

The Defendants' Conduct While Knowing About the Engine Defect

55. 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) Hyundai Canada routinely refused to repair the Affected Vehicles free of charge when the Engine Defect manifested – even within the warranty period;
- (c) Hyundai 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) Hyundai 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) Hyundai Canada and its agents ignored the Engine Defect in Affected Vehicles until it caused significant mechanical problems necessitating costly repairs;
- (f) Hyundai 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 Hyundai’s oil change guidelines, Hyundai Canada and its agents attempted to evade Hyundai 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 Hyundai 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) Hyundai Canada has failed to recall and/or offer adequate engine repairs and/or replacements for every Affected Vehicle.

56. Although Hyundai 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

57. Hyundai Canada has been slow to recall the Affected Vehicles, if at all.

58. Since December 17, 2019, Hyundai Canada has initiated five recalls with respect to the Engine Defect in the Affected Vehicles in Canada.

59. Despite the five 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.

60. On December 17, 2019, Hyundai Canada announced that it would be conducting a Product Improvement Campaign for 275,533 model year 2019 Hyundai Santa Fe vehicles, model

year 2013-2018 Hyundai Santa Fe Sport vehicles, model year 2011-2019 Hyundai Sonata vehicles, model year 2014-2015 and 2019 Hyundai Tucson vehicles, and model year 2019 Hyundai Veloster vehicles equipped with Theta II 2.4-litre and turbocharged 2.0-litre Engines (Transport Canada Recall # 2019-640).

61. Under this Product Improvement Campaign, Hyundai 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 would cause a sudden loss of power with an inability to restart and could increase the risk of an accident.
62. On December 2, 2020, Hyundai Canada initiated a recall of 14,549 model year 2012 Hyundai Santa Fe vehicles, model year 2011-2013 and 2016 Hyundai Sonata vehicles, and model year 2015-2016 Hyundai Veloster vehicles equipped with Theta II turbocharged 2.0-litre and Gamma II 1.6-litre and turbocharged 1.6-litre Engines (Transport Canada Recall # 2020-592).
63. This recall campaign indicates (i) that the connecting rod bearings could wear prematurely; (ii) that as a result of the premature connecting rod bearings, there could be an abnormal knocking noise from the Engine and/or illumination of the oil pressure warning light; (iii) that if the vehicle continues to be driven with worn connecting rod bearings, the Engine could fail; (iv) that engine failure would cause a sudden loss of power with an inability to restart; (v) that in some cases, a damaged connecting rod could puncture the engine block and cause an oil leak; (vi) that a sudden loss of engine power could increase the risk of a crash; and, (vii) that oil that leaks onto a hot engine component could cause a fire.

64. Under this recall campaign, dealers are to inspect the Engines and replace any Engines where they find connecting rod bearing damage. The recall campaign also involves a software update for the engine control module.
65. On September 17, 2021, Hyundai Canada initiated a recall of 34,607 model year 2017 Hyundai Sonata vehicles and model year 2017 Hyundai Tucson vehicles equipped with Nu 2.0-litre Engines (Transport Canada Recall # 2021-573).
66. This recall campaign indicates (i) that the connecting rod bearings could wear prematurely; (ii) that as a result of the premature connecting rod bearings, there could be an abnormal knocking noise from the Engine and/or illumination of the oil pressure warning light; (iii) that if the vehicle continues to be driven with worn connecting rod bearings, the Engine could fail; (iv) that engine failure would cause a sudden loss of power with an inability to restart; (v) that in some cases, a damaged connecting rod could puncture the engine block and cause an oil leak; (vi) that a sudden loss of engine power could increase the risk of a crash; and, (vii) that oil that leaks onto a hot engine component could cause a fire.
67. Under this recall campaign, dealers are to inspect the Engines and replace any Engines where they find connecting rod bearing damage. The recall campaign also involves a software update for the engine control module.
68. Also on September, 17, 2021, Hyundai Canada announced that it would be conducting a Product Improvement Campaign for 152,924 model year 2014-2016 Hyundai Elantra vehicles, model year 2014-2019 Hyundai Elantra GT vehicles, model year 2016-2019 Hyundai Sonata vehicles, and model year 2014-2019 Hyundai Tucson vehicles equipped with Nu 2.0-litre Engines (Transport Canada Recall # 2021-575).

69. Under this Product Improvement Campaign, Hyundai 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 would cause a sudden loss of power with an inability to restart and could increase the risk of an accident or create the risk of a fire.
70. On November 4, 2021, Hyundai Canada announced that it would be conducting a Product Improvement Campaign for model year 2012-2017 Hyundai Veloster vehicles equipped with Gamma II 1.6-litre and turbocharged 1.6-litre Engines (Transport Canada Recall # 2021-674).
71. Under this Product Improvement Campaign, Hyundai 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 would cause a sudden loss of power with an inability to restart and could increase the risk of an accident or create the risk of a fire.
72. Despite initiating the five 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

73. On or around October 17, 2017, Ms Kapron purchased a new 2017 Hyundai Tucson from Hamilton Hyundai in Hamilton, Ontario. She purchased this vehicle for personal, family and/or household uses.

