

JUL 08 2022



S-225552

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

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JOSEPH ANTHONY PAPA

PLAINTIFF

AND:

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

DEFENDANTS

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

**NOTICE OF CIVIL CLAIM**

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

#### TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

#### CLAIM OF THE PLAINTIFF(S)

##### Part 1: STATEMENT OF FACTS

##### A. Introduction - Overview

1. The within proposed consumer product liability multi-jurisdictional class proceeding involves certain Affected Class Vehicles, as defined below, designed, manufactured, assembled, tested, marketed, distributed, supplied, leased and/or sold by the Defendants, KIA CANADA INC. ("KCI"), KIA MOTORS CORPORATION ("KMC"), KIA MOTORS AMERICA, INC. ("KMA"), KIA MOTORS MANUFACTURING GEORGIA, INC. ("KMMG"), HYUNDAI AUTO CANADA CORP. ("HACC"), HYUNDAI MOTOR COMPANY ("HMC"), HYUNDAI MOTOR AMERICA, INC. ("HMA") and HYUNDAI MOTOR MANUFACTURING ALABAMA LLC ("HMMA"), in Canada, including the Province of British Columbia, whose engines contain, *inter alia*, a latent design and/or manufacturing defect that results in excessive engine oil consumption, leading to sudden and unexpected engine stalling, loss of power and catastrophic engine failure (the "Oil Consumption Defect").

2. Excessive oil consumption is a serious issue for vehicle longevity and safety. If the Oil Consumption Defect is not detected by the owner and/or lessee, continued operation of a vehicle with low levels of oil can cause premature wear on an engine, requiring the replacement of small parts, expensive vehicle system components, and even the entire engine – long before replacement would be needed under a normal maintenance schedule. Left unaddressed, low oil levels can also lead to unexpected engine stalling, loss of power and even engine failure. Stalling, loss of power and engine failure can occur while the Affected Class Vehicles are in operation, at any time, and under any driving condition or speed, all of which poses a substantial risk of harm or injury to vehicle occupants and others on the road.
3. As explained by the Defendants, KCI, KMC, KMA and/or KMMG, to their authorized dealerships in Technical Service Bulletin ("TSB") No. 222 of December 2020 (revised January 6, 2022):

"Operation with deteriorated or low engine oil causes reduced lubrication and cooling, as well as impaired operating of hydraulic components. This leads to abnormal wear of engine parts, oversaturation of carbon, and deposits of oil sludge. These can result in damage to multiple areas of the engine, ultimately requiring a costly, lengthy, and preventable repair."
4. To avoid these negative outcomes, owners and/or lessees of the Affected Class Vehicles must take on an unexpected and undisclosed burden: checking and filling their engine's oil much more frequently than a reasonable consumer would expect and more frequently than the Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, recommend as to their respective Affected Class Vehicles in the Owner's Manual.
5. Over-filling the oil pan or sump is also not a solution. If the oil pan is filled above its optimal level, marked by the maximum fill line, the crankshaft will be partially or fully submerged. When operating in this condition, the crankshaft will aerate or foam the oil, which reduces the efficacy of the lubrication system, and thus lubrication of the engine. Excess oil will also strain and damage the gaskets and seals protecting the engine, leading to more significant oil leaks.

6. Even if Affected Class Vehicle owners and/or lessees are successful in maintaining the proper oil level in their engines, problems remain because oil is being consumed during the combustion cycle at an excessive rate within the combustion chamber. Further, the Oil Consumption Defect does not cause the Affected Class Vehicles' engines to simply use more oil; it allows oil to migrate to places where it should not be. Excessive oil residue and the by-products of burning oil damage the combustion and exhaust systems and keep them from operating efficiently or even adequately over time, which causes abnormal wear of engine parts, oversaturation of carbon, and deposits of oil sludge, ultimately requiring a costly engine rebuild or replacement.
  
7. Affected Class Vehicles include, but are not limited to, the following model year Kia and Hyundai vehicles designed, manufactured and/or assembled by the Defendants, KMC, KMMG, HMC and/or HMMA, and marketed, advertised, distributed and/or sold by the Defendants, KCI, KMC, KMA, HACC, HMC and/or HMA, in Canada, including the Province of British Columbia, equipped with Nu, Gamma, Theta, Lambda and/or Kappa type engines with the Oil Consumption Defect:

<u>Defendant, Vehicle Manufacturer</u>	<u>Model</u>	<u>Model Year ("MY")</u>
KMC	Forte	2010-2021
KMC	Niro	2017-2021
KMC/KMMG	Optima	2011-2020
KMC/KMMG	Optima Hybrid	2011-2020
KMC	Rio	2012-2021
KMC/KMMG	Sorento	2011-2020
KMC	Soul	2012-2021
KMC	Sportage	2011-2020
KMC	Stinger	2018-2021
KMC/KMMG	K5	2022

HMC/HMMA	Elantra	2012-2020
HMC	Genesis Coupe	2009- 2018
HMC	Kona	2019-2021
HMC	Palisade	2020-2021
HMC/HMMA	Santa Fe	2010-2012, 2015-2021
HMC/HMMA	Sonata	2009-2010, 2015-2021
HMC/HMMA	Sonata Hybrid	2011- 2021
HMC	Tucson	2010-2013, 2015-2021
HMC	Veloster	2011-2021
HMC	Venue	2020-2021

8. Many owners and/or lessees of the Affected Class Vehicles have communicated with Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, and/or their agents, to request that they remedy or otherwise address the Oil Consumption Defect and/or resultant damage at no expense. The Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, have routinely failed to do so, even within the warranty period.
9. The Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, have also routinely denied warranty claims related to this concealed defect when it manifests in the Affected Class Vehicles outside of the warranty period. As the Oil Consumption Defect can manifest shortly outside of the warranty period for the Affected Class Vehicles—and given Defendants', KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, knowledge of this concealed, safety-related defect—the Defendants', KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, attempts to limit the warranty with respect to the Oil Consumption Defect are unconscionable and unenforceable here. The Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, also attempt to shirk their warranty obligations by requiring individuals to produce all maintenance records for the vehicle, and by denying warranty coverage if even one record is missing.
10. The Plaintiff alleges that Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, have known about the excessive oil consumption in the Affected Class Vehicles for years. The Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, have knowledge of the numerous complaints they have received, information from dealers,

United States government regulator, National Highway Traffic Safety Administration ("NHTSA") and Transport Canada, complaints which they are required by law to monitor, and their own internal warranty and service records, all of which describe the excessive oil consumption problem.

11. Notwithstanding all these sources of information, the Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, have not disclosed to the Plaintiff and similarly situated consumers at, or before, the point of sale that the Affected Class Vehicles are predisposed to an excessively high rate of engine oil consumption. The Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, have yet to recall the Affected Class Vehicles to repair the Oil Consumption Defect. Indeed, in many cases the Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, have even refused to disclose the Oil Consumption Defect when an Affected Class Vehicle displaying symptoms consistent with the Oil Consumption Defect is brought in for service. Consumers are often required to have their vehicles undergo inconvenient (and sometimes costly) oil consumption testing for thousands of kilometers, only for the Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, to deny warranty coverage for the necessary repairs.
12. Nor have the Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, offered their customers a suitable repair or replacement or offered to reimburse customers who have incurred out-of-pocket expenses or repair or mitigate the effects of the Oil Consumption Defect. Many consumers experience long wait times for parts promised by the Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, purportedly to address the Oil Consumption Defect, and in most cases do not receive required engine replacements.
13. When owners and/or lessees of the Affected Class Vehicles have requested the Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, or their agents, honour their warranty and address the Oil Consumption Defect and any resultant damage at no expense, the Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, do not adequately repair the Affected Class Vehicles. Instead, the Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, either ignore the Oil Consumption Defect until it causes significant mechanical problems necessitating costly repairs or, worse,

provide oil servicing or make mechanical adjustments that mask, and even exacerbate, the Oil Consumption Defect, but do not fix or remedy it.

14. Since the Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, knew, or ought to have known, that some of the most expensive repairs and serious safety consequences of the Oil Consumption Defect may occur outside the warranty period, any attempt to limit the warranty with respect to the Oil Consumption Defect is unconscionable and should be held unenforceable.
15. As a result of the Defendants', KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, unfair, deceptive and/or fraudulent business practices, owners and/or lessees of the Affected Class Vehicles, including the Plaintiff, have suffered an ascertainable loss of money and/or property and/or value. The Defendants, KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, committed these unfair and deceptive trade practices in a manner giving rise to substantial aggravating circumstances—including deceptive "repairs" and intentional non-diagnosis—and a continued practice of obfuscation and concealment.
16. Had the Plaintiff and proposed class members known about the Oil Consumption Defect at the time of purchase or lease, they would not have purchased or leased the Affected Class Vehicles or would have paid substantially less for them.
17. As a result of the Oil Consumption Defect and the monetary costs associated with purchasing a vehicle with the Oil Consumption Defect, attempting to repair such a defect, out-of-pocket costs related to alternative transportation, having to purchase additional engine oil, and increased cost of maintenance, the Plaintiff and proposed class members have suffered injury-in-fact, have incurred damages, and have otherwise been harmed by the Defendants', KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, conduct.
18. As a direct result of Defendants', KCI, KMC, KMA, KMMG, HACC, HMC, HMA and/or HMMA, wrongful conduct, the Plaintiff and proposed class members have been harmed and are entitled to actual damages, including damages for the benefit of the bargain they struck when purchasing their vehicles, the diminished value of their vehicles, out-of-pocket costs, statutory damages, lawyers fees, costs, restitution, and injunctive and/or declaratory relief.

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

## **B. The Parties**

### **The Representative Plaintiff**

20. The Plaintiff, JOSEPH ANTHONY PAPA, is a resident of Coquitlam, British Columbia, Canada.
21. In or about March 2015 the Plaintiff purchased a new 2015 Kia Sorento ("Kia Sorento") from West Auto Sales Ltd., doing business as "KIA WEST", a Kia dealership, in Coquitlam, British Columbia for approximately \$33,616.28, inclusive of tax, with a ~~seven~~-year warranty. The Plaintiff's Kia Sorento is an Affected Class Vehicle equipped with an engine that contains the Oil Consumption Defect.
22. The Plaintiff's Kia Sorento was designed, manufactured and/or assembled by the Defendant, KMC, in South Korea and marketed, promoted, advertised, distributed and/or sold in Canada by the Defendants, KCI, KMC and/or KMA.
23. The Plaintiff's decision to purchase the Kia Sorento was based upon the vehicle's purported reputation for safety and dependability, which he relied upon. Despite touting the safety and dependability of their Affected Class Vehicles, at no point did the Defendants, KMC, KCI and/or KMA, or their agents, dealers or other representatives, disclose the Oil Consumption Defect to the Plaintiff.
24. On or about February 25, 2021 the Plaintiff took his Kia Sorento to KIA WEST and reported that he was burning oil as the vehicle was consuming approximately one litre of oil per week. The dealership checked the vehicle's oil level, found it to be low and simply topped it up.



25. On or about September 27, 2021 the check engine light in the Plaintiff's Kia Sorento started flashing and he proceeded to lose all engine power while driving. The Plaintiff brought his Kia Sorento to KIA WEST, who confirmed the Plaintiff's complaint and installed a knock sensor and software upgrade.
26. On or about May 17, 2022 the check engine light in the Plaintiff's Kia Sorento again started flashing and he lost all engine power while operating the vehicle on the Coquihalla Highway in British Columbia. The Plaintiff had his Kia Sorento towed to a Kia dealership in Chilliwack, British Columbia, "Chilliwack Kia". The Kia dealership performed an inspection of the vehicle and found that its spark plugs were excessively carboned with oil deposits, oil was leaking from the valve covers and recommended the use of a thicker oil to reduce consumption. Chilliwack Kia replaced the sparks plugs, serviced and cleaned the engine intake valve at a cost of \$617.50. The Plaintiff had to rent a vehicle at a cost of \$815.50 while the repairs were being undertaken to his Kia Sorento at Chilliwack Kia, which remained there until May 31, 2022. As soon as the Plaintiff drove away from Chilliwack Kia, after the repairs were undertaken, his Kia Sorento lost all engine power again. Subsequently, on June 2, 2022, Chilliwack Kia installed a new knock sensor and got the vehicle running again.
27. On or about June 21, 2022 the Plaintiff attended at KIA WEST and advised the dealership that the vehicle was going into limp mode and burning oil as it was consuming approximately one litre of oil per week. KIA WEST was unable to fix or remedy the problem.
28. The check engine light continues to flash in the Plaintiff's Kia Sorento and further, it continues to consume approximately one litre of oil per week.
29. The Plaintiff's Kia Sorento has approximately 153,000 kilometres on it.
30. At all relevant times herein, the Plaintiff adhered to the Defendants, KCI, KMC, KMA and/or KMMG, recommended vehicle maintenance intervals for his Kia Sorento.
31. The Plaintiff has suffered an ascertainable loss as a result of the Defendants, KCI, KMC, KMA and/or KMMG, omissions and/or misrepresentations associated with the Oil Consumption Defect, including, but not limited to, out-of-pocket expenses associated with

the Oil Consumption Defect, diminished value of his Kia Sorento, and other consequential losses.

