ELECTRONICALLY AMENDED on this 23 day of May, 2023 pursuant to the Order of The Honourable Justice Glustein dated the 18 day of April, 2023.

Austin B Ross Digitally signed by Austin B Ross Date: 2023.05.23 09:45:18 -04'00'

Name of Court Registrar Signature

Court File No. CV-22-00675588-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

BRIAN McCLOSKEY and KRYSTAN KAPRON

Plaintiffs

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

Proceeding under the *Class Proceedings Act, 1992*

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF

YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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

Date January 21, 2022 Issued by "E-filed Claim"
Local Registrar

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

TO: **KIA CANADA INC**
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TO: **KIA MOTORS CORPORATION**
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TO: **KIA MOTORS MANUFACTURING GEORGIA, INC**
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TO: **HYUNDAI AUTO CANADA CORP**
75 Frontenac Drive
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TO: **HYUNDAI MOTOR AMERICA, INC**
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TO: **HYUNDAI MOTOR MANUFACTURING ALABAMA, LLC**
700 Hyundai Boulevard
Montgomery, AL 36015
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CLAIM

DEFINED TERMS

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

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

Model	Model Year(s) Affected
Hyundai Elantra	2014-2016
Hyundai Elantra Coupe	2014
Hyundai Elantra GT	2014-2020
Hyundai Genesis Coupe	2013
Hyundai Santa Fe	2010-2012
Hyundai Sonata Hybrid	2011-2015
Hyundai Sonata Hybrid/Plug-In Hybrid	2016-2019
Hyundai Tucson	2010-2021
Hyundai Veloster	2012-2017
Kia Forte	2010-2018
Kia Forte Koup	2010-2016
Kia Optima Hybrid	2011-2016
Kia Optima Hybrid/Plug-In Hybrid	2017-2020
Kia Rondo	2010-2012, 2014-2015
Kia Sorento	2011-2013
Kia Soul	2012-2019
Kia Sportage	2011-2013

(b) **"Class"** and/or **"Class Members"** means all persons, corporations or other entities resident in Canada who are current or former owners and/or lessees of an **Affected Vehicle**;

(c) **"Engines"** means the Theta II 2.4-litre and 2.0-litre turbocharged, Nu 2.0-litre, Gamma II 1.6-litre and 1.6-litre turbocharged, and Lambda II 3.0-litre, 3.3-litre,

3.8-litre and 3.3-litre turbocharged **GDI** engines designed, developed and manufactured by the Defendants, and the Theta II 2.0-litre, 2.4-litre, and 2.0-litre turbocharged, Nu 1.8-litre and 2.0-litre, Gamma II 1.6-litre, and Lambda II 3.3-litre and 3.5-litre **MPI** engines designed, developed and manufactured by the Defendants;

(d) **"Engine Defect"** means the latent design, manufacturing, material, and/or workmanship defects in the Affected Vehicles that cause restricted oil flow, increased oil consumption, engine damage, sudden vehicle stalling, catastrophic engine failure, and/or non-collision engine fires;

(e) **"Excluded Vehicles"** means the following vehicles equipped with Theta II 2.4-litre and turbocharged 2.0-litre **GDI** engines designed, developed and manufactured by the Defendants:

Model	Model Year(s) Affected
Hyundai Sonata	2011-2019
Hyundai Santa Fe (Sport)	2013-2019
Hyundai Tucson	2014-2015, 2019
Kia Optima	2011-2019
Kia Sorento	2012-2019
Kia Sportage	2011-2019

(f) **"GDI"** means gasoline direct injection;

(g) **"Hyundai"** means Hyundai Motor Company;

(h) **"Hyundai Alabama"** means Hyundai Motor Manufacturing Alabama, LLC;

(i) **"Hyundai Canada"** means Hyundai Auto Canada Corp;

(j) **"Hyundai USA"** means Hyundai Motor America, Inc;

(k) **"Kia"** means Kia Motors Corporation;

(l) **"Kia Canada"** means Kia Canada Inc;

(m) **"Kia Georgia"** means Kia Motors Manufacturing Georgia, Inc;

(n) **"Kia USA"** means Kia Motors America, Inc;

(o) **"MPI"** means multi-point injection;

(p) **"Mr McCloskey"** means Brian McCloskey; and,

(q) **"Ms Kapron"** means Krystan Kapron.

RELIEF CLAIMED

2. The Plaintiffs, Mr McCloskey and Ms Kapron, on their own behalf and on behalf of all Class Members, seek:

(a) an order certifying this action as a class proceeding and appointing them as the representative plaintiffs of the Class pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6;

(b) a declaration that the Defendants, or any of them, were negligent in the design, research, development, manufacturing, testing, marketing, advertisement, promotion, distribution, sale, leasing, warranting, servicing, and/or repair of the Affected Vehicles;

(c) a declaration that the Defendants, or any of them, were negligent in their failure to warn Mr McCloskey, Ms Kapron and the Class Members of the Engine Defect;

(d) a declaration that the Defendants, or any of them, are vicariously liable for the acts and omissions of their officers, directors, agents, employees, and representatives;

(e) a declaration that the Defendants, or any of them, breached the express and/or implied warranties for the Affected Vehicles;

(f) a declaration that the Defendants, or any of them, breached the *Motor Vehicle Safety Act*, SC 1993, c 16, by failing to provide notice of the latent Engine Defect to Mr McCloskey, Ms Kapron, and the Class Members;

(g) a declaration that the Defendants, or any of them, breached the *Motor Vehicle Safety Act*, SC 1993, c 16, by failing to provide notice of the latent Engine Defect to Mr McCloskey, Ms Kapron, and the Class Members;