74. Ms Kapron's 2017 Hyundai Tucson had a Nu 2.0-litre GDI Engine.
75. On or around October 24, 2020 at approximately 5:30 pm, while driving in the far left lane on the Queen Elizabeth Way freeway during heavy traffic, Ms Kapron experienced an engine seizure followed by a non-collision engine fire in her 2017 Hyundai Tucson.
76. The engine seizure was sudden and unexpected and came without warning: no warning lights and no previous problems with the vehicle. While driving in the far left lane on the Queen Elizabeth Way freeway, Ms Kapron heard clicking noises coming from the Engine. When she tried to accelerate to move over, her 2017 Hyundai Tucson experienced a sudden loss of power. It would not accelerate or produce power and felt like it was running out of gas.
77. Ms Kapron turned on her hazard lights and was able to merge to the shoulder. Once on the shoulder, Ms Kapron phoned her husband to tell him about the engine seizure. Ms Kapron then noticed smoke coming from her 2017 Hyundai Tucson. Another motorist pulled over and yelled at Ms Kapron to get out of her vehicle because it was on fire.
78. Ms Kapron quickly exited her 2017 Hyundai Tucson. Within seconds of her exiting the vehicle, the vehicle burst into flames.
79. Firefighters and police attended the scene. It took five firefighter trucks approximately 90 minutes to extinguish the fire.
80. Ms Kapron reported the non-collision engine fire to Hyundai Canada. Hyundai Canada refused to honour Ms Kapron's warranty and refused to provide her with a rental car.

81. The Ontario Provincial Police impounded Ms Kapron's 2017 Hyundai Tucson at the scene. Although Ms Kapron's automobile insurer asked the Defendants to investigate the non-collision engine fire, the Defendants never had the vehicle released to them. Ms Kapron phoned Hyundai Canada for an update five times in the year following the non-collision engine fire. She learned that the Defendants never examined her vehicle or investigated the cause of the non-collision engine fire in her vehicle.
82. The sudden and unexpected engine seizure and non-collision engine fire in Ms Kapron's 2017 Hyundai Tucson was a life-threatening and dangerous occurrence. Fortunately, Ms Kapron was able merge to the shoulder and quickly exit the vehicle to avoid serious personal injuries.
83. The non-collision engine fire in Ms Kapron's 2017 Hyundai Tucson was considered a total loss event for insurance purposes. Unfortunately, the insurance indemnity Ms Kapron received did not fully compensate her for her losses. For example, the insurance indemnity did not fully cover the amount Ms Kapron still owed on her car loan (the insurance indemnity was approximately \$15,000 plus tax, but at the time of the non-collision engine fire, Ms Kapron still owed approximately \$19,050 on her car loan). Ms Kapron had to pay approximately \$5,000 out of pocket to pay off her car loan and purchase a replacement vehicle.
84. The non-collision engine fire left Ms Kapron without a vehicle for several weeks. Without her 2017 Hyundai Tucson, Ms Kapron found it difficult to commute to work. Neither Hyundai Canada or her automobile insurer would provide her with a rental car. She borrowed vehicles from friends and family when she could. If she could not borrow a

vehicle from friends and/or family, Ms Kapron was forced to take time off from work and lost wages as a result. Approximately one month after the engine seizure and non-collision engine fire, Ms Kapron purchased a new vehicle.

85. As a result of the Engine Defect in her 2017 Hyundai Tucson, Ms Kapron has suffered, and will continue to suffer damages, including, but not limited to, inconvenience, loss of use of the vehicle, and loss of income.
86. At all material times, Ms Kapron followed Hyundai Canada's maintenance recommendations and/or schedules for her 2017 Hyundai Tucson. Her vehicle had been serviced within three months of the engine seizure and non-collision engine fire and only had approximately 80,000 km on its odometer at the time of the engine seizure and non-collision engine fire.
87. Neither the Defendants nor any of their agents, affiliates, predecessors, or subsidiaries informed Ms Kapron of the existence of the latent Engine Defect prior to her purchase of the vehicle. Had Ms Kapron known of the Engine Defect in the 2017 Hyundai Tucson at the time of purchase, she would not have purchased the vehicle or would have paid substantially less to purchase the vehicle.

CAUSES OF ACTION

Negligence

88. The Defendants are and were in a relationship of proximity to Ms Kapron and the Class Members. It was reasonable foreseeably that if the Affected Vehicles contained the Engine Defect, harm to Ms Kapron and the Class Members would result.

89. At all material times, the Defendants, or any of them, owed a duty of care to Ms Kapron 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;
- (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.

90. 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 Ms Kapron and the Class Members of the latent Engine Defect.
91. Ms Kapron'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 Ms Kapron 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 Ms Kapron 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 Ms Kapron 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.

92. As a result of the Defendants' negligence, Ms Kapron and the Class Members suffered and will continue to suffer damages.

Breach of Warranties

93. The Defendants expressly or impliedly warranted to Ms Kapron 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.

94. Hyundai 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 Hyundai 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.

95. 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 Ms Kapron and the Class Members.

96. Hyundai Canada has breached its warranties with Ms Kapron and the Class Members, and as a result, Ms Kapron and the Class Members have suffered damages.

Unjust Enrichment

97. The Defendants caused Ms Kapron and the 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.
98. As a result, the Defendants were enriched by the payment or overpayment.
99. Ms Kapron and the Class Members suffered a deprivation equal to the Defendants' enrichment.
100. There is no juristic reason for the Defendants' enrichment and Ms Kapron's and the Class Members' corresponding deprivation. Ms Kapron and the Class Members are entitled to restitution for the Defendants' unjust enrichment.

DAMAGES

101. Ms Kapron and the Class Members have suffered losses and damages caused by the wrongful and negligent acts of the Defendants.
102. 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.
103. Ms Kapron and 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.

104. 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 Ms Kapron, the Class Members and the public.
105. This conduct renders the Defendants liable to pay punitive damages to Ms Kapron and the Class Members.

PLACE OF TRIAL

106. Ms Kapron proposes that this action be tried in Toronto, Ontario.

March 2, 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.

KRYSTAN KAPRON
Plaintiff

-and- HYUNDAI AUTO CANADA CORP et al
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

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STATEMENT OF CLAIM

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