32. Neither the Defendants, KCI, KMC, KMA and/or KMMG, nor any of their agents, dealers, or other representatives, informed the Plaintiff of the existence of the Oil Consumption Defect prior to, or any time after, his purchase of the Kia Sorento. The Plaintiff would not have purchased his Kia Sorento had he known about the Oil Consumption Defect.

#### **The Defendants**

33. The Defendant, KCI, is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0085732, and has a registered agent, FMD Service (B.C.) Inc., at #2900 - 550 Burrard Street, Vancouver, British Columbia, V6C 0A3, Canada.
34. The Defendant, KMC, is a company duly incorporated pursuant the to the laws of South Korea and has an address for service at 12, Heolleung-ro, Seocho-gu, Seoul, South Korea.
35. The Defendant, KMA, is a company duly incorporated pursuant to the laws of the State of California, one of the United States of America, and has a registered agent, C T Corporation System, at 111 Peters Canyon Road, Irvine, California, 92606, United States of America.
36. The Defendant, KMMG, is a company duly incorporated pursuant to the laws of the State of Georgia, one of the United States of America, and has a registered agent, C T Corporation System, at 289 S Culver Street, Lawrenceville, Georgia, 30046-4805, United States of America.
37. The Defendant, HACC, is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0069704, and has a registered agent, BHT Management Inc., at #1800 - 510 West Georgia Street, Vancouver, British Columbia, V6B 0M3, Canada.
38. The Defendant, HMC, is a company duly incorporated pursuant the to the laws of Korea and

has an address for service at 12, Heolleung-ro, Seocho-gu, Seoul, South Korea.

39. The Defendant, HMA, is a company duly incorporated pursuant to the laws of the State of California, one of the United States of America, and has a registered agent, National Registered Agents, Inc., at 10550 Talbert, Avenue, Fountain Valley, California, 92708, United States of America.
40. The Defendant, HMMA, is a is a company duly incorporated pursuant to the laws of the State of Alabama, one of the United States of America, and has a registered agent, Richard E. Neal, at 700 Hyundai Boulevard, Montgomery, Alabama, 36105, United States of America.
41. At all material times to the cause of action herein, the Defendant, KCI, was, and is, a wholly owned North American subsidiary of the Defendant, KMC, which, *inter alia*, markets, advertises, distributes and/or sells Kia vehicles, including certain Affected Class Vehicles, as averred to in paragraph 7 herein, equipped with engines containing the Oil Consumption Defect in Canada, and within the Province of British Columbia.
42. At all material times to the cause of action herein, the Defendant, KMC, designs, manufacturers, assembles, markets, advertises, distributes and/or sells Kia vehicles, including certain Affected Class Vehicles, as averred to in paragraph 7 herein, equipped with engines containing the Oil Consumption Defect, through its related subsidiaries and/or operating units, including the Defendants, KCI, KMA and/or KMMG, independent retailers and authorized dealerships in the United States of America and Canada. The Defendant, KMC, also provides all the technical information for the purposes of designing, manufacturing, servicing and/or repairing its Affected Class Vehicles to its subsidiaries, including the Defendants, KCI, KMA and KMMG.
43. At all material times to the cause of action herein, the Defendant, KMA, was, and is, a wholly owned North American subsidiary of the Defendant, KMC, which, *inter alia*, markets, advertises, distributes and/or sells Kia vehicles, including certain Affected Class Vehicles, as averred to in paragraph 7 herein, equipped with engines containing the Oil Consumption Defect, in the United States of America and/or Canada, including the Province of British

Columbia.

44. At all material times to the cause of action herein, the Defendant, KMMG, was, and is, a wholly owned North American subsidiary of the Defendant, KMC, which, *inter alia*, designs, manufactures and/or assembles Kia vehicles, including certain Affected Class Vehicles, as averred to in paragraph 7 herein, equipped with engines containing the Oil Consumption Defect, at an automobile plant located in the State of Georgia, United States of America, for distribution and/or sale in the United States of America and/or Canada, including the Province of British Columbia.
45. At all material times to the cause of action herein, the Defendant, KCI, was responsible for the distribution, service and/or repair, of Kia vehicles in Canada, including, *inter alia*, the Kia Affected Class Vehicles.
46. At all material times to the cause of action herein, the Defendant, HACC, was, and is, a wholly owned North American subsidiary of the Defendant, HMC, which, *inter alia*, markets, advertises, distributes and/or sells Hyundai vehicles, including certain Affected Class Vehicles, as averred to in paragraph 7 herein, equipped with engines containing the Oil Consumption Defect in Canada, and within the Province of British Columbia.
47. At all material times to the cause of action herein, the Defendant, HMC, designs, manufacturers, assembles, markets, advertises, distributes and/or sells Hyundai vehicles, including certain Affected Class Vehicles, as averred to in paragraph 7 herein, equipped with engines containing the Oil Consumption Defect, through its related subsidiaries and/or operating units, including the Defendants, HACC, HMA and/or HMMA, independent retailers and authorized dealerships in the United States of America and Canada. The Defendant, HMC, also provides all the technical information for the purposes of designing, manufacturing, servicing and/or repairing its Affected Class Vehicles to its subsidiaries, including the Defendants, HMA, HACC and HMMA.
48. At all material times to the cause of action herein, the Defendant, HMA, was, and is, a wholly owned North American subsidiary of the Defendant, HMC, which, *inter alia*, markets, advertises, distributes and/or sells Hyundai vehicles, including certain Affected Class

Vehicles, as averred to in paragraph 7 herein, equipped with engines containing the Oil Consumption Defect, in the United States of America and/or Canada, including the Province of British Columbia.

49. At all material times to the cause of action herein, the Defendant, HMMA, was, and is, a wholly owned North American subsidiary of the Defendant, HMC, which, *inter alia*, designs, manufactures and/or assembles Hyundai vehicles, including certain Affected Class Vehicles, as averred to in paragraph 7 herein, equipped with engines containing the Oil Consumption Defect, at an automobile plant located in the State of Alabama, United States of America, for distribution and/or sale in the United States of America and/or Canada, including the Province of British Columbia.
50. At all material times to the cause of action herein, the Defendant, HACC, was responsible for the distribution, service and/or repair of Hyundai vehicles in Canada, including, *inter alia*, the Hyundai Affected Class Vehicles.
51. At all material times to the cause of action herein, the Defendants, KCI, KMC, KMA and/or KMMG, shared the common purpose of, *inter alia*, designing, developing, manufacturing, assembling, marketing, distributing, supplying and/or selling Kia vehicles, including certain Affected Class Vehicles, as averred to in paragraph 7 herein, equipped with engines containing the Oil Consumption Defect in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendants, KCI, KMC, KMA and/or KMMG, are interwoven with that of the other as to the Oil Consumption Defect in certain Affected Class Vehicles, as averred to in paragraph 7 herein, such that each is the agent of the other.
52. At all material times to the cause of action herein, the Defendants, HACC, HMC, HMA and/or HMMA, shared the common purpose of, *inter alia*, designing, developing, manufacturing, assembling, marketing, distributing, supplying and/or selling Hyundai vehicles, including certain Affected Class Vehicles, as averred to in paragraph 7 herein, equipped with engines containing the Oil Consumption Defect in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendants, HACC, HMC, HMA and/or HMMA, are interwoven with that of the other as to the Oil Consumption

Defect in certain Affected Class Vehicles, as averred to in paragraph 7 herein, such that each is the agent of the other.

53. At all material times to the cause of action herein, the Defendant, HMC, together with the Defendants, HACC, HMA, HMMA, KCI, KMC, KMA and KMMG, comprise the Hyundai Motor Group, which designs, manufactures, assembles, markets, distributes and/or sells the Affected Class Vehicles.
54. Hereinafter, the Defendants, KCI, KMC, KMA and KMMG, are collectively referred to as the Defendant, "KIA", the Defendants, HACC, HMC, HMA and HMMA, are collectively referred to as the Defendant, "HYUNDAI", and/or further, collectively as the "Defendants", unless referred to individually or otherwise.

**C. The Class**

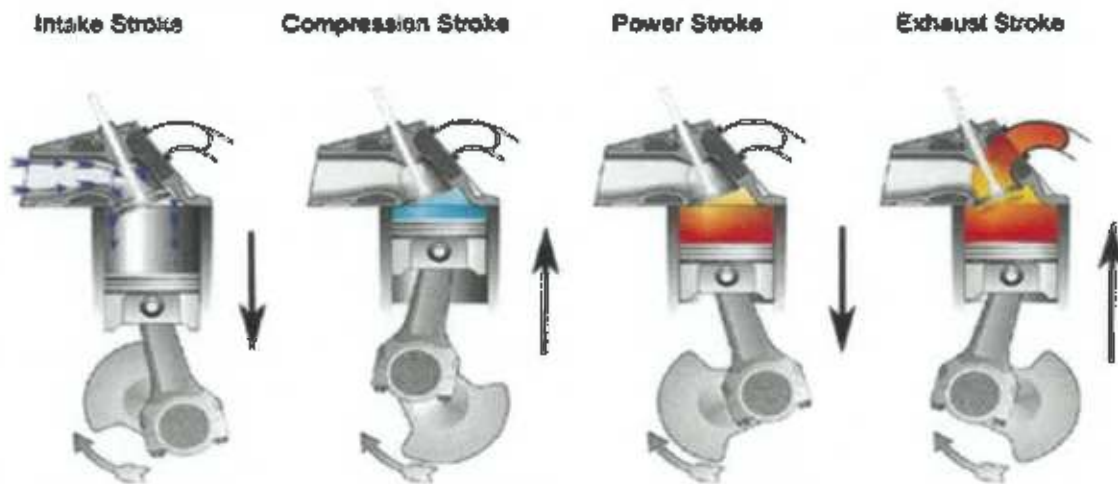
55. This action is brought on behalf of members of a class consisting of the Plaintiff, all British Columbia residents, and all other persons resident in Canada, excluding the Province of Quebec, who own, owned, lease and/or leased an Affected Class Vehicle ("Class" or "Class Members"), excluding employees, officers, directors, agents of the Defendants and their family members, class counsel, presiding judges and any person who has commenced an individual proceeding against or delivered a release to the Defendants concerning the subject of this proceeding, or such other class definition or class period as the Court may ultimately decide on the application for certification.

**D. Factual Allegations**

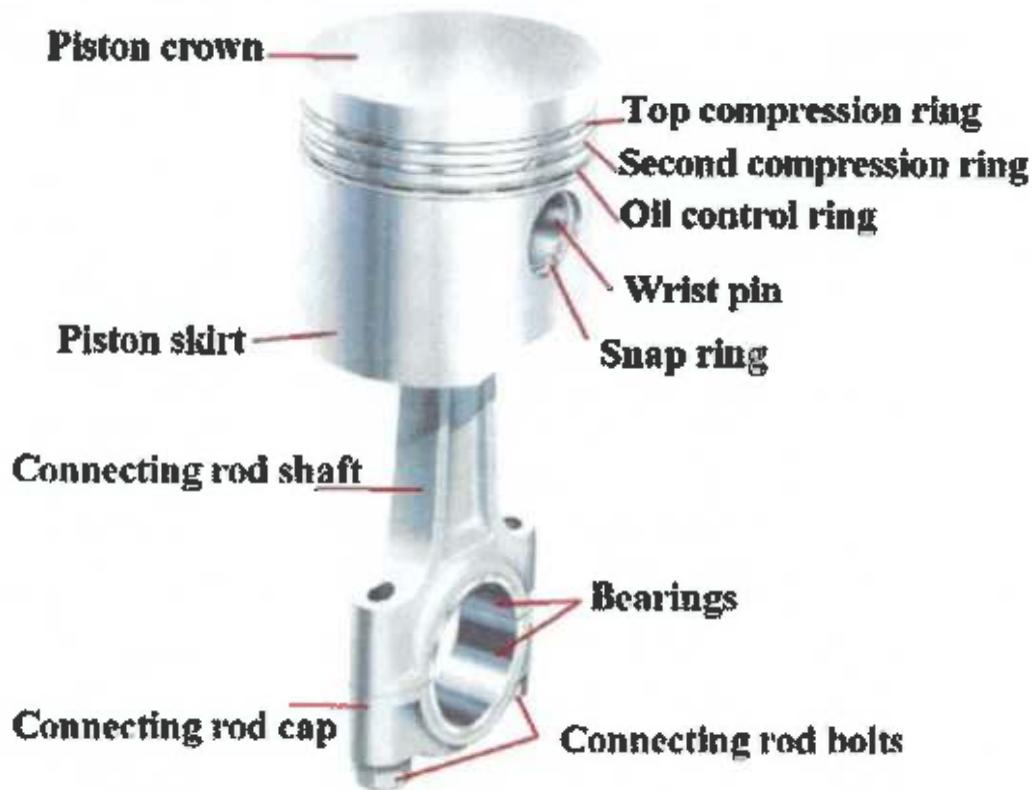
**I. The Oil Consumption Defect**

56. The engines installed in the Affected Class Vehicles use four reciprocating pistons to convert the pressure created by the combustion of gasoline mixed with air into a rotating motion. Gasoline, and only gasoline as a fuel, is mixed with air in the combustion chamber of the engine. To generate such rotating motion, a four-step sequence (the "Combustion Cycle") is used. First, the intake stroke begins with the Inlet valve opening and an atomized

fuel mixture is pulled into the combustion chamber. Second, the compression stroke begins with the inlet valve closing and the piston beginning its movement upward, compressing the air in the combustion chamber. Third, the power stroke begins when the spark plug ignites the fuel/air mixture, expanding the gases and generating power that is transmitted to the crankshaft. Fourth, the exhaust stroke begins with the exhaust valve opening and the piston moving up, pushing the exhaust gases out of the cylinder. The exhaust valve then closes, the inlet valve opens, and the Combustion Cycle repeats itself. A diagram of the Combustion Cycle is below:



57. During this process, engine oil is used to lubricate the piston, piston rings, and the cylinder wall as the piston moves up and down. Engine oil reduces wear on moving parts throughout the engine, improves sealing, and cools the engine by carrying heat away from the moving parts. If there is an insufficient amount of engine oil, the engine will not have the necessary lubrication or cooling, thereby causing premature wear of internal parts, inadequate performance, oversaturation of carbon, oil sludge within the engine and even catastrophic engine failure.
58. The top sidewall of each engine piston contains flexible metal rings that when correctly sized, installed, and properly tensioned, prevent engine oil from entering the combustion chamber, as well as optimizing compression. On each piston, there are three rings: the top compression ring, the second compression ring, and the oil control ring.