(h) a declaration that the Defendants, or any of them, were unjustly enriched at the expense of Mr McCloskey, Ms Kapron, and the Class Members;

(i) general damages and special damages in the amount of $100,000,000;

(j) punitive damages in the amount of $25,000,000;

(k) disgorgement of the Defendants' profits and other equitable relief;

(l) a reference to decide any issues not decided at the trial of the common issues;

(m) costs of administration and notice, plus applicable taxes, pursuant to s 26(9) of the *Class Proceedings Act, 1992*;

(n) costs of this action pursuant to the *Class Proceedings Act, 1992*, the *Courts of Justice Act*, and the *Rules of Civil Procedure*, RRO 1990, Reg 194;

(o) prejudgment interest compounded and post-judgement interest in accordance with ss 128 and 129 of the *Courts of Justice Act*, RSO 1990, c C43, as amended; and,

(p) such further and other relief as to this Honourable Court may seem just.

THE PARTIES

The Plaintiffs and the Class

3. Mr McCloskey is an individual residing in Calgary, Alberta. He and his wife, Susan Catherine McCloskey ("Ms McCloskey"), are former owners of a 2012 Kia Sportage equipped with a Theta II 2.4-litre MPI Engine.

4. Ms Kapron is an individual residing in Beamsville, Ontario. She previously owned a 2017 Hyundai Tucson equipped with a Nu 2.0-litre GDI Engine.

5. Mr McCloskey and Ms Kapron seek to represent the following Class of which they are members:

> All persons, corporations or other entities resident in Canada who are current or former owners and/or lessees of an Affected Vehicle.

The Defendants

6. The Defendant Kia Canada is a corporation incorporated pursuant to the laws of Canada with its registered office located in Mississauga, Ontario. Kia Canada is and was at all material times a subsidiary of Kia.

7. Kia Canada imports into Canada for sale or lease newly manufactured Kia-branded vehicles, including the Kia-branded Affected Vehicles, and is responsible for ensuring that those vehicles are compliant with the regulations for import into Canada.

8. Kia Canada distributes Kia-branded vehicles in Canada, and sells, leases, services, and repairs the Kia-branded Affected Vehicles through its network of dealers. Money received by a dealer from the purchase or lease of a Kia-branded vehicle flows from the dealer to Kia Canada.

9. Kia Canada administers the warranties for all Kia-branded Affected Vehicles sold in Canada, representing that they are, *inter alia*, free of defects in material and workmanship.

10. The Defendant Kia is a corporation organized and existing under the laws of South Korea. Kia controls and directs Kia Canada with respect to virtually all aspects of the Kia-branded Affected Vehicles.

11. The Defendant Hyundai Canada is a corporation incorporated pursuant to the laws of Canada with its registered office located in Markham, Ontario. Hyundai Canada is and was at all material times a subsidiary of Hyundai.

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

13. Hyundai Canada distributes Hyundai-branded vehicles in Canada, and sells, leases, services, and repairs the Hyundai-branded Affected Vehicles through its network of dealers. Money received by a dealer from the purchase or lease of a Hyundai-branded vehicle flows from the dealer to Hyundai Canada.

14. Hyundai Canada administers the warranties for all Hyundai-branded Affected Vehicles sold in Canada, representing that they are, *inter alia*, free of defects in material and workmanship.

15. The Defendant Hyundai is a corporation organized and existing under the laws of South Korea. Hyundai controls and directs Hyundai Canada with respect to virtually all aspects of the Hyundai-branded Affected Vehicles.

16. The Defendants Hyundai and Kia designed, engineered, researched, developed, tested, manufactured, marketed, supplied, and distributed the Engines in the Affected Vehicles sold in Canada.

17. The Defendant Kia USA is a corporation organized and existing under the laws of California. Kia USA is and was at all material times a subsidiary of Kia.

18. The Defendant Hyundai USA is a corporation organized and existing under the laws of California. Hyundai USA is and was at all material times a subsidiary of Hyundai.

19. The Defendants Kia USA and Hyundai USA are and were at all material times responsible for exporting Affected Vehicles and parts for Affected Vehicles, including the Engines, from the United States into Canada.

20. The Defendant Kia Georgia is a corporation organized and existing under the laws of Georgia. Kia Georgia is and was at all material times a subsidiary of Kia.

21. The Defendant Hyundai Alabama is a corporation organized and existing under the laws of Delaware. Hyundai Alabama is and was at all material times a subsidiary of Hyundai and Hyundai USA.

22. The Defendants Kia Georgia and Hyundai Alabama manufactured Affected Vehicles and Engines sold, leased and/or distributed in Canada.

23. The Defendants operated and continue to operate as an integrated unit and are collectively responsible for the design, research, development, testing, manufacture, production, supply, distribution, marketing, leasing and sale of thousands of the Affected Vehicles to residents of Canada. They prepared and participated in the development of the owner's manuals, warranty booklets, and maintenance recommendations and/or schedules for the Affected Vehicles and continue to provide service and maintenance for the Affected Vehicles through their extensive network of authorized dealers and service providers.

THE FACTS

The Engines

24. The Engines contain:

(a) a GDI fuel-delivery system, which injects gasoline directly into the combustion chamber rather than through a carburetor, and which the Defendants advertise allows for greater control of the fuel mixture at the optimum moment, improving efficiency and allowing for better fuel economy, increased power, and reduced emissions; or,

(b) an MPI fuel-delivery system, which injects gasoline at each cylinder, directly inside the cylinder's intake port, and which the Defendants advertise allows for greater control over how much gasoline the Engine burns and increases overall fuel efficiency.

25. The Engines use four reciprocating pistons (six reciprocating pistons in the Lambda II Engines) to convert pressure into a rotating motion. Gasoline is mixed with air in the combustion chambers of the Engine. A four-stroke sequence (the "Combustion Cycle") is used to generate the rotating motion as follows:

(a) the intake stroke begins with the inlet valve opening and a vaporized fuel mixture being pulled into the combustion chamber;

(b) the compression stroke begins with the inlet valve closing and the piston beginning its movement upward, compressing the vaporized fuel mixture in the combustion chamber;

(c) the power stroke begins when the spark plug ignites the vaporized fuel mixture, expanding the gases and generating power that is then transmitted to the crankshaft;

(d) the exhaust stroke begins with the exhaust valve opening and the piston moving back up, forcing the exhaust gases out of the cylinder; and,

(e) the exhaust valve then closes, the inlet valve opens, and the Combustion Cycle repeats itself.

26. The pistons in the Engines are connected to the crankshaft via the connecting rod. As the connecting rod moves up and down during the Combustion Cycle, the crankshaft rotates, providing power to the Affected Vehicles' drive wheels. During this cycle, the crankshaft rotates several thousand times per minute within each connecting rod. A bearing placed between the connecting rod and crankshaft surfaces allows the crankshaft to rotate within the connecting rods during the Combustion Cycle, reduces friction and prolongs longevity.

27. Engine oil is crucial to the performance of the Engines in the Affected Vehicles. When the Affected Vehicles are in operation, engine oil:

(a) is used to lubricate the pistons, cylinder walls, connecting rod bearings, and other rotating and moving parts as the pistons move up and down through the four-stroke sequence;

(b) is essential to reducing wear on the rotating and moving parts of the Engine; improving sealing; and, cooling the Engine by carrying away heat from its rotating and moving parts; and,

(c) cleans and transports contaminants away from the Engine to the engine oil filter.

28. An oil pump pumps and pressurizes oil throughout the Engine. The oil pump draws oil from the oil pan, located underneath the piston and crankshaft, and forces the oil through the oil filter and then through passages in the Engine to properly lubricate and reduce friction in the rotating and moving engine parts. The oil returns to the oil pan through small drainage holes located throughout the Engine before being recirculated by the oil pump.

29. In the Engines, the connecting rod bearings must be lubricated with engine oil to allow the crankshaft to rotate within the connecting rods.

The Latent Engine Defect

30. This action concerns a latent Engine Defect in the Affected Vehicles, which typically manifests itself during the limited warranty period or shortly after its expiration. Latent manufacturing and workmanship defects in the Affected Vehicles cause restricted oil flow, increased oil consumption, sudden vehicle stalling, catastrophic engine failure, and/or non-collision engine fires (the "Engine Defect").

31. The manufacturing, assembly, and quality-control processes for producing and installing these Engines must be both precise and robust, to minimize, if not eliminate, manufacturing errors and the possibility of impurities contaminating the production of the engine components.

32. As a result of an improper manufacturing and machining process, the quality of the workmanship in manufacturing the Engines, including, but not limited to, their

components, such as the engine blocks, pistons and connecting rod bearings, to design specifications suffered.

33. Many of these manufacturing and workmanship defects would have been discoverable in routine quality-control inspections done to ensure that manufactured pieces meet design specifications. When engine components fail to meet design specifications, they fail to fit together properly, prematurely wear and breakdown, and are prone to damaging themselves and/or other engine components, causing the Engine Defect.

Metal Debris Circulating in the Engines of the Affected Vehicles

34. As mentioned above, when engine components fail to meet design specifications, they fail to fit together properly and prematurely wear and breakdown, causing metal debris from those components or other components to circulate throughout the Engines via the engine oil. Metal debris in the engine oil also results from, *inter alia*, (i) the failure to properly clean the engine crankshaft to remove metal debris during manufacturing; and , (ii) residual metal debris from factory machining operations.

35. The metal debris in the engine oil causes damage to the Engines' components in two ways: (i) through contact with the engine components; and, (ii) by blocking the flow of oil to rotating and moving engine components, causing premature wear due to the lack of oil lubrication.

36. As the metal debris circulates throughout the Engines via the engine oil, the connecting rod bearings in the Engines suffer damage and over time begin to fracture. Once the connecting rod bearings fracture, larger amounts of metal debris begin to accumulate in the engine oil. As a result, the engine oil becomes so contaminated with metal debris that the oil filter can

no longer remove the debris and maintain the necessary oil pressure within the Engine. The oil pump recirculates the contaminated engine oil throughout the Engine, causing damage to the various engine components and eventually resulting in sudden and unexpected vehicle stalling, catastrophic engine failure, and/or non-collision engine fires.

37. Additionally, as the connecting rod bearings continue to fracture, the acceptable tolerances between the bearings, the connecting rod, and the crankshaft rapidly deteriorate, eventually causing the Engines to produce a "knocking" noise. In some cases, the defective connecting rod bearings may eventually cause the piston and/or connecting rod to break through the engine block as a result of the deterioration. If the connecting rod breaks through the engine block, it can result in a non-collision engine fire as engine oil leaks through the broken cylinder wall and throughout the Engine.

38. After the connecting rod bearings fail and more metal debris is circulated throughout the Engine via the engine oil, damage is caused to other key engine components, such as the main cap, which fastens the crankshaft to the Engine. This leads to vehicles stalling, catastrophic engine failure, and/or non-collision engine fires.