Each ring plays a role in preventing oil from entering the combustion chamber of the engine.

59. The top ring is a compression ring, which means it is responsible, in part, for separating the combustion chamber from the engine oil sump. It is also responsible for forming a seal between the piston (the movable part of the combustion chamber) and the remaining fixed combustion chamber geometry such that the intake gases can be compressed. It is the closest ring to the inlet valve which controls the flow of the combustion gases. As such, the top compression ring is exposed to a significant amount of chemical corrosion and very high operating temperatures. The top compression ring transfers approximately 70% of the combustion chamber heat from the piston to the cylinder wall.
60. The second piston ring is also a compression ring and is used to augment and complete the seal of the combustion chamber. It also acts as the final seal to wipe the cylinder wall clean



of any remaining engine oil. Combustion gases that bypass the top compression ring are stopped by the second compression ring.

61. The bottom ring, the oil control ring, is actually two rings in one piston groove. Its function is to control the amount of engine oil present on the surface of the cylinder bore and to wipe excess oil from the cylinder wall during piston movement. The return of excess oil through the opening between the two rings, through the oil drain holes, is directed to the engine oil pan (sump). The oil control ring includes two thin rails or running surfaces.
62. The pistons move up and down within the cylinders of the engine block in sliding contact. In this particular class of engines, the heat-treating process for the piston oil rings is done improperly which results in excessive oil ring hardness. The intended purpose of the heat-treating process is to maximize efficient operation, defined as minimizing sliding friction and increasing combustion chamber efficiency. Since the manufacturing process is defective, the excessive oil ring hardness results in scuffing of the engine's cylinder bore and even chipping of the oil ring's outer periphery. This cylinder and/or piston ring damage will result in increased oil consumption, which may then cause an abnormal knocking noise from the engine and/or illumination of the oil pressure warning light.
63. If engine oil is able to pass any of these piston rings, the engine oil will enter the combustion chamber. Once engine oil is in the combustion chamber, it will contribute as fuel to the Combustion Cycle sequence. However, even though the engine oil is a hydrocarbon (fuel), it combusts significantly slower than gasoline. Excess oil in the combustion chamber decreases combustion efficiency (the power produced), increases emissions, poisons the catalytic converter, and finally causes a reduction in the overall amount of oil contained in the engine.
64. The piston ring assembly and cylinder coating in the Affected Class Vehicles are defective. Rather than preventing oil from by passing the rings and entering the combustion chamber, they permit engine oil to seep into the combustion chamber of the engine. As a result, engine oil is not adequately separated from the Combustion Cycle. Instead, engine oil is burned and consumed during the Combustion Cycle. Additionally, and as a result, the crankcase becomes pressurized, since gases from the Combustion Cycle are allowed to

enter the crankcase.

65. If the loss of oil is not detected and the engine oil is not refilled to the minimum level, the engine will be either marginally lubricated or under-lubricated. Inadequate lubrication causes premature, substantial wear and then substantial damage throughout the engine, including oversaturation of carbon and deposits of oil sludge, thereby necessitating expensive repairs. Lack of oil can culminate in engine failure, which is a serious safety risk. If the loss of oil is detected and the engine oil is over filled, similar damage results. Even if the loss of oil is detected and the owner and/or lessee is able to maintain proper oil levels, the escaping oil burns off in the combustion and exhaust systems, causing damage to key emission-related components in the exhaust system.

**ii. The Oil Consumption Defect destroys engine parts, impairs efficiency and causes higher emissions**

66. As discussed above, the Oil Consumption Defect allows oil to pass into the combustion chamber during the combustion process. Once in the combustion chamber, the by passing oil is burned off rather than returned for further lubrication. This not only causes a decrease in engine performance, but also decreases fuel efficiency, causes carbon deposits to form, and damages the engine and various ignition and emission components.
67. Engine oil is a hydrocarbon; when it is present in the combustion chamber during the combustion cycle, it ignites and burns as any other hydrocarbon. However, due to the chemical nature of oil – which is more viscous and denser than gasoline – it burns slower and generates heat over a longer period of time. As a result of these characteristics, engine oil contributes practically nothing to the combustion part of the cycle, and only generates heat in the exhaust system due to the longer burn (combustion) times. It does, however, consume some of the oxygen in the combustion chamber, thereby reducing both ignition and combustion efficiency. This in turn increases emissions, which causes the fuel management system to introduce a different and most often non-optimal fuel-to-air ratio during the next cycle.
68. Optimum combustion depends on the correct fuel/air ratio in order to provide a near

stoichiometric mixture (i.e., the fuel amount is neither excessive nor lacking). The oxygen sensors monitor unburned oxygen in the exhaust gases and send this information to the engine control module, which then uses this information to determine if the fuel mixture is rich (too much fuel) or lean (not enough fuel) and adjusts the fuel/air mixture as necessary. The oxygen sensors also measure oxygen levels after the exhaust reacts with the catalytic converter, to help the engine run efficiently and to minimize emissions. The catalytic converters are emission control devices designed to convert toxic pollutants contained in exhaust gases to less toxic pollutants by catalyzing a redox reaction (oxidation or reduction).

69. While a significant amount of the unwanted engine oil is burned within the combustion chamber during the Combustion Process, any remaining and as-yet unburned oil exits the combustion chamber via the exhaust valve and is passed on to the catalytic converter. Excess oil entering into the exhaust system can cause damage to that system and increases harmful emissions.
70. The Oil Consumption Defect can contaminate oxygen sensors and catalytic converters of the Affected Class Vehicles. Contamination can impair the accuracy of the oxygen sensors, for example, hampering the catalytic converters and causing the engine to not properly detect emission issues. Likewise, the catalytic converters can become poisoned as an effect of engine oil burning during the combustion cycle. The burnt oil is incorporated into the expelled exhaust gases of the engine, with the exhaust containing substances that coat the working surfaces of the catalytic converters, encapsulating the catalyst materials so that they cannot contact and treat the exhaust.
71. The catalytic converter is the central component of the emission system of any vehicle equipped with an internal combustion engine. Since the mid-1970s, almost all cars and light-duty trucks in North America have come equipped with catalytic converters to comply with government regulatory standards on harmful emissions. The catalytic converter converts dangerous compounds produced in the combustion process into less harmful compounds.
72. A catalytic converter is designed to last the entire useful life of a vehicle. The catalytic

converter converts harmful chemical compounds like carbon monoxide and nitrogen oxide into more inert compounds prior to being returned to the atmosphere. The exhaust system does this by using the pressurized gases from the exhaust stroke of the engine to push these exhaust gases through honeycomb structures made of heat resistant ceramic coated with the catalytic materials and contained within a stainless-steel case. Each of the channels within the honeycomb structure are lined with precious metals such as platinum, rhodium, and palladium that act as catalysts to the conversion process. When dangerous compounds like carbon monoxide (CO), unburnt hydrocarbons (HC), and nitrogen oxides (Nox) molecules come into contact with the platinum, rhodium, and palladium, the molecules are either reduced catalytically or oxidized into recumbent gases that are less harmful – typically carbon dioxide (CO<sub>2</sub>) and nitrogen (N<sub>2</sub>) – and water (H<sub>2</sub>O).

73. If excess oil enters into the catalytic converter, the conversion process is disrupted and reduced in efficiency and efficacy. Excess oil will coat the working surfaces of the platinum, rhodium, and palladium and mask the catalysts, preventing them from reacting with the toxic exhaust gases. This is called "catalyst poisoning" and causes the vehicle to make changes (sometimes drastic changes) to the fuel/air ratio through the fuel management system and to release higher levels of harmful emissions.
74. Excess oil in the exhaust system can cause other problems that lead to higher emissions. On both sides of the catalytic converter, O<sub>2</sub> sensors monitor the concentration of oxygen in exhaust gases. The O<sub>2</sub> sensors transmit that data to the Engine Control Unit ("ECU").
75. Another effect is that phosphorus is released when the excess oil is burned and will foul (i.e., plate on to) the O<sub>2</sub> sensor, causing the O<sub>2</sub> sensor to degrade or fail. When the O<sub>2</sub> sensor is fouled, it will incorrectly communicate to the ECU, which will then make incorrect adjustments to the fuel/air ratio being provided to the engine. The ECU may adjust the fuel/air ratio and make it too lean – meaning that there is too little fuel and too much air in the mixture. A lean mixture, if not corrected will cause the exhaust/emission systems to allow excess amounts of Nox to pass to the environment.
76. The ECU may also respond by adding fuel to the fuel/air mixture creating a "rich" fuel mixture ("rich" because there is too much gasoline and too little air). When engines run

using a "rich" fuel mixture, fuel economy is reduced because the engine is receiving more fuel than it can consume during the combustion process. This excess fuel then continues through the exhaust system and is released into the environment as unburned or partially burned hydrocarbons.

77. If the issue is not addressed or corrected, the excess fuel will burn when it mixes with oxygen inside the catalytic converter and can melt the internal working surfaces of the catalytic converter. As a result, the ability of the catalytic converter to reduce harmful emissions will be compromised.
78. When the catalytic converter or O<sub>2</sub> sensors are compromised, the Check Engine light should illuminate on the display panel informing the driver of a problem. The Affected Class Vehicles do not provide notice of the Oil Consumption Defect to the driver. The result is that drivers are left completely unaware that the dangerous Oil Consumption Defect is also causing the Affected Class Vehicles to have an emissions system that is defective, pollutes at levels that exceed the intended levels, and violates government emissions standards.

**iii. The Defendants', KIA and HYUNDAI, longstanding knowledge of the Oil Consumption Defect**

79. The Defendants, KIA and/or HYUNDAI, through a variety of sources including (1) their own records of customers' complaints, (2) dealership repair records, (3) warranty and post-warranty claims, (4) comments posted on public websites devoted to automotive reviews and vehicle defect reports, (5) and internal pre-sale durability testing and internal investigations (sometimes referred to as "star" reports), were well aware of the Oil Consumption Defect.

**a. Defendant's, HYUNDAI, Recall 203 Dealer Best Practice Publication**

80. On or about June 11, 2021, the Defendant, HYUNDAI, issued "Recall 203 Dealer Best Practice" recalling 203 – 2.0 Nu MPI Engine – Piston Oil Ring – Remedy Not Yet Available.
81. The Recall 203 Dealer Best Practice ("Recall 203") document indicated that it was based

on “a condition involving engine failures” in which “engines in the subject vehicles may have been assembled using piston oil rings that were produced with inconsistent heat treating by the piston oil ring supplier resulting in excessive oil ring hardness. Excessive hardness can cause chipping of the piston oil ring’s outer periphery, which could lead to scuffing of the engine’s cylinder bore.”

82. Recall 203 acknowledged that continual operation of a vehicle in this condition could result in damage to the engine block and eventual stall. In some situations, the engine damage could cause oil to leak and could increase the risk of fire.
83. Under the recall, the Defendant, HYUNDAI, provides that all affected vehicles will receive an enhanced engine control software update containing a new Piston Noise Sensing System (“PNSS”) program, which continuously monitors engine vibrations for unusual patterns potentially indicating an abnormal condition with the engine, such as damaged cylinder bore and/or piston skirt, which could lead to an engine failure. However, the recall also provided that the PNSS was currently under development and will be applied when available.

**b. TSBs demonstrate the Defendants’, KIA and HYUNDAI, longstanding knowledge of oil consumption issues in their Affected Class Vehicles**

84. The Defendants, KIA and HYUNDAI, issued TSBs to their authorized dealerships in order to provide instructions on how to repair Kia and Hyundai vehicles or respond to particular consumer complaints. These communications are not meant for consumer review. Rather, they are intended to standardize service throughout Defendants’, KIA and HYUNDAI, agent dealership network. Further, these communications often do not reveal the root cause of a problem, only describe a complaint and a remedy, frequently in terms that a lay person would not understand, and do not disclose the severity or scope across all the vehicles to which the TSB relates.
85. Evidence of the Defendants’, KIA and HYUNDAI, knowledge of the Oil Consumption Defect are apparent in TSBs as early as December 2020.

**c. TSB 222**

86. In December 2020, the Defendant, KIA, issued TSB 222 titled "Excessive Oil Consumption Nu/Gamma/Theta/Kappa Engines." This TSB was revised approximately five times thereafter with the most recent revision dated January 6, 2022.
87. TSB 222 bulletin provides information on diagnosing and/or repairing some 2011-2021 model year vehicles exhibiting excessive oil consumption.
88. As explained in TSB 222:
  - a. "Engine oil is responsible for lubrication, cooling and operating of hydraulic components of the engine."
  - b. "Operation with deteriorated or low engine oil causes reduced lubrication and cooling, as well as impaired operation of hydraulic components. This leads to abnormal wear of engine parts, oversaturation of carbon, and deposits of oil sludge. These can result in damage to multiple areas of the engine, ultimately requiring a costly, lengthy, and preventable repair."
89. TSB 222 first instructed the Defendant's, KIA, dealers to top off the oil in the vehicle's engine, seal the drain plug and oil filter using an anti-tamper marking to ensure accurate test results. The customer would then be instructed to drive 1,000 miles (1,600 kilometres). After driving 1,000 miles the customer would return to the Defendant's, KIA, dealer where the oil consumption would be calculated. If the oil consumption was above 1,000 miles per quart (1.4 litres) then the vehicle passed the oil consumption test and the repair is complete. If the vehicle consumed more than one quart of oil in 1,000 miles then the vehicle was to undergo a Combustion Chamber Cleaning.
90. The Combustion Chamber Cleaning is intended to remove deposits from combustion chamber, intake valves and fuel injectors that produce a loss of power and performance as a result of the Oil Consumption Defect. Unfortunately, many proposed Class Members were forced to pay out of pocket for this service even though both Defendants, KIA and

HYUNDAI, knew it was needed as a result of the Oil Consumption Defect.

91. After the Combustion Chamber Cleaning, the vehicle was to be driven another 1,000 miles and then returned to the Kia retailer for analysis and computation of oil consumption. At this point, if the oil consumption was above 1,000 miles per quart then the vehicle passed the oil consumption test and the repair is complete. If the vehicle consumed more than one quart of oil in 1,000 miles then the vehicle was to undergo an engine replacement.

**d. TSB 21-EM-003H**

92. In March 2021, the Defendant, HYUNDAI, issued TSB 21-EM-003H titled "Excessive Oil Consumption Inspection and Repair Guidelines." This TSB was applicable to all models and all model years equipped with 4-cylinder gasoline engines including, but not limited to, Sonata, Santa Fe Sport, Tucson and Veloster.
93. TSB 21-EM-003H first instructed the Defendant's, HYUNDAI, dealers to check the customers service records and review the maintenance history of the vehicle. If a customer was unable to produce these documents the Defendant, HYUNDAI, would inform the customer that their warranty would not be applicable and any repair would be the financial responsibility of the customer. The next step would be to top off the oil in the vehicle's engine, seal the drain plug and oil filter using an anti-tamper marking to ensure accurate test results. The customer would then be instructed to drive 1,000 miles. After driving 1,000 miles, the customer would return to the Defendant's, HYUNDAI, retailer where the oil consumption would be calculated. If the oil consumption was above 1,000 miles per quart then the vehicle passed the oil consumption test and the repair is complete. If the vehicle consumed more than one quart of oil in 1,000 miles then the vehicle was to undergo a Combustion Chamber Cleaning.
94. The Combustion Chamber Cleaning is intended to remove deposits from combustion chamber, intake valves and fuel injectors that produce a loss of power and performance as a result of the Oil Consumption Defect. Unfortunately, many proposed Class Members were forced to pay out-of-pocket for this service even though both Defendants, KIA and HYUNDAI, knew it was needed as a result of the Oil Consumption Defect.



95. After the Combustion Chamber Cleaning, the vehicle was to be driven another 1,000 miles and then returned to the Defendant, HYUNDAI, dealer for analysis and computation of oil consumption. At this point, if the oil consumption was above 1,000 miles per quart then the vehicle passed the oil consumption test and the repair is complete. If the vehicle consumed more than one quart of oil in 1,000 miles then the vehicle was to undergo an engine replacement.

96. The Defendants, KIA and HYUNDAI, knew of the Oil Consumption Defect years before even issuing the earliest TSBs related to it.

**iv. Numerous consumer reports to NHTSA should have alerted the Defendants, KIA and HYUNDAI, to the Oil Consumption Defect**

97. NHTSA and Transport Canada are government agencies in the United States and Canada respectively that are responsible for ensuring safe roadways and enforcing motor vehicle safety standards. Consumers may file vehicle safety-related complaints with NHTSA's Office of Defects Investigation and Transport Canada, where they are logged and published.

98. NHTSA has received numerous complaints about the Oil Consumption Defect in the few years since the Nu, Gamma, Theta, Lambda and Kappa engine models were launched. These complaints begin as early as 2012, with at least 16 complaints between May 2012 and December 2014. Since then hundreds of complaints have been lodged and continue to accumulate, yet the Defendants, KIA and HYUNDAI, have not attempted to adequately address the oil consumption issues in the Affected Class Vehicles. NHTSA complaints regarding excessive oil consumption in the Affected Class Vehicles can be found at <https://www.nhtsa.gov/recalls>.

**v. The Defendants', KIA and HYUNDAI, internal testing should have identified the Oil Consumption Defect**

99. The Defendants, KIA and HYUNDAI, are experienced automobile manufacturers. As such, the Defendants, KIA and HYUNDAI, conduct tests, including pre-sale durability testing, to

verify that the vehicles they sell are free from defects and align with their specifications and intended use of the Affected Class Vehicles.

100. All vehicle manufacturers, including the Defendants, KIA and HYUNDAI, are required by government regulations in the United States (49 U.S. Code 301 - Motor Vehicle Safety Act) and Canada (*Motor Vehicle Safety Act*, R.S.C.1993, c.16), and related regulations, to submit quarterly submissions to NHTSA and Transport Canada of "early warning reporting" data, including claims relating to property damage received by the automotive manufacturer, warranty claims paid by the automotive manufacturer, consumer complaints, incidents involving injury or death, and field reports prepared by the automotive manufacturer's employees or representatives concerning failure, malfunction, lack of durability, or other performance issues. Further, all automotive manufacturers, including the Defendants, KIA and HYUNDAI, routinely monitor and analyze NHTSA and/or Transport Canada complaints to determine whether vehicles or automotive components should be recalled due to safety concerns. As such, the Defendants, KIA and HYUNDAI, have knowledge of all NHTSA and/or Transport Canada complaints.
101. In Canada, emissions from motor vehicles are regulated by Environment Canada under the *Canadian Environmental Protection Act*, 1999, S.C. 1999, c.33 ("CEPA"), which applies to new and/or used vehicles imported into Canada or to vehicles shipped inter-provincially.
102. Increasingly, the general approach to setting vehicle emissions standards in Canada is to harmonize them with the United States Environmental Protection Agency ("EPA") standards as much as possible. On January 1, 2004, Environment Canada enacted the *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2 under CEPA, the purpose of which was to reduce emissions and to "establish emission standards and test procedures for on-road vehicles that are aligned with those of the EPA" for "vehicles and engines that are manufactured in Canada, or imported into Canada, on or after January 1, 2004". Every model of vehicle or engine that is certified by the EPA and that is sold concurrently in Canada and in the United States, is required to meet the same emission standards in Canada as in the United States.
103. The Defendants, KIA and HYUNDAI, were independently obligated to test the Affected

Class Vehicles' exhaust emissions system's durability for their "useful life" under CEPA and the United States *Clean Air Act*, 42 U.S.C. ch. 85 §7401-7671. Under the EPA rules, engine manufacturers can use one of two methods for testing the exhaust emissions durability—using a chassis dynamometer to test the vehicles after they have run for a given period of time or using a "bench aging" procedure which involves using extreme heat to test certain components, including the catalytic converters.

104. In either case, certificate holders must test and certify that the vehicles will comply with EPA emissions standards throughout their "useful life," which is currently defined as 120,000 miles (193,000 kilometres). As the *Clean Air Act Handbook* describes it, "[t]he demonstration of light-duty vehicle emission durability for purposes of certification consists of two elements: (1) emission deterioration (the extent emissions will increase during the vehicle's useful life); and (2) component durability (whether emission-related components will operate properly for the useful life of the vehicle)." The Plaintiff alleges that the Oil Consumption Defect and the damage it causes to the exhaust system would have been shown during such tests.
105. As such, through a variety of quality control metrics, the Defendants, KIA and HYUNDAI, knew or ought to have known of the Oil Consumption Defect in the Affected Class Vehicles prior to and shortly after the time of sale to proposed Class Members.
106. If the Defendants, KIA and HYUNDAI, did not discover the Oil Consumption Defect, their research and testing were insufficient to support their advertising, promoting, marketing, warranting, and selling of the Affected Class Vehicles as suitable and safe for operation and use in the intended and reasonably foreseeable manner.

**vi. The Defendant's, KIA, response to consumers presenting the Oil Consumption Defect at Kia dealerships**

107. According to the Defendant's, KIA, website, its Affected Class Vehicles come with a five-year/100,000 kilometre "worry-free comprehensive warranty covering virtually the entire vehicle."

108. The Kia Warranty includes: five-year/100,000 kilometre powertrain warranty; 8-year/130,000 kilometre major emission components that guarantee that the car will conform with government emission standards; and five-year/unlimited mileage as to roadside assistance plan.
109. The Powertrain Warranty covers the engine, transmission, and drive systems. Accordingly, the Powertrain Warranty is the applicable warranty related to the Oil Consumption Defect.
110. The Defendant, KIA, instructs vehicle owners and/or lessees to bring their vehicles to a Kia dealership for the warranty repairs. Many owners and/or lessees have presented the Affected Class Vehicles to Kia dealerships with complaints about the Oil Consumption Defect.
111. Despite the Defendant's, KIA, knowledge of the problem—and presumed knowledge of how to appropriately remediate and prevent the Oil Consumption Defect from recurring—the Defendant, KIA, has not fixed the defect in vehicles under warranty. Instead, customers report the following actions at Kia dealerships:
  - a. advising customers that excessive oil consumption is normal and that oil should be added to the engine on a regular basis between oil change intervals; and
  - b. adding significant amounts of engine oil, sometimes exceeding the recommended fill level.
112. These customer experiences are consistent with the TSBs the Defendant, KIA, has issued, but neither of these service actions actually fixes the Oil Consumption Defect and each of them will allow damage to the combustion, exhaust, and emission systems described above to occur over time. In fact, The Defendant's, KIA, actions are likely exacerbating the damage that the Oil Consumption Defect would cause under ordinary circumstances if no intervention occurred.
113. These customer experiences reflect service actions that are contrary, moreover, to the

recommendations set forth in the Affected Class Vehicle Owner's Manuals of the Defendant, KIA. For example, the Owner's Manual for the 2020 Kia Sportage contains a table for Turbo Models specifying that engine oil should be changed every 12 months or 10,000 kilometers for normal maintenance, and every six months or 5,000 kilometers for severe usage conditions.

- 114. The Owner's Manual for the 2020 Kia Sportage specifies that, for non turbo models, engine oil should be changed every 12 months or 12,000 kilometres under normal conditions, and every six months or 6,000 kilometres for severe usage conditions.
- 115. Consumers have incurred and will continue to incur expenses related to the Oil Consumption Defect because the Defendant's, KIA, service and repairs do not adequately resolve the Oil Consumption Defect.

**vii. The Defendant's, HYUNDAI, response to consumers presenting the Oil Consumption Defect at Hyundai dealerships**

- 116. The Affected Class Vehicles of the Defendant, HYUNDAI, come with a five-year /100,000 kilometre Powertrain Limited Warranty; five-year/100,000 kilometer New Vehicle Limited Warranty; five-year/unlimited kilometre Anti-Perforation Warranty; five-year/unlimited kilometre 24-hour roadside assistance, as well as additional warranties for parts, accessories and emissions, and electric and hybrid powertrain coverage.
- 117. The Powertrain Warranty covers the engine, transmission, and drive systems. Accordingly, the Powertrain Warranty is the applicable warranty related to the Oil Consumption Defect.
- 118. The Defendant, HYUNDAI, instructs vehicle owners and/or lessees to bring their vehicles to a Hyundai dealership for the warranty repairs. Many owners and/or lessees have presented Affected Class Vehicles to Hyundai dealerships with complaints about the Oil Consumption Defect.
- 119. Despite the Defendant's, HYUNDAI, knowledge of the problem—and presumed knowledge of how to appropriately remediate and prevent the Oil Consumption Defect from

recurring—the Defendant, HYUNDAI, has not fixed the defect in vehicles under warranty. Instead, customers report two different actions at Hyundai dealerships:

- a. advising customers that the excessive oil consumption is normal and that oil should be added to the engine on a regular basis between oil change intervals; and
- b. adding significant amounts of engine oil, sometimes exceeding the recommended fill level.

120. These customer experiences are consistent with the TSBs the Defendant, HYUNDAI, has issued, but neither of these service actions actually fixes the Oil Consumption Defect and each of them will allow damage to the combustion, exhaust, and emission systems described above to occur over time. In fact, the Defendant's, HYUNDAI, actions are likely exacerbating the damage that the Oil Consumption Defect would cause under ordinary circumstances if no intervention occurred.