39. As stated above, as a result of the metal debris in the oil of the Engines, the Affected Vehicles suffer from restricted and inadequate engine oil lubrication. As explained above, it is essential that the Engines have oil distributed throughout the engine lubrication channels. When operating properly, the engine oil is distributed throughout the Engine by the oil pump and then flows back to the oil pan where it is recirculated throughout the Engine.

40. In the Affected Vehicles, the engine lubrication channels become clogged and restricted as a result of the metal debris in the engine oil – even under normal use and with proper maintenance. When the engine lubrication channels clog, the oil pump is unable to circulate oil throughout the Engine and unable to adequately return the oil to the oil pan, causing oil starvation. This insufficient lubrication causes premature wear of the engine components, engine damage, sudden vehicle stalling, catastrophic engine failure, and/or non-collision engine fires.

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

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

42. The Engine Defect is life-threatening and dangerous. As a result of latent manufacturing and workmanship defects, the Affected Vehicles are prone to the restriction of oil flow through the connecting rod bearings as well as to other vital areas of the Engine, causing the Affected Vehicles to experience sudden vehicle stalling, catastrophic engine failure, and/or non-collision engine fires during operation.

43. The Engine Defect poses a significant risk of personal injury and/or property damage to Mr McCloskey, Ms Kapron and the other Class Members, occupants of the Affected Vehicles, and other members of the Canadian public because it can cause sudden vehicle stalling, catastrophic engine failure, and non-collision engine fires while the Affected Vehicles are in operation at any time and under any driving conditions and/or speed.

44. Numerous current and former owners and lessees of the Affected Vehicles have experienced engine damage, catastrophic engine failure, and/or non-collision engine fires while operating the Affected Vehicles, placing them and those around them in immediate danger.

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

The Defendants' Knowledge of the Latent Engine Defect

46. The Defendants have long been aware of the Engine Defect but have intentionally, negligently and/or recklessly concealed the Engine Defect from Mr McCloskey, Ms Kapron, and the other Class Members; failed to warn Mr McCloskey, Ms Kapron, and the other Class Members of the serious personal safety risks from the latent Engine Defect; and, failed to adequately notify the appropriate authorities of the safety risk.

47. At all material times, the Defendants had notice and knowledge of the Engine Defect through, *inter alia*, (i) numerous complaints they received from consumers, including Mr McCloskey, Ms Kapron, and the Class Members; (ii) information received from dealers, including dealer repair records; (iii) Transport Canada and US National Highway Traffic Safety Administration complaints and records; (iv) warranty and post-warranty claims; (v) the high number of replacement parts ordered from the Defendants; and, (vi) their own internal records, including pre-sale durability testing.

48. The Defendants' customer relations departments routinely monitor the Internet for customer complaints and regularly receive and respond to customer calls concerning, *inter*

alia, product defects. Through these activities, the Defendants were made aware of the Engine Defect and its potential danger.

49. The Defendants also became aware of the Engine Defect from the substantial volume of reports of engine problems relating to the connecting rod bearings, lubrication channels, and fuel leakage.

50. For example, Kia Canada's and Hyundai Canada's customer relations departments work closely with Kia- and Hyundai-authorized service technicians to identify potentially widespread vehicle problems and assist in the diagnosis of vehicle issues. Kia Canada and Hyundai Canada have received numerous reports of engine problems in the Engines relating to the connecting rod bearings, lubrication channels, and fuel leakage.

51. The Defendants also collect and analyze field data, including, but not limited to, repair requests made at dealers and service centres, technical reports prepared by engineers who have reviewed vehicles for which warranty coverage is requested, parts sales reports, and warranty claims data.

52. The Defendants' warranty departments similarly review and analyze warranty claims data submitted by their dealers, agents and authorized service technicians to identify defect trends in their vehicles.

53. The Defendants knew or ought to have known about the Engine Defect because of the high number of replacement parts ordered from the Defendants.

54. In Canada, Kia and Hyundai service centres are required to order replacement parts, including engines, piston assemblies, and connecting rod bearings, directly from Kia

Canada and Hyundai Canada. Other independent vehicle repair shops that service Affected Vehicles also order replacement parts directly from Kia Canada and Hyundai Canada. Kia Canada and Hyundai Canada routinely monitor part sales reports and are responsible for the shipping of parts requested by dealers and technicians.

55. Kia Canada and Hyundai Canada had detailed, accurate, and real-time data regarding the number and frequency of replacement part orders. The sudden increase in orders for the Engines and engine components used in the Affected Vehicles was known to Kia Canada and Hyundai Canada and ought to have alerted them to the scope and severity of the Engine Defect.

56. The Defendants knew or ought to known about the Engine Defect from Transport Canada and US National Highway Traffic Safety Administration complaints and records. The Defendants routinely monitor these complaints and records to identify potential defects in their vehicles.

57. Although the Defendants became aware of the Engine Defect much earlier, US National Highway Traffic Safety Administration complaints establish that the Defendants knew, or ought to have known, of the Engine Defect at least as early as August 2, 2010, the date upon which the first US National Highway Traffic Safety Administration complaint in relation to the Engines was filed. This was before the majority of the Affected Vehicles were sold.

58. The Defendants are experienced in the design, testing, and manufacturing of passenger vehicles. As an experienced manufacturer, the Defendants conduct testing on incoming

batches of components, including the Engines, to verify that the components are free from defects and comply with the Defendants' specifications.

59. In fact, the Defendants represent to their customers and the public that they put their vehicles, their engines and their engine components, through very stringent and tough tests.

60. Accordingly, the Defendants knew or ought to have known that the Engines used in the Affected Vehicles are defective and likely to fail prematurely, costing Mr McCloskey, Ms Kapron, and the Class Members thousands of dollars in expenses and presenting a serious safety risk to Mr McCloskey, Ms Kapron, the Class Members and the public.

The Defendants' Conduct While Knowing About the Engine Defect

61. Despite their knowledge of the Engine Defect:

(a) the Defendants continued to market the Affected Vehicles as being safe and of a high quality;

(b) Kia Canada and Hyundai Canada routinely refused to repair the Affected Vehicles free of charge when the Engine Defect manifested – even within the warranty period;

(c) Kia Canada and Hyundai Canada routinely refused to offer to reimburse their customers who incurred out-of-pocket expenses to repair the Engine Defect – even within the warranty period;

(d) Kia Canada, Hyundai Canada and their agents refused to disclose the existence of the Engine Defect when Affected Vehicles displaying symptoms consistent with the Engine Defect were brought in for service;

(e) Kia Canada, Hyundai Canada and their agents ignored the Engine Defect in Affected Vehicles until it caused significant mechanical problems necessitating costly repairs;

(f) Kia Canada and Hyundai Canada have attempted to circumvent their warranty obligations related to the Engine Defect by faulting Class Members for use of aftermarket oil filters or for a lack of maintenance;

(g) the Defendants did not inform Class Members of the true cause of the engine damage, increased oil consumption, sudden vehicle stalling, catastrophic engine failure, and non-collision engine fires;

(h) despite knowing that the Engine Defect manifests even if the Class Members followed Kia's or Hyundai's oil change guidelines, Kia Canada, Hyundai Canada and their agents attempted to evade Kia Canada's and Hyundai Canada's warranty obligations by requiring Class Members to produce the entire maintenance history of the Affected Vehicles, including proof that all oil changes were completed at a Kia-authorized or Hyundai-authorized dealer or service provider, before determining whether to make the necessary repairs under warranty;

(i) the Defendants have refused to take any action to correct the Engine Defect when it manifests in the Affected Vehicles after the expiration of the warranty period; and,

(j) Kia Canada and Hyundai Canada have failed to recall and/or offer adequate engine repairs and/or replacements for every Affected Vehicle.

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

Transport Canada Recalls

63. Kia Canada and Hyundai Canada have been slow to recall the Affected Vehicles, if at all.

64. Since December 17, 2019, Kia Canada has initiated twelve recalls with respect to the Engine Defect in the Kia-branded Affected Vehicles in Canada.

65. Since December 17, 2019, Hyundai Canada has initiated nine recalls with respect to the Engine Defect in the Hyundai-branded Affected Vehicles in Canada.

66. Despite the twenty-one recalls, many of the Affected Vehicles have not yet been recalled despite (i) having the same Engines as the recalled Affected Vehicles; and, (ii) Class Members notifying the Defendants about their Engines stalling, failing, or catching fire.

(1) Transport Canada Recalls for Kia-Branded Affected Vehicles

67. On December 17, 2019, Kia Canada announced that it would be conducting a Product Improvement Campaign for 26,082 model year 2019 Kia Optima vehicles, model year 2019 Kia Sorento vehicles, and model year 2019-2020 Kia Sportage vehicles (Transport Canada Recall # 2019-639).

68. On November 11, 2020, Kia Canada announced that it would be conducting a Product Improvement Campaign for 27,879 model year 2014-2016 Kia Soul vehicles equipped with Nu 2.0-litre GDI Engines (Transport Canada Recall # 2020-535).

69. Under these Product Improvement Campaigns, Kia Canada is providing a software update to the engine control module to detect potential problems before the Engine fails. These recall campaigns indicate that engine failure could cause a sudden loss of power with an inability to restart and could increase the risk of a crash.

70. On December 4, 2020, Kia Canada initiated a recall of 39,658 model year 2012-2015 Kia Forte vehicles, model year 2012-2015 Kia Forte Koup vehicles, model year 2011-2013 Kia Optima vehicles, model year 2012 Kia Sorento vehicles, model year 2014-2015 Kia Soul vehicles, and model year 2012 Kia Sportage vehicles equipped with Nu 2.0-litre GDI Engines or Theta II 2.4-litre MPI Engines (Transport Canada Recall # 2020-597).

71. This recall campaign indicates (i) that in certain vehicles equipped with a Nu 2.0-litre GDI Engine or Theta II 2.4-litre MPI Engine, an engine compartment fire could occur while driving; (ii) that Kia Canada is conducting this recall as a preventative measure to prevent fire risk due to potential fuel leaks, oil leaks and/or engine damage; (iii) that the following symptoms might be present: an abnormal knocking noise from the Engine, illumination of

the check engine light and/or oil pressure warning light, the smell of fuel, burning or smoke, or oil leaks; (iv) that if the vehicle continues to be driven with these symptoms, the Engine could fail and/or an engine compartment fire could occur; (v) that engine failure could cause a sudden loss of power with an inability to restart; (vi) that an engine compartment fire could create a risk of injury; and, (vii) that a sudden loss of engine power could increase the risk of a crash.

72. Under this recall campaign, dealers are to inspect the Engines and engine compartments for fuel and/or engine oil leaks, perform an engine test, and make any necessary repairs, including engine replacement. The recall campaign also involves performing the Knock Sensor Detection System (KSDS) software update – designed to detect engine damage from worn connecting rod bearings –, if it is available for the vehicle.