121. These customer experiences reflect service actions that are contrary, moreover, to the recommendations set forth in the Affected Class Vehicles Owner's Manuals of the Defendant, HYUNDAI. For example, the Owner's Manual for the 2020 Hyundai Sonata contains a schedule for Normal Maintenance, which specifies that engine oil should be changed every 12 months or 12,000 kilometres.

122. The Defendant, HYUNDAI, further advises that engine oil should be changed every six months or 6,000 kilometres for severe usage conditions.

123. Consumers have incurred and will continue to incur expenses related to the Oil Consumption Defect because the Defendant's, HYUNDAI, service and repairs do not adequately resolve the Oil Consumption Defect.

**viii. Oil consumption in the Affected Class Vehicles**

124. The Defendant, KIA, advises customers on its website under "Car care tips" that "oil stops

the metal surfaces in your engine from grinding together and wearing, by creating a separating oil film between them. The oil also disperses heat and reduces wear, protecting the engine."

125. The Defendant, KIA, further advises consumers on its website under "Protect Your Kia" that customers should change their engine oil every 7,500 miles.
126. As of 2017, the Defendant, HYUNDAI, had built five million engines at its Alabama manufacturing facility.
127. The Defendant, HYUNDAI, acknowledges on its website under "Hyundai gives you maximum choice, Engines and powertrains" that "good [engine] performance characteristics remain of prime importance," and claims that it "is trying to strike the perfect balance between power and efficiency with special consideration to the environment. We are committed to working towards better performance, higher efficiency and cleaner emissions."
128. The Defendant, HYUNDAI, advises customers on its website under "Car Care" that "[g]etting regular oil changes is easy and can extend the life of your car. Engine oil is one of the most important fluids in your car. As you drive, oil breaks down and is exposed to contaminants, reducing its lubricating properties."
129. The Defendant, HYUNDAI, further advises that most consumers should change their engine oil every 6,000-7,500 miles.

**ix. The Defendants', KIA and HYUNDAI, marketing of the Affected Class Vehicles**

130. The Defendants, KIA and HYUNDAI, design, engineer, manufacture and/or sell the Affected Class Vehicles throughout North America through their network of authorized motor vehicle dealers.
131. The Defendant, KIA, touts its vehicles' dependability on its website: "In 2022, Kia ranked highest among mass market brands in J.D. Power's Vehicle Dependability Study. The study determines long-term reliability by measuring the number of problems in three-year old

vehicles across nine major categories. This year's study found that Kia vehicles received the best scores in vehicle dependability among mass market brands."

132. The Defendant's, KIA, business is performing immensely well. In September 2021, the Defendant, KIA, announced that it had experienced its best-ever third-quarter sales in company history for a total of 177,014 vehicles sold, and that this result has contributed to its highest ever sales performance for the first nine months of a calendar year – a total of 555,525 vehicles – a nine-percent increase over the previous first three-quarter sales record of 491,764 vehicles in the United States.
133. The Defendant, HYUNDAI, is the fifth largest automaker in the world, with average annual sales for all vehicles, including its Affected Class Vehicles, of over 700,000 vehicles in the United States in 2021 and nearly 3,000,000 vehicles globally. Sales of the Elantra topped 127,000 in 2021, sales of the Santa Fe exceeded 112,000 that year and Sonata sales were in excess of 83,000 in the United States.
134. The Defendant's, HYUNDAI, business is also performing immensely well – even in the face of a global pandemic. For example, in July 2021, it announced that it had its largest profit in seven years, and its website indicates that in 2019, it had exceeded KRW 100 trillion in sales, its "highest ever sales figure, and the continuation of a long history of solid performance."
135. Overall, the Defendant, HYUNDAI, touts its vehicles' "high quality, dependability and reliability" and that its "dedication and commitment to building vehicles of the highest quality knows no bounds."
- x. **The Defendants, KIA and HYUNDAI, concealed the Oil Consumption Defect from consumers and deflect responsibility for engine problems onto consumers**
136. As alleged herein, the Defendants, KIA and HYUNDAI, have failed to disclose the Affected Class Vehicles' excessive oil consumption problem to consumers before or at point-of-sale. The Defendants, KIA and HYUNDAI, have also refused to acknowledge the Oil



Consumption Defect to vehicle owners and/or lessees and further, have affirmatively taken steps to conceal the Oil Consumption Defect.

**xi. Agency relationship between Defendants, KIA and HYUNDAI, and their authorized dealerships as to the Affected Class Vehicles**

137. The Defendants, KIA and HYUNDAI, as the vehicle manufacturers, impliedly or expressly acknowledged that Kia and Hyundai authorized dealerships are their sales agents, the dealers have accepted that undertaking, they have the ability to control authorized Kia and Hyundai dealers, and they act as the principal in that relationship, as is shown by the following:

- (a) The Defendants can terminate the relationship with their dealers at will;
- (b) The relationships are indefinite;
- (c) The Defendants are in the business of selling vehicles as are their dealers;
- (d) The Defendants provide tools and resources for Hyundai and Kia dealers to sell vehicles;
- (e) The Defendants supervise their dealers regularly;
- (f) Without the Defendants the relevant Kia and Hyundai dealers would not exist;
- (g) The Defendants as the principal require the following of their dealers:
  - (i) Reporting of sales;
  - (ii) Computer network connection with the Defendants;
  - (iii) Training of dealers' sales and technical personnel;

- (iv) Use of the Defendants' supplied computer software;
  - (v) Participation in the Defendants' training programs;
  - (vi) Establishment and maintenance of service departments in Hyundai and Kia dealerships;
  - (vii) Certification of Defendants' pre-owned vehicles;
  - (viii) Reporting to the Defendants with respect to the car delivery, including reporting the Plaintiff's names, addresses, preferred titles, primary and business phone numbers, e-mail addresses, vehicle VIN numbers, delivery date, type of sale, lease/finance terms, factory incentive coding, if applicable, vehicles' odometer readings, extended service contract sale designations, if any, and names of delivering dealership employees; and
  - (ix) Displaying the Defendants' logos on signs, literature, products, and brochures within dealerships.
- (h) Dealerships bind the Defendants with respect to:
- (i) Warranty repairs on the vehicles the dealers sell; and
  - (ii) Issuing service contracts administered by the Defendants.
- (i) The Defendants further exercise control over their dealers with respect to:
- (i) Financial incentives given to Kia and Hyundai dealer employees;
  - (ii) Locations of dealers;
  - (iii) Testing and certification of dealership personnel to ensure compliance with the Defendants policies and procedures; and

- (iv) Customer satisfaction surveys, pursuant to which the Defendants allocate the number of their cars to each dealer, thereby directly controlling dealership profits.
- (j) Kia and Hyundai dealers sell the Defendants' vehicles on the Defendants' behalf, pursuant to a "floor plan," and the Defendants do not receive payment for their cars until the dealerships sell them;
- (k) Dealerships bear the Defendants' brand names, use their logos in advertising and on warranty repair orders, post Hyundai and Kia brand signs for the public to see, and enjoy a franchise to sell the Defendants' products, including the Affected Class Vehicles;
- (l) The Defendants require Kia and Hyundai dealers to follow the rules and policies of the Defendants in conducting all aspects of dealer business, including the delivery of the Defendants' warranties described above, and the servicing of defective vehicles such as the Affected Class Vehicles;
- (m) The Defendants require their dealers to post the Defendants' brand names, logos, and signs at dealer locations, including dealer service departments, and to identify themselves and to the public as authorized Kia and Hyundai dealers and servicing outlets for the Defendants' vehicles;
- (n) The Defendants require their dealers to use service and repair forms containing their brand names and logos;
- (o) The Defendants require Kia and Hyundai dealers to perform the Defendants warranty diagnoses and repairs, and to do the diagnoses and repairs according to the procedures and policies set forth in writing by the Defendants;
- (p) The Defendants require Kia and Hyundai dealers to use parts and tools either provided by the Defendants or approved by Defendants and to inform the Defendants when dealers discover that unauthorized parts have been installed on

one of the Defendants vehicles;

- (q) The Defendants require dealers' service and repair employees to be trained by the Defendants in the methods of repair of Hyundai and Kia-brand vehicles;
- (r) The Defendants audit Kia and Hyundai dealerships' sales and service departments and directly contact the customers of said dealers to determine their level of satisfaction with the sale and repair services provided by the dealers; dealers are then granted financial incentives or reprimanded depending on the level of satisfaction;
- (s) The Defendants require their dealers to provide it with monthly statements and records pertaining, in part, to dealers' sales and servicing of the Defendants' vehicles;
- (t) The Defendants provide technical service bulletins and messages to their dealers detailing chronic defects present in product lines, and repair procedures to be followed for chronic defects;
- (u) The Defendants provide their dealers with specially trained service and repair consultants with whom dealers are required by the Defendants to consult when dealers are unable to correct a vehicle defect on their own;
- (v) The Defendants require Kia and Hyundai-brand vehicle owners to go to authorized Kia and Hyundai dealers to obtain servicing under the Defendants warranties; and
- (w) Kia and Hyundai dealers are required to notify the Defendants whenever a vehicle is sold or put into warranty service.

## **Part 2: RELIEF SOUGHT**

1. The Plaintiff, on his own behalf and on behalf of the proposed Class Members, claims against the Defendants, KCI, KMC, KMA, KMMA, HACC, HMC, HMA and HMMA, jointly

and severally, as follows:

- (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the named representative;
- (b) a declaration that the Affected Class Vehicles are equipped with engines containing the Oil Consumption Defect;
- (c) a declaration that the Defendants, KCI, KMC, KMA, KMMA, HACC, HMC, HMA and/or HMMA, were negligent in the design and/or manufacturing of the Affected Class Vehicles equipped with engines containing the Oil Consumption Defect causing the Plaintiff and proposed Class Members to suffer damages;
- (d) a declaration that the Defendants, KCI, KMC, KMA, KMMA, HACC, HMC, HMA and/or HMMA:
  - (i) breached their duty of care to the Plaintiff and proposed Class Members;
  - (ii) breached express warranties as to the Affected Class Vehicles and are consequently liable to the Plaintiff and proposed Class Members for damages;
  - (iii) breached implied warranties or conditions of merchantability as to the Affected Class Vehicles and are consequently liable to the Plaintiff and proposed Class Members for damages pursuant to sections 18(a),(b) and 56 of the *Sale of Goods Act*, R.S.B.C. 1996 ("SGA"), 410; sections 16(2), (4) and 52 of the *Sale of Goods Act*, RSA 2000, c. S-2; sections 16(1), (2) and 52 of the *Sale of Goods Act*, RSS 1978, c. S-1; sections 16(a), (b) and 54 of *The Sale of Goods Act*, CCSM 2000, c. S10; sections 15(1), (2) and 51 of the *Sale of Goods Act*, RSO 1990, c. S.1; sections 16(a),(c) and 54 of the *Sale of Goods Act*, RSNL 1990, c. S-6 ; sections 17(a),(b) and 54 of the *Sale of Goods Act*, RSNS 1989, c. 408; sections 20(a),(b) and 67 of the *Sale of Goods Act*, RSNB 2016, c. 110; sections 16(a), (b) and 53 of the *Sale of*

*Goods Act*, RSPEI 1988, c. S-1; sections 15(a), (b) and 60 of the *Sale of Goods Act*, RSY 2002, c. 198; sections 18(a),(b) and 60 of the *Sale of Goods Act*, RSNWT 1988, c. S-2; and sections 18(a),(b) and 60 of the *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2; and

- (iv) engaged in unfair practices contrary to sections 4 and 5 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004 ("BPCPA"); Sections 5 and 6 of the *Consumer Protection Act*, RSA 2000, c. C-26.3; Sections 6 and 7 of *The Consumer Protection and Business Practices Act*, SS, 2014, c C-30.2; Sections 2 and 3 of *The Business Practices Act*, CCSM c B120; Sections 14(1) and (2) of the *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A and Section 4 (1) of the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1, and are consequently liable to the Plaintiff and proposed Class Members for damages;
- (e) a declaration that it is not in the interests of justice to require that notice be given, where applicable, under the *BPCPA*; *Consumer Protection Act*, RSA 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, SS, 2014, c C-30.2; *The Business Practices Act*, CCSM c B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, and SNB 1978, c C-18.1, and waiving any such applicable notice provisions;
- (f) an Order for the statutory remedies available under the *BPCPA*; *Consumer Protection Act*, RSA 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, SS, 2014, c C-30.2; *The Business Practices Act*, CCSM c B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1, including damages, cancellation and/or rescission of the purchase and/or lease of the Affected Class Vehicles;
- (g) an order directing the Defendants, KCI, KMC, KMA, KMMA, HACC, HMC, HMA and/or HMMA, to advertise any adverse findings against them pursuant to section 172(3)(c) of the *BPCPA*; Section 19 of the *Consumer Protection Act*, RSA 2000, c. C-26.3; Section 93(1)(f) of *The Consumer Protection and Business Practices Act*,

SS, 2014, c C-30.2; Section 23(2)(f) of *The Business Practices Act*, CCSM c B120; Section 18(11) of the *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A and Section 15 of the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1;

- (h) a declaration that the Defendants, KCI, KMC, KMA, KMMA, HACC, HMC, HMA and/or HMMA, breached sections 36 and/or 52 of the *Competition Act*, R.S.C 1985, c. C-34 and are consequently liable to the Plaintiff and proposed Class Members for damages;
- (i) a declaration that the Defendants, KCI, KMC, KMA, KMMA, HACC, HMC, HMA and/or HMMA, were unjustly enriched at the expense of the Plaintiff and proposed Class Members;
- (j) an order enjoining the Defendants, KCI, KMC, KMA, KMMA, HACC, HMC, HMA and/or HMMA, from continuing the unlawful and unfair business practices as alleged herein;
- (k) injunctive and/or declaratory relief requiring the Defendants, KCI, KMC, KMA, KMMA, HACC, HMC, HMA and/or HMMA, to recall, repair and/or replace the engines equipped in the Affected Class Vehicles containing the Oil Consumption Defect and/or buy back all Affected Class Vehicles and to fully reimburse and make whole all proposed Class Members for all costs and economic losses associated therewith;
- (l) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("*CPA*") directing an aggregate assessment of damages;
- (m) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;
- (n) damages, including actual, compensatory, incidental, statutory and consequential damages;

- (o) special damages;
- (p) punitive damages;
- (q) costs of investigation pursuant to section 36 of the *Competition Act*;
- (r) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (s) such further and other relief as to this Honourable Court may seem just.