73. On February 1, 2021, Kia Canada announced that it would be conducting a Product Improvement Campaign for 30,938 model year 2016-2018 Kia Forte vehicles and model year 2014-2015 Kia Rondo vehicles equipped with Nu 2.0-litre GDI Engines (Transport Canada Recall # 2021-039).

74. On February 1, 2021, Kia Canada also announced that it would be conducting a Product Improvement Campaign for 48,787 model year 2010-2011 Kia Forte vehicles, model year 2010-2012 Kia Rondo vehicles, model year 2011 Kia Sorento vehicles, and model year 2011-2013 Kia Sportage vehicles equipped with Theta II 2.4-litre MPI Engines (Transport Canada Recall # 2021-040).

75. On April 6, 2021, Kia Canada announced that it would be conducting a Product Improvement Campaign for 8,908 model year 2012-2016 Kia Soul vehicles equipped with Gamma II 1.6-litre GDI Engines (Transport Canada Recall # 2021-204).

76. Under these Product Improvement Campaigns, Kia Canada is providing a software update to the engine control module to detect potential problems before the Engine fails. These recall campaigns indicate that engine failure could cause a sudden loss of power with an inability to restart and could increase the risk of a crash and/or create the risk of a fire.

77. On April 14, 2021, Kia Canada initiated a recall of 443 model year 2018 Kia Forte vehicles equipped with Nu 2.0-litre MPI Engines (Transport Canada Recall # 2021-224).

78. This recall campaign indicates (i) that in certain vehicles equipped with a Nu 2.0-litre MPI Engine, small metal particles that are not captured by the oil filter can build up in the oil pump; (ii) that if this happens, the engine oil pressure may be reduced, causing engine wear and resulting in abnormal engine noise; (iii) that if this happens, the malfunction indicator lamp and/or oil pressure warning light may turn on; (iv) that if the vehicle continues to be driven with these symptoms, the Engine could fail; (v) that engine failure could cause a sudden loss of power with an inability to restart; and, (vi) that a sudden loss of engine power could increase the risk of a crash.

79. Under this recall campaign, dealers are to replace the oil pan with a new one that has two magnets to capture small metal particles.

80. On April 14, 2021, Kia Canada also initiated a recall of 19,634 model year 2020 Kia Forte vehicles, model year 2021 Kia Seltos vehicles, and model year 2020-2021 Kia Soul vehicles equipped with Nu 2.0-litre MPI Engines (Transport Canada Recall # 2021-225).

81. This recall campaign indicates (i) that in certain vehicles, the Engine's piston oil rings may be defective; (ii) that the defective piston oil rings can cause engine wear that can lead to increased oil consumption; (iii) that as a result of the engine wear, there could be an abnormal noise from the Engine and/or illumination of the oil pressure warning light; (iv) that if the vehicle continues to be driven with the engine wear, the Engine could fail; (v) that engine failure could cause a sudden loss of engine power; (vi) that a sudden loss of engine power could increase the risk of a crash; and, (vii) that an engine failure could create the risk of a fire.

82. Under this recall campaign, dealers are to inspect the Engines and replace any Engines where they find damage. The recall campaign also indicates that dealers are also to install a Piston-ring Noise Sensing System (PNSS) software update designed to alert the driver of potential damage before an engine failure occurs.

83. On July 9, 2021, Kia Canada announced that it would be conducting a Product Improvement Campaign for 1,565 model year 2014-2016 Kia Optima vehicles equipped with Theta II 2.4-litre MPI Engines (Transport Canada Recall # 2021-424).

84. Under this Product Improvement Campaign, Kia Canada is providing a software update to the engine control module to detect potential problems before the Engine fails. This recall campaign indicates that engine failure could cause a sudden loss of power with an inability to restart, could increase the risk of a crash, and could create the risk of a fire.

85. On November 1, 2021, Kia Canada initiated a recall of 712 model year 2017-2018 Kia Optima vehicles equipped with Nu 2.0-litre GDI Engines (Transport Canada Recall # 2021-666).

86. This recall campaign indicates (i) that the connecting rod bearings can become damaged; (ii) that if the connecting rod bearings become damaged, the Engine could make abnormal knocking noises and/or the oil pressure warning light may turn on; (iii) that if the vehicle continues to be driven with these symptoms, the Engine could fail and/or a fire could occur; (iv) that engine failure can cause a sudden loss of power with an inability to restart; (v) that a sudden loss of engine power could increase the risk of a crash; and, (vi) that engine failure could also create the risk of a fire.

87. Under this recall campaign, dealers are to inspect the Engines for connecting rod bearing damage and replace the Engine if connecting rod bearing damage is found. The recall campaign also involves a software update for the engine control module. The recall campaign also involves installing the Knock Sensor Detection System (KSDS) software update designed to detect engine damage from excessive connecting rod bearing wear.

88. On December 7, 2021, Kia Canada announced that it would be conducting a Product Improvement Campaign for 19,923 model year 2017-2019 Kia Soul vehicles equipped with Nu 2.0-litre GDI Engines (Transport Canada Recall # 2021-733).

89. On January 11, 2022, Kia Canada announced that it would be conducting a Product Improvement Campaign for 200 model year 2019-2020 Kia Optima vehicles equipped with Nu 2.0-litre GDI Engines (Transport Canada Recall # 2022-004).

90. Under these Product Improvement Campaigns, Kia Canada is providing a software update to the engine control module to detect potential problems before the Engine fails. These recall campaigns indicate that a sudden loss of engine power could increase the risk of an accident and that engine failure could also create the risk of a fire.

(2) Transport Canada Recalls for Hyundai-Branded Affected Vehicles

91. On December 17, 2019, Hyundai Canada announced that it would be conducting a Product Improvement Campaign for 275,533 model year 2019 Hyundai Santa Fe vehicles, model year 2013-2018 Hyundai Santa Fe Sport vehicles, model year 2011-2019 Hyundai Sonata vehicles, model year 2014-2015 and 2019 Hyundai Tucson vehicles, and model year 2019 Hyundai Veloster vehicles equipped with Theta II 2.4-litre and turbocharged 2.0-litre GDI Engines (Transport Canada Recall # 2019-640).

92. Under this Product Improvement Campaign, Hyundai Canada is providing a software update to the engine control module to detect potential problems before the Engine fails. This recall campaign indicates that engine failure would cause a sudden loss of power with an inability to restart and could increase the risk of an accident.

93. On December 2, 2020, Hyundai Canada initiated a recall of 14,549 model year 2012 Hyundai Santa Fe vehicles, model year 2011-2013 and 2016 Hyundai Sonata vehicles, and model year 2015-2016 Hyundai Veloster vehicles equipped with Theta II turbocharged 2.0-litre and Gamma II 1.6-litre and turbocharged 1.6-litre GDI Engines or Theta II 2.4-litre MPI Engines (Transport Canada Recall # 2020-592).

94. This recall campaign indicates (i) that the connecting rod bearings could wear prematurely; (ii) that as a result of the premature connecting rod bearings, there could be an abnormal

knocking noise from the Engine and/or illumination of the oil pressure warning light; (iii) that if the vehicle continues to be driven with worn connecting rod bearings, the Engine could fail; (iv) that engine failure would cause a sudden loss of power with an inability to restart; (v) that in some cases, a damaged connecting rod could puncture the engine block and cause an oil leak; (vi) that a sudden loss of engine power could increase the risk of a crash; and, (vii) that oil that leaks onto a hot engine component could cause a fire.

95. Under this recall campaign, dealers are to inspect the Engines and replace any Engines where they find connecting rod bearing damage. The recall campaign also involves a software update for the engine control module.

96. On April 28, 2021, Hyundai Canada initiated a recall of 76,192 model year 2019-2020 Hyundai Elantra vehicles, model year 2019-2021 Hyundai Kona vehicles, and model year 2019-2020 Hyundai Veloster vehicles equipped with Nu 2.0-litre MPI Engines (Transport Canada Recall # 2021-252).

97. This recall campaign indicates (i) that in certain vehicles, the Engine's piston oil rings may be defective; (ii) that the defective piston oil rings can cause engine wear that can lead to increased oil consumption; (iii) that as a result of the engine wear, there could be an abnormal noise from the Engine and/or illumination of the oil pressure warning light; (iv) that if the vehicle continues to be driven with the engine wear, the Engine could fail; (v) that engine failure would cause a sudden loss of engine power; (vi) that a sudden loss of engine power could increase the risk of a crash; and, (vii) that an engine failure could create the risk of a fire.

98. Under this recall campaign, dealers are to inspect the Engines and replace any Engines where they find damage. The recall campaign also indicates that Hyundai Canada is developing a Piston-ring Noise Sensing System (PNSS) software update for installation once available; it will alert the driver of potential damage before an engine failure occurs.

99. On September 17, 2021, Hyundai Canada initiated a recall of 34,607 model year 2017 Hyundai Sonata vehicles and model year 2017 Hyundai Tucson vehicles equipped with Nu 2.0-litre GDI Engines (Transport Canada Recall # 2021-573).

100. This recall campaign indicates (i) that the connecting rod bearings could wear prematurely; (ii) that as a result of the premature connecting rod bearings, there could be an abnormal knocking noise from the Engine and/or illumination of the oil pressure warning light; (iii) that if the vehicle continues to be driven with worn connecting rod bearings, the Engine could fail; (iv) that engine failure would cause a sudden loss of power with an inability to restart; (v) that in some cases, a damaged connecting rod could puncture the engine block and cause an oil leak; (vi) that a sudden loss of engine power could increase the risk of a crash; and, (vii) that oil that leaks onto a hot engine component could cause a fire.

101. Under this recall campaign, dealers are to inspect the Engines and replace any Engines where they find connecting rod bearing damage. The recall campaign also involves a software update for the engine control module.

102. Also on September, 17, 2021, Hyundai Canada announced that it would be conducting a Product Improvement Campaign for 152,924 model year 2014-2016 Hyundai Elantra vehicles, model year 2014-2019 Hyundai Elantra GT vehicles, model year 2016-2019

Hyundai Sonata vehicles, and model year 2014-2019 Hyundai Tucson vehicles equipped with Nu 2.0-litre GDI Engines (Transport Canada Recall # 2021-575).

103. On October 1, 2021, Hyundai Canada announced that it would be conducting a Product Improvement Campaign for 51,508 model year 2011-2015 Hyundai Sonata vehicles and model year 2010-2013 Hyundai Tucson vehicles equipped with Theta II 2.4-litre MPI Engines (Transport Canada Recall # 2021-612).

104. On November 4, 2021, Hyundai Canada announced that it would be conducting a Product Improvement Campaign for model year 2012-2017 Hyundai Veloster vehicles equipped with Gamma II 1.6-litre and turbocharged 1.6-litre GDI Engines and model year 2010-2012 Hyundai Santa Fe vehicles equipped with Theta II 2.4-litre MPI Engines (Transport Canada Recall # 2021-674).