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

#### **Jurisdiction**

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

- (e)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia;
- (e)(iii)(A)(B) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;
- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;



- (h) concerns a business carried on in British Columbia; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

## **Causes of Action**

### **Negligence**

2. The Plaintiff and proposed Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
3. At all material times to the cause of action herein, the Plaintiff and proposed Class Members were using the Affected Class Vehicles for the purposes and manner for which they were intended. The Defendants as vehicle manufacturers, at all material times, owed a duty of care to the Plaintiff and proposed Class Members to provide a product that did not have a design and/or manufacturing defect. The Affected Class Vehicles pose a substantial risk of harm or injury to proposed Class Members on account of the Oil Consumption Defect.
4. The Defendants as the designer, engineer, manufacturer, promoter, marketer and/or distributor of the Affected Class Vehicles, intended for use by ordinary consumers, owed a duty of care to the Plaintiff and proposed Class Members to ensure that the Affected Class Vehicles were reasonably safe for use.
5. The Defendants owed a duty of care to the proposed Class. This duty of care was breached by the Defendants' failure to design and/or manufacture engines equipped in the Affected Class Vehicles that did not consume excessive amounts of oil which destroys engine parts, impairs efficiency and cause higher emissions, leading to sudden and unexpected stalling, loss of power and/or catastrophic engine failure.
6. At all material times, the Defendants owed a duty of care to the Plaintiff and proposed Class Members and breached that standard of care expected in the circumstances. They knew of the Oil Consumption Defect, yet they continued to equip the Affected Class Vehicles with

engines containing the Oil Consumption Defect.

7. The Defendants owed the Plaintiff and proposed Class Members a duty to carefully monitor the safety and post-market performance of the engines equipped in the Affected Class Vehicles. The Defendants had a duty to warn or promptly warn the Plaintiff and proposed Class Members of the dangers associated with the use of the Affected Class Vehicles. They failed to promptly, or at all, recall the Affected Class Vehicles from the Canadian market upon discovering the Oil Consumption Defect, which could cause serious personal injury and/or property damage, in conditions of ordinary use and which otherwise reduced the value of the Affected Class Vehicles and resulted in costs associated with the loss of use of the Affected Class Vehicles.
8. The circumstances of the Defendants being in the business of designing, manufacturing and placing the Affected Class Vehicles into the Canadian stream of commerce are such that the Defendants are in a position of legal proximity to the Plaintiff and proposed Class Members, and therefore are under an obligation to be fully aware of safety when designing, manufacturing, assembling and selling a product such as the Affected Class Vehicles.
9. It was reasonably foreseeable that a failure by the Defendants to design and/or manufacturer engines that did not consume excessive amounts of oil which destroys engine parts, impairs efficiency and cause higher emissions, leading to sudden and unexpected stalling, loss of power and/or catastrophic engine failure, would cause harm or injury to the Plaintiff and proposed Class Members.
10. The Plaintiff and proposed Class Members had no knowledge of the Oil Consumption Defect in the Affected Class Vehicles and had no reason to suspect the Oil Consumption Defect.
11. The Defendants knew or ought to have known that the Affected Class Vehicles equipped with engines containing the Oil Consumption Defect, which, in the absence of reasonable care in the design, manufacture and/or assembly of such engines equipped in the Affected Class Vehicles, presented a substantial safety hazard to drivers and passengers of the Affected Class Vehicles as a result of sudden and unexpected stalling, loss of power and/or

catastrophic engine failure.

12. As such, the Defendants through their employees, officers, directors, and agents, failed to meet the reasonable standard of care or conduct expected in the circumstances in that:
  - (a) they knew, or ought to have known, about the Oil Consumption Defect in the Affected Class Vehicles and should have timely warned the Plaintiff and proposed Class Members;
  - (b) they designed, developed, manufactured, tested, assembled, marketed, advertised, distributed, supplied and/or sold vehicles equipped with defective engines;
  - (c) they failed to timely warn the Plaintiff, proposed Class Members and/or consumers about the Oil Consumption Defect in the Affected Class Vehicles, which presented a substantial safety hazard to drivers and passengers;
  - (d) they failed to change the design, manufacture and/or assembly of the defective engines equipped in the Affected Class Vehicles containing the Oil Consumption Defect in a reasonable and timely manner;
  - (e) they failed to properly inspect and test the engines equipped in the Affected Class Vehicles containing the Oil Consumption Defect;
  - (f) they knew, or ought to have known, about the Oil Consumption Defect in the Affected Class Vehicles but failed to disclose it;
  - (g) they failed to timely issue and implement safety, repair and/or replacement recalls of the Affected Class Vehicles equipped with engines containing the Oil Consumption Defect;
  - (h) the Oil Consumption Defect presented a serious safety hazard to drivers and passengers of the Affected Class Vehicles resulting from sudden and unexpected stalling, loss of power and/or catastrophic engine failure;

- (i) notwithstanding that they foresaw personal injury and/or the loss of property of the drivers and passengers in the Affected Class Vehicles, they failed or failed to promptly eliminate or correct the Oil Consumption Defect in the Affected Class Vehicles; and
  - (j) failed to exercise reasonable care and judgment in matters of design, manufacture, materials, workmanship and/or quality of a product which would reasonably be expected of it as an automobile manufacturer.
13. As a result of the Oil Consumption Defect in the Affected Class Vehicles by reason of the Defendants' negligence and their failure to disclose and/or adequately warn of the Oil Consumption Defect, the Plaintiff and proposed Class Members have suffered damages and will continue to suffer damages. The value of each of the Affected Class Vehicles is reduced. The Plaintiff and each proposed Class Member must expend the time to have his/her vehicle repaired and/or recalled and be without their vehicle. The Defendants should compensate the Plaintiff and each proposed Class Member for their incurred out-of-pocket expenses for, *inter alia*, alternative transportation and vehicle payments as a result of the Oil Consumption Defect.

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

14. The Plaintiff and proposed Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
15. As an express warrantor and manufacturer and merchant, the Defendants had certain obligations to conform the engines equipped in the Affected Class Vehicles to their express warranties.
16. The Defendants marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through independent retail dealers and/or authorized dealerships. Such representations formed the basis of the bargain in the Plaintiff's and proposed Class Members' decisions to purchase and/or lease the Affected Class Vehicles.

17. When the Plaintiff and proposed Class Members purchased and/or leased their vehicles equipped with engines containing the Oil Consumption Defect (either as new vehicles or as used vehicles with remaining warranty coverage), the Defendants expressly warranted under their warranties that they would correct any vehicle defect found within the warranty period, and cover all towing, parts, and labor needed to correct the defect.
18. The warranties of the Defendants formed a basis of the bargain that was reached when the Plaintiff and proposed Class Members purchased and/or leased the Affected Class Vehicles.
19. The Oil Consumption Defect at issue in this litigation was present at the time vehicles equipped with the defective engines were sold and/or leased to the Plaintiff and proposed Class Members.
20. The Defendants breached their express warranties (and continue to breach these express warranties) because they did not and have not corrected the Oil Consumption Defect in the Affected Class Vehicles.
21. Pursuant to their express warranties, the Defendants were obligated to correct any defect in the engines equipped in the Affected Class Vehicles containing the Oil Consumption Defect owned and/or leased by the Plaintiff and proposed Class Members.
22. Although the Defendants were obligated to correct the defective engines in the Affected Class Vehicles, none of the purported, attempted fixes to the Oil Consumption Defect are adequate under the terms of the warranty, as they did not cure the Oil Consumption Defect.
23. The Defendants and their agent dealers have failed and refused to conform the defective engines in the Affected Class vehicles containing the Oil Consumption Defect to their express warranties. The Defendants' conduct, as averred to herein, has voided any attempt on their part to disclaim liability for their actions.
24. In particular, the Defendants breached their express warranties by:

- (a) knowingly providing the Plaintiff and proposed Class Members with the Affected Class Vehicles containing defects in material that were never disclosed to the Plaintiff and proposed Class Members;
  - (b) failing to repair or replace the Affected Class Vehicles equipped with engines containing the Oil Consumption Defect at no cost within the warranty period;
  - (c) ignoring, delaying responses to and denying warranty claims in bad faith; and
  - (d) supplying products and materials that failed to conform to their representations.
25. The Plaintiff and proposed Class Members have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of the Defendants or by operation of law in light of the Defendants' conduct as described herein.
26. The Plaintiff and proposed Class Members have given the Defendants a reasonable opportunity to cure their breach of express warranties or, alternatively, were not required to do so because such an opportunity would be unnecessary and futile given that the repairs and/or replacements offered by the Defendants can neither cure the Oil Consumption Defect in the Affected Class Vehicles nor resolve the incidental and consequential damages flowing therefrom.
27. The Defendants received timely notice regarding the Oil Consumption Defect from the Plaintiff and proposed Class Members when they brought their vehicles to their dealerships. The Defendants also received notice through complaints made by other consumers, to NHTSA and to Transport Canada. Notwithstanding such notice, the Defendants have failed and refused to offer an effective remedy.
28. In their capacity as a supplier and/or warrantor, and by the conduct described herein, any attempt by the Defendants to limit their express warranties in a manner that would enforce the five-year/100,000 kilometres limit would be unconscionable. The Defendants' warranties were adhesive, and did not permit negotiation, or the inclusion of design and/or

manufacturing defects. The Defendants possessed superior knowledge of the defects in the engines equipped in the Affected Class Vehicles containing the Oil Consumption Defect prior to offering the Affected Class Vehicles for sale. The Defendants concealed and did not disclose the Oil Consumption Defect, and the Defendants, did not remedy the defect prior to sale (or afterward). Any effort to otherwise limit liability for the design and/or manufacturing defect is null and void.

29. Further, because the Defendants have been unable to remedy the Oil Consumption Defect, the limitation on remedies included in the warranty fails its essential purpose and is null and void.
30. The Plaintiff and proposed Class Members have suffered damages caused by the Defendants' breach of their express warranties and are entitled to recover damages, including but not limited to, diminution of value.

**Breach of the Implied Warranty or Condition of Merchantability pursuant to the SGA and Parallel Provincial Sale of Goods Legislation**

31. The Plaintiff and proposed Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
32. The Defendants are a "seller" with respect to motor vehicles within the meaning of the SGA, *Sale of Goods Act*, RSA 2000, c. S-2; *Sale of Goods Act*, RSS 1978, c. S-1; *The Sale of Goods Act*, CCSM 2000, c. S10; *Sale of Goods Act*, RSO 1990, c. S.1; *Sale of Goods Act*, RSNL 1990, c. S-6 ; *Sale of Goods Act*, RSNS 1989, c. 408; *Sale of Goods Act*, RSNB 2016, c. 110; *Sale of Goods Act*, RSPEI 1988, c. S-1; *Sale of Goods Act*, RSY 2002, c. 198; *Sale of Goods Act*, RSNWT 1988, c. S-2; and *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2, pursuant to their agency relationship with their authorized dealers, distributors, resellers, retailers and/or intermediaries.
33. The Defendants are, and were, at all relevant times a seller with respect to Affected Class Vehicles equipped with the defective engines containing the Oil Consumption Defect. The Defendants directly sold and marketed vehicles equipped with the defective engines

equipped in the Affected Class Vehicles containing the Oil Consumption Defect to customers through authorized dealers, like those from whom the Plaintiff and proposed Class Members bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. The Defendants knew that the Affected Class Vehicles equipped with the defective engines containing the Oil Consumption Defect would and did pass unchanged from the authorized dealers to the Plaintiff and proposed Class Members, with no modification to the engines equipped in the Affected Class Vehicles.