105. On March 10, 2022, Hyundai Canada announced that it would be conducting a second Product Improvement Campaign for model year 2017 Hyundai Sonata vehicles equipped with Nu 2.0-litre GDI Engines (Transport Canada Recall # 2022-107).

106. On May 8, 2022, Hyundai Canada announced that it would be conducting a Product Improvement Campaign for model year 2014-2016 Hyundai Elantra vehicles, model year 2014-2020 Hyundai Elantra GT vehicles, model year 2016-2019 Hyundai Sonata vehicles, and model year 2014-2021 Hyundai Tucson vehicles equipped with Nu 2.0-litre GDI Engines (Transport Canada Recall # 2022-244).

107. Under these Product Improvement Campaigns, Hyundai Canada is providing a software update to the engine control module to detect potential problems before the Engine fails.

These recall campaigns indicate that engine failure would cause a sudden loss of power with an inability to restart and could increase the risk of an accident or create the risk of a fire.

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

The Defendants' Warranty Practices

109. Kia Canada or Hyundai Canada issued two relevant warranties with each Affected Vehicle: a "New Vehicle Limited Warranty" and a "Powertrain Limited Warranty." Both expressly warrant that the Affected Vehicle shall be free from material and/or workmanship defects.

110. Under the New Vehicle Limited Warranty, Kia Canada or Hyundai Canada agreed to repair or replace any component with a material and/or workmanship defect reported within the earlier of five years or 100,000 km.

111. Under the Powertrain Limited Warranty, Kia Canada or Hyundai Canada agreed to repair or replace any powertrain component, including selected engine components, with a material and/or workmanship defect reported within the earlier of five years or 100,000 km.

112. Kia Canada and Hyundai Canada instruct owners and lessees of Affected Vehicles to bring their Affected Vehicles to a Kia-authorized or Hyundai-authorized dealer or service provider for the warranty repairs. Many Class Members have presented their Affected Vehicles to Kia-authorized or Hyundai-authorized dealers and service providers with complaints related to the Engine Defect.

113. Kia Canada and Hyundai Canada have evaded their warranty obligations by failing to tell Class Members that their Affected Vehicles are defective and by representing that the cause of the Engine Defect is the Class Member's lack of maintenance or use of aftermarket oil filters.

114. Despite knowing that the Engine Defect manifests even if the Class Members follow Kia's or Hyundai's oil change guidelines, Kia Canada and Hyundai Canada have also evaded their warranty obligations by requiring Class Members to produce the entire maintenance history of the Affected Vehicles, including proof that all oil changes were completed at a Kia-authorized or Hyundai-authorized dealer or service provider, before determining whether to make the necessary repairs under warranty.

115. Kia Canada and Hyundai Canada have routinely refused to repair the Affected Vehicles free of charge when the Engine Defect manifested within the warranty period, and have also routinely refused to offer to reimburse Class Members who incurred out-of-pocket expenses to repair the Engine Defect within the warranty period.

116. Kia Canada's and Hyundai Canada's failure to honour their warranty obligations imposes significant out-of-pocket expenses on Class Members, including out-of-pocket repair expenses, rental car expenses, and/or towing expenses.

The Plaintiffs' Experiences

(1) Mr McCloskey's Experience

117. On or around April 21, 2012, Mr and Ms McCloskey purchased a new 2012 Kia Sportage with a Theta II 2.4-litre MPI Engine from Northland Kia in Calgary, Alberta. They purchased this Affected Vehicle for personal, family and/or household uses.

118. On or around September 1, 2020, Ms McCloskey was driving in busy rush-hour traffic in Calgary, Alberta. While exiting the Glenmore Trail expressway onto the Crowchild Trail expressway at a speed of approximately 80 km/h, Ms McCloskey started to hear an abnormal knocking noise coming from the Affected Vehicle's Engine followed shortly by the illumination and flashing of all the dashboard warning lights and a sudden loss of engine power.

119. The sudden vehicle stalling in the McCloskeys' Affected Vehicle was a life-threatening and dangerous occurrence, especially given the level of traffic and the speed at which Ms McCloskey and other vehicles sharing the road with her were travelling when the sudden vehicle stalling occurred (approximately 80 km/h). Fortunately, Ms McCloskey was able to coast the Affected Vehicle to the right-hand lane of the expressway and exit to the right-hand shoulder of a side road just before the Engine catastrophically failed.

120. Ms McCloskey opened the hood of the Affected Vehicle and could smell oil. She did not try to restart the Affected Vehicle, choosing instead to have the Affected Vehicle towed to Northland Kia for diagnosis and repairs.

121. Northland Kia inspected the McCloskeys' Affected Vehicle on September 2, 2020. Mr and Ms McCloskey learned (1) that their Affected Vehicle had suffered a catastrophic engine

failure, specifically an engine seizure; (2) that there were no recalls or open programs for their Affected Vehicle; and, (3) that the Engine in their Affected Vehicle needed to be replaced at a cost of $11,922.81 (more than the then-fair-market value of the Affected Vehicle).

122. Mr McCloskey reported the sudden vehicle stalling and catastrophic engine failure in the McCloskeys' Affected Vehicle to Kia Canada and to Transport Canada.

123. Mr McCloskey reached out to Kia Canada with a request that Kia Canada cover the cost to replace the Engine in the McCloskeys' Affected Vehicle. Kia Canada refused to cover this cost. Given the high cost to replace the Engine (especially relative to the then-fair-market value of their Affected Vehicle) and fearing that the new replacement Engine could suffer the same sudden vehicle stalling and/or catastrophic engine failure, Mr and Ms McCloskey ultimately decided not to proceed with the engine replacement, donated