34. A warranty that the Affected Class Vehicles were in merchantable condition was implied by law pursuant to sections 18(a) and/or (b) of the *SGA*, sections 16(2) and/or (4) of the *Sale of Goods Act*, RSA 2000, c. S-2; sections 16(1) and (2) of the *Sale of Goods Act*, RSS 1978, c. S-1; sections 16(a) and/or (b) of *The Sale of Goods Act*, CCSM 2000, c. S10; sections 15(1) and/or (2) of the *Sale of Goods Act*, RSO 1990, c. S.1; sections 16(a) and/or (c) of the *Sale of Goods Act*, RSNL 1990, c. S-6 ; sections 17(a) and/or (b) of the *Sale of Goods Act*, RSNS 1989, c. 408; sections 20(a) and/or (b) of the *Sale of Goods Act*, RSNB 2016, c. 110; sections 16(a) and/or (b) of the *Sale of Goods Act*, RSPEI 1988, c. S-1; sections 15(a) and/or (b) of the *Sale of Goods Act*, RSY 2002, c. 198; sections 18(a) and/or (b) of the *Sale of Goods Act*, RSNWT 1988, c. S-2; and sections 18(a) and (b) of the *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2,
35. The Defendants marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through independent retail dealers and/or authorized dealerships. Such representations formed the basis of the bargain in the Plaintiff's and proposed Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
36. Affected Class Vehicles equipped with engines containing the Oil Consumption Defect were defective at the time they left the possession of the Defendants. The Defendants knew of this defect at the time these transactions occurred. Thus, vehicles equipped with defective engines containing the Oil Consumption Defect, when sold and at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.
37. The Plaintiff and proposed Class Members purchased and/or leased the Affected Class



Vehicles from the Defendants through their subsidiaries, authorized agents for retail sales, through private sellers or were otherwise expected to be the eventual purchasers and/or lessees of the Affected Class Vehicles when bought and/or leased from a third party. At all relevant times, the Defendants were the manufacturers, distributors, warrantors and/or sellers of the Affected Class Vehicles. As such, there existed privity and/or vertical privity of contract between the Plaintiff and proposed Class Members and the Defendants, as to their Affected Class Vehicles. Alternatively, privity of contract need not be established nor is it required because the Plaintiff and proposed Class Members are intended third-party beneficiaries of contracts between the Defendants and their resellers, authorized dealers and/or distributors and, specifically, of the Defendants' implied warranties.

38. The Defendants' resellers, authorized dealers and/or distributors are intermediaries between the Defendants and consumers. These intermediaries sell the Affected Class Vehicles to consumers and are not, themselves, consumers of the Affected Class Vehicles and, therefore, have no rights against the Defendants with respect to the Plaintiff's and proposed Class Members' acquisition of the Affected Class Vehicles. The Defendants' warranties were designed to influence consumers who purchased and/or leased the Affected Class Vehicles.
39. The Defendants knew or had reason to know of the specific use for which the Affected Class Vehicles were purchased or leased.
40. As a result of the Oil Consumption Defect, the Affected Class Vehicles were not in merchantable condition when sold and are not fit for the ordinary purpose of providing safe and reliable transportation.
41. The Defendants knew about the Oil Consumption Defect in the Affected Class Vehicles, allowing them to cure their breach of warranty if they chose.
42. At all times that the Defendants warranted and sold their Affected Class Vehicles, they knew or ought to have known that their warranties were false and yet they did not disclose the truth or stop manufacturing or selling their Affected Class Vehicles and, instead, continued to issue false warranties and continued to insist the products were safe. The

Affected Class Vehicles were defective when the Defendants delivered them to their resellers, authorized dealers and/or distributors which sold the Affected Class Vehicles and the Affected Class Vehicles were, therefore, still defective when they reached the Plaintiff and proposed Class Members.

43. The Defendants' attempts to disclaim or limit the implied warranty of merchantability vis-à-vis the Plaintiff, proposed Class Members and/or consumers is unconscionable and unenforceable. Specifically, the Defendants' warranty limitation is unenforceable because they knowingly sold and/or leased a defective product without informing the Plaintiff, proposed Class Members and/or consumers about the Oil Consumption Defect in the Affected Class Vehicles. The time limits contained in the Defendants' warranty periods were also unconscionable and inadequate to protect the Plaintiff and proposed Class Members. Among other things, the Plaintiff and proposed Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favoured the Defendants. A gross disparity in bargaining power existed between the Defendants and the Plaintiff and proposed Class Members, and the Defendants knew that the Affected Class Vehicles were equipped with a defective engine that consumed excessive amounts of oil which destroys engine parts, impairs efficiency and cause higher emissions, leading to sudden and unexpected stalling, loss of power and/or catastrophic engine failure, all of which posed a serious risk of harm, injury and/or property damage to the Plaintiff and proposed Class Members.
44. The Plaintiff and proposed Class Members have complied with all obligations under the warranty or otherwise have been excused from performance of said obligations as a result of the Defendants' conduct alleged herein. Affording the Defendants a reasonable opportunity to cure their breach of written warranties, therefore, would be unnecessary and futile.
45. As a direct and proximate result of the Defendants' breach of implied warranties or conditions of merchantability, the Plaintiff and proposed Class Members have suffered loss, diminution and/or damage as a result of the Oil Consumption Defect in the Affected Class Vehicles pursuant to sections 56 of the SGA, section 52 of the *Sale of Goods Act*, RSA 2000, c. S-2; section 52 of the *Sale of Goods Act*, RSS 1978, c. S-1; section 54 of *The Sale*

of Goods Act, CCSM 2000, c. S10; section 51 of the *Sale of Goods Act*, RSO 1990, c. S.1; section 54 of the *Sale of Goods Act*, RSNL 1990, c. S-6 ; section 54 of the *Sale of Goods Act*, RSNS 1989, c. 408; section 67 of the *Sale of Goods Act*, RSNB 2016, c. 110;section 53 of the *Sale of Goods Act*, RSPEI 1988, c. S-1;section 60 of the *Sale of Goods Act*, RSY 2002, c. 198; section 60 of the *Sale of Goods Act*, RSNWT 1988, c. S-2; and section 60 of the *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2,

**Violation of *BPCPA* and Parallel Provincial Consumer Protection Legislation**

46. The Plaintiff and proposed Class Members in British Columbia hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
47. The Defendants are in British Columbia for the purposes of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in Schedule "A".
48. The Affected Class Vehicles are consumer "goods" within the meaning of section 1(1) of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A" .
49. The Plaintiff and proposed Class Members in British Columbia who purchased and/or leased the Affected Class Vehicles primarily for personal, family or household purposes, and not for resale or for the purposes of carrying on business, are "consumers" within the meaning of section 1(1) of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A" .
50. The purchase and/or lease of the Affected Class Vehicles by the Plaintiff and proposed Class Members in British Columbia for personal, family or household purposes, and not for resale or for carrying on business constitutes a "consumer transaction" within the meaning of section 1(1) of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A" .
51. The Defendants are a "supplier" within the meaning of section 1(1) of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A", as they

carried on business in British Columbia and who in the course of business participated in a consumer transaction by: (i) supplying goods to a consumer, or (ii) soliciting, offering, advertising or promoting with respect to a consumer transaction, whether or not privity of contract exists between that person and the consumer, and includes an assignee of, any rights or obligations of the supplier under the *BPCPA*. The Defendants are the vehicle manufacturers of the Affected Class Vehicles and distribute, market and/or supply such vehicles to consumers including proposed Class Members in British Columbia. At all relevant times, the Defendants were a supplier and/or seller of the Affected Class Vehicles as their resellers, authorized dealers and/or distributors were acting as the agents of the Defendants.

52. By failing to disclose and actively concealing the Oil Consumption Defect in the Affected Class Vehicles, the Defendants engaged in unfair and deceptive trade practices prohibited by sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A". The Defendants knew that the Affected Class Vehicles were equipped with a defective engine that consumed excessive amounts of oil which destroys engine parts, impairs efficiency and cause higher emissions, leading to sudden and unexpected stalling, loss of power and/or catastrophic engine failure, all of which posed a serious risk of harm, injury and/or property damage to the Plaintiff and proposed Class Members, but yet failed to adequately warn consumers.
53. As alleged herein, the Defendants made misleading representations and omissions concerning the benefits, performance and/or safety of the engine equipped in the Affected Class Vehicles.
54. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and proposed Class Members were deceived by the Defendants' failure to disclose their knowledge of the Oil Consumption Defect and associated safety risk.
55. In particular, the Defendants engaged in a pattern of unfair or deceptive acts or practices in failing to disclose to the Plaintiff and proposed Class Members that the Affected Class Vehicles were equipped with a defective engine that consumed excessive amounts of oil which destroys engine parts, impairs efficiency and cause higher emissions, leading to

sudden and unexpected stalling, loss of power and/or catastrophic engine failure, all of which posed a serious risk of harm, injury and/or property damage to the Plaintiff and proposed Class Members, as follows:

- (a) failing to disclose that the Affected Class Vehicles, including the engine, were not of a particular standard, quality, or grade;
- (b) failing to disclose before, during and/or after the time of purchase, lease and/or repair, any and all known material defects or material nonconformity of the Affected Class Vehicles, including the Oil Consumption Defect;
- (c) failing to disclose at the time of purchase and/or lease that the Affected Class Vehicles, including the engine, were not in good working order, defective, not fit for their intended, and ordinary purpose, and created a serious and imminent risk of danger or harm to occupants of the Affected Class Vehicles;
- (d) failing to give adequate warnings and/or notices regarding the use, defects, and problems with the engine equipped in the Affected Class Vehicles' to consumers who purchased and/or leased the Affected Class Vehicles, even though the Defendants possessed exclusive knowledge of the inherent oil defect in the engine before and at the time of purchase and/or lease;
- (e) failing to disclose, either through warnings and/or recall notices, and/or actively concealing, the fact that the engine in the Affected Class Vehicles was defective, even though the Defendants knew about the Oil Consumption Defect; and
- (f) representing that the Oil Consumption Defect in the Affected Class Vehicles would be covered under its warranty program.

56. In purchasing and/or leasing the Affected Class Vehicles, proposed Class Members in British Columbia were deceived by the Defendants failure to disclose their exclusive knowledge of the Oil Consumption Defect such that the engine equipped in the Affected Class Vehicles consumed excessive amounts of oil which destroys engine parts, impairs

efficiency and cause higher emissions, leading to sudden and unexpected stalling, loss of power and/or catastrophic engine failure, all of which posed a serious risk of harm, injury and/or property damage to the Plaintiff and proposed Class Members.

57. By failing to disclose and actively concealing the Oil Consumption Defect, the Defendants engaged in unfair or deceptive acts or practices prohibited by sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A".
58. Further, as alleged herein, the Defendants made misleading representations and/or omissions concerning the benefits, performance and/or safety of the Affected Class Vehicles, in particular as to the engine equipped in the Affected Class Vehicles by:
  - (a) publishing owners' manuals that made materially misleading omissions concerning vehicle safety and purported performance which uniformly omitted any warning to consumers that the engine equipped in the Affected Class Vehicles consumed excessive amounts of oil which destroys engine parts, impairs efficiency and cause higher emissions, leading to sudden and unexpected stalling, loss of power and/or catastrophic engine failure;
  - (b) advertisements which uniformly omitted any information about the Oil Consumption Defect and which misled consumers into believing that the engine in the Affected Class Vehicles would function properly; and
  - (c) emphasizing and extolling in brochures the safety, durability and performance of the Affected Class Vehicles.
59. The Defendants' conduct as alleged herein was, and is, in violation of sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A", in particular, by:
  - (a) representing that the Affected Class Vehicles, including the engine, were defect-free and did not pose a safety hazard, which it did not;

- (b) representing that the Affected Class Vehicles, including the engine, were of a particular standard, quality or grade, when they were not;
  - (c) advertising the Affected Class Vehicles, including the engine, with intent not to sell them as advertised; and
  - (d) representing that the Affected Class Vehicles, including the engine, have been supplied in accordance with a previous representation as to benefits, performance and/or safety, when they have not.
60. In purchasing and/or leasing the Affected Class Vehicles, proposed Class Members in British Columbia were deceived by the Defendants failure to disclose their exclusive knowledge of the Oil Consumption Defect and/or their representations made as to the benefits, performance and/or safety of the Affected Class Vehicles in their sales brochure materials, manuals, press releases and/or websites.
61. The Defendants intentionally and knowingly misrepresented and omitted material facts regarding their Affected Class Vehicles, specifically regarding the Oil Consumption Defect, with an intent to mislead the Plaintiff and proposed Class Members.
62. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and proposed Class Members were deceived by the Defendants' failure to disclose their knowledge of the Oil Consumption Defect and associated safety risk.
63. The Plaintiff and proposed Class Members had no way of knowing of the Defendants' representations were false, misleading and incomplete or knowing the true nature of the Oil Consumption Defect in the Affected Class Vehicles. As alleged herein, the Defendants engaged in a pattern of deception in the face of a known engine defect in the Affected Class Vehicles. The Plaintiff and proposed Class Members did not, and could not, unravel the Defendants' deception on their own.
64. The Defendants knew, or ought to have known, that their conduct violated sections 4 and

5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A".

65. The Defendants owed the Plaintiff and proposed Class Members a duty to disclose the truth about the Oil Consumption Defect in the Affected Class Vehicles as it created a serious safety hazard and the Defendants:
  - (a) possessed exclusive knowledge of the Oil Consumption Defect in the Affected Class Vehicles;
  - (b) intentionally concealed the foregoing from the Plaintiff and proposed Class Members; and/or
  - (c) failed to warn consumers or to publicly admit that the Affected Class Vehicles had a engine defect.
66. The Defendants had a duty to disclose that the engine in the Affected Class Vehicles was fundamentally flawed as described herein because it created a serious safety hazard and the Plaintiff and proposed Class Members relied on the Defendants' material misrepresentations and omissions regarding the Affected Class Vehicles and the Oil Consumption Defect.
67. The Defendants' conduct proximately caused injuries to the Plaintiff and proposed Class Members that purchased and/or leased the Affected Class Vehicles and suffered harm as alleged herein.
68. The Plaintiff and proposed Class Members were injured and suffered ascertainable loss, injury-in-fact and/or actual damage as a proximate result of the Defendants' conduct in that the Plaintiff and proposed Class Members incurred costs related to the Oil Consumption Defect including repair, service and/or replacement costs, rental car costs and overpaid for their Affected Class Vehicles that have suffered a diminution in value.
69. The Defendants' violations cause continuing injuries to the Plaintiff and proposed Class



Members. The Defendants' unlawful acts and practices complained of herein affect the public interest.

70. The Defendants knew of the defective engine and that the Affected Class Vehicles were materially compromised by the Oil Consumption Defect.
71. The facts concealed and omitted by the Defendants from the Plaintiff and proposed Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase an Affected Class Vehicle or pay a lower price. Had the Plaintiff and proposed Class Members known about the defective nature of the engine in the Affected Class Vehicles, they would not have purchased and/or leased the Affected Class Vehicles or would not have paid the prices they paid.
72. The Plaintiff's and proposed Class Members' injuries were directly or proximately caused by the Defendants' unlawful and deceptive business practices.
73. As a result of the Defendants' conduct as alleged herein, proposed Class Members in British Columbia are entitled to a declaration under section 172(1)(a) of the *BPCPA* that an act or practice engaged in by the Defendants in respect to the purchase and/or lease of the Affected Class Vehicles contravenes the *BPCPA*, an injunction under section 172(1)(b) of the *BPCPA* to restrain such conduct and/or damages under section 171 of the *BPCPA*, and to such remedies under parallel provincial consumer protection legislation, as described in Schedule "A".
74. Proposed Class Members in British Columbia are entitled, to the extent necessary, a waiver of any notice requirements under section 173(1) the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A", as a result of the Defendants' failure to disclose and/or actively conceal the Oil Consumption Defect from proposed Class Members in British Columbia and their misrepresentations as to the benefits, performance and/or safety of the Affected Class Vehicles.

**Breach of the *Competition Act***

75. The Plaintiff and proposed Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
76. By making representations to the public as to the safety, durability, quality, character and/or performance of the Affected Class Vehicles, in particular to their engines, the Defendants breached sections 36 and/or 52 of the *Competition Act*, in that their representations:
  - (a) were made to the public in the form of advertising brochures, statements and/or other standardized statements claiming the safety, durability, quality, character and/or performance of the Affected Class Vehicles;
  - (b) were made to promote the supply or use of a product or for the purpose of promoting its business interests;
  - (c) stated safety of the Affected Class Vehicles; and
  - (d) were false and misleading in a material respect.
77. At all relevant times, the Defendants were the seller and/or supplier of the Affected Class Vehicles. As such, there existed contractual privity and/or vertical privity of contract between the Plaintiff and proposed Class Members and the Defendants as to the Affected Class Vehicles as their resellers, authorized dealers and/or distributors at all material times were acting as the agents of the Defendants.
78. The Defendants engaged in unfair competition and unfair or unlawful business practices through the conduct, statements and omissions described herein and by knowingly and intentionally concealing the Oil Consumption Defect in the Affected Class Vehicles the Plaintiff and proposed Class Members, along with concealing the safety risks, costs, and monetary damage resulting from the Oil Consumption Defect. The Defendants should have disclosed this information because they were in a superior position to know the true facts related to the Oil Consumption Defect and the Plaintiff and proposed Class Members could

not reasonably be expected to learn or discover the true facts related to the Oil Consumption Defect.

79. The Oil Consumption Defect in the Affected Class Vehicles constitutes a safety issue. The Defendants knew that the Affected Class Vehicles were equipped with a defective engine that consumed excessive amounts of oil which destroys engine parts, impairs efficiency and cause higher emissions, leading to sudden and unexpected stalling, loss of power and/or catastrophic engine failure, all of which posed a serious risk of harm, injury and/or property damage to the Plaintiff and proposed Class Members, which triggered the Defendants' duty to disclose the safety issue to consumers.
80. These acts and practices have deceived the Plaintiff and proposed Class Members. In failing to disclose the Oil Consumption Defect and suppressing other material facts from the Plaintiff and proposed Class Members, the Defendants breached their duty to disclose these facts, violated the *Competition Act* and caused injuries to the Plaintiff and proposed Class Members. The Defendants' omissions and concealment pertained to information that was material to the Plaintiff and proposed Class Members, as it would have been to all reasonable consumers.
81. Further, the Plaintiff and proposed Class Members relied upon the Defendants' misrepresentations as to the safety ,durability and/or dependability of the Affected Class Vehicles to their detriment in purchasing and/or leasing the Affected Class Vehicles so as to cause loss and/or damage to the Plaintiff and proposed Class Members.
82. The Plaintiff and proposed Class Members have, therefore, suffered damages and are entitled to recover damages pursuant to section 36(1) and/or 52 of the *Competition Act*.

#### **Unjust Enrichment**

83. The Plaintiff and proposed Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
84. The Defendants have unjustly profited from the Oil Consumption Defect in the Affected

Class Vehicles whose value was inflated by their active concealment and the Plaintiff and proposed Class Members have overpaid for the Affected Class Vehicles.

85. The Defendants have received and retained unjust benefits from the Plaintiff and proposed Class Members and an inequity has resulted. It is inequitable and unconscionable for the Defendants to retain these benefits.
86. As a result of the Defendants' fraud, misrepresentations, deception and/or failure to disclose, the Plaintiff and proposed Class Members were not aware of the true facts concerning the Oil Consumption Defect in the Affected Class Vehicles and did not benefit from the Defendants' misconduct.
87. The Defendants knowingly accepted the unjust benefits of its misconduct. There is no juristic reason why the amount of its unjust enrichment should not be disgorged and returned to the Plaintiff and proposed Class Members, in an amount to be proven at Trial.
88. Further, the purchase of both new and/or used Affected Class Vehicles from authorized or affiliated dealerships of the Defendants or third party sellers conferred a benefit on the Defendants as such vehicles required use of the Defendants' parts as called for in the Defendants' recall or repair of the Oil Consumption Defect in the Affected Class Vehicles.

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

89. The Plaintiff and proposed Class Members had no way of knowing about the Oil Consumption Defect in the Affected Class Vehicles. The Defendants concealed their knowledge of the Oil Consumption Defect while continuing to market, sell and/or lease, the Affected Class Vehicles.
90. Within the *Limitation Act*, and to parallel legislative provisions in the rest of Canada as described in Schedule "B", the Plaintiff and proposed Class Members could not have discovered through the exercise of reasonable diligence that the Defendants were concealing the conduct complained of herein and misrepresenting the true qualities of the Affected Class Vehicles.

91. The Plaintiff and proposed Class Members did not know facts that would have caused a reasonable person to suspect or appreciate that there was a Oil Consumption Defect in the engine of the Affected Class Vehicles.
92. For these reasons, the *Limitation Act*, and to parallel legislative provisions in the rest of Canada, as described in Schedule "B", has been tolled by operation of the discovery rule with respect to the claims in this proposed class proceeding.
93. Further, due to Defendants knowing and active concealment throughout the time period relevant to this proposed class proceeding, the *Limitation Act*, and to parallel legislative provisions in the rest of Canada as described in Schedule "B" has been tolled.
94. Instead of publicly disclosing the Oil Consumption Defect in the Affected Class Vehicles, the Defendants kept the Plaintiff and proposed Class Members in the dark as to the Oil Consumption Defect and the serious safety hazard it presented.
95. The Defendants were under a continuous duty to disclose to the Plaintiff and proposed Class Members the existence of the Oil Consumption Defect in the Affected Class Vehicles.
96. The Defendants knowingly, affirmatively and actively concealed or recklessly disregarded the true nature, quality and character of the Affected Class Vehicles.
97. As such, the Defendants are estopped from relying on the *Limitation Act*, and parallel legislative provisions in the rest of Canada as described in Schedule "B", in defense of this proposed class proceeding.

Plaintiff's(s') address for service:

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

w2Fax number address for service (if any):

604-435-4944

E-mail address for service (if any):

none

Place of trial:

Vancouver, BC, Canada

The address of the registry is:

800 Smithe Street  
Vancouver, BC V6Z 2E1  
Canada

Dated: July 7, 2022

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

Signature of K.S. Garcha  
lawyer for the plaintiff

**Schedule "A"**

**Consumer Protection Legislation Across Canada**

Province or Territory	Legislation
Alberta	<p><i>Consumer Protection Act</i>, RSA 2000, c. C-26.3</p> <p>"Goods" - Section 1(1)(e)(i);  "Consumers" - Section 1(1)(b)(i);  "Consumer Transaction" - Section 1(1)(c)(i);  "Supplier" - Section 1(1)(i),(ii) and/or (iii);  "Unfair Practices" - Sections 5 and 6;  Statutory Remedies - Sections 13(1), (2) and 142.1; and  Waiver of Notice - Section 7.1(1)</p>
Saskatchewan	<p><i>The Consumer Protection and Business Practices Act</i>, SS 2014, c. C-30.2</p> <p>"Goods" - Section 2(e);  "Consumer" - Section 2(b);  "Supplier" - Section 2(l);  "Unfair Practices" - Sections 6 and 7; and  Statutory Remedies - Section 93</p>
Manitoba	<p><i>Consumer Protection Act</i>, CCSM c. C200</p> <p>"Goods" - Section 1;  "Consumer" - Section 1;  "Consumer Transaction" - Section 1;  "Supplier" - Section 1;  "Unfair Business Practices" - Sections 2(1) and (3); and  Statutory Remedies - 23(2)(a) and (b)</p>
Ontario	<p><i>Consumer Protection Act</i>, 2002, SO 2002, c. 30, Sch. A</p> <p>"Goods" - Section 1;  "Consumer" - Section 1;  "Supplier" - Section 1;  "Unfair Practices" - Sections 14(1) and (2);  Statutory Remedies - Sections 18(1) and (2); and  Waiver of Notice - Sections 18(3) and (15)</p>

New Brunswick	<p><i>Consumer Product Warranty and Liability Act</i>, SNB 1978, c. C-18.1</p> <p>"Consumer Product" - Section 1(1); "Buyer" - Section 1(1); "Contract for the sale or supply of a consumer product" - Section 1(1); and "Seller" - Section 1(1);</p>
---------------	---



**Schedule "B"**

**Limitation Act Legislation Across Canada**

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

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

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

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

## Appendix

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

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

The proposed multi-jurisdictional class proceeding involves certain Affected Class Vehicles designed, manufactured, assembled, tested, marketed, distributed, supplied, leased and/or sold by the Defendants in Canada whose engines contain, *inter alia*, a latent design and/or manufacturing defect that results in excessive engine oil consumption, leading to sudden and unexpected engine stalling, loss of power and catastrophic engine failure, all of which poses a substantial risk of harm or injury to vehicle occupants and others on the road.

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

A personal injury arising out of:

- ☐ motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

### Part 4:

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50
2. *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003 c. 28
3. *Business Practices and Consumer Protection Act*, S.B.C. 2004; *Consumer Protection Act*, RSA 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, SS, 2014, c C-30.2; *The*

*Business Practices Act*, CCSM c B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, and SNB 1978, c C-18.1

4. *Sale of Goods Act*, R.S.B.C 1996, c. 410; *Sale of Goods Act*, RSA 2000, c. S-2; *Sale of Goods Act*, RSS 1978, c. S-1; *The Sale of Goods Act*, CCSM 2000, c. S10; *Sale of Goods Act*, RSO 1990, c. S.1; *Sale of Goods Act*, RSNL 1990, c. S-6 ;*Sale of Goods Act*, RSNS 1989, c. 408; *Sale of Goods Act*, RSNB 2016, c. 110; *Sale of Goods Act*, RSPEI 1988, c. S-1; *Sale of Goods Act*, RSY 2002, c. 198; *Sale of Goods Act*, RSNWT 1988, c. S-2; and *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2,

5. *Motor Vehicle Safety Act* , R.S.C. 1993, c.16

6. *Canadian Environmental Protection Act*, 1999, S.C. 1999, c.33

7. *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2

8. *Court Order Interest Act*, R.S.B.C., c. 79

9. *Competition Act*, R.S.C 1985, c. C-34

10. *Limitation Act*, S.B.C. 2012, c.13; *Limitations Act*, RSA 2000, c. L-12; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitation of Actions Act*, CCSM c. L150; *Limitations Act*, 2002, SO 2002, c. 24, Sch. B; *Limitations Act*, SNL 1995, c. L-16.1; *Limitation of Actions Act*, SNS 2014, c. 35; *Limitation of Actions Act*, SNB 2009, c. L-8.5; *Statute of Limitations*, RSPEI 1988, c. S-7; *Limitation of Actions Act*, RSY 2002, c. 139; *Limitation of Actions Act*, RSNWT 1988, c. L-8; *Limitation of Actions Act*, RSNWT (Nu) 1988, c. L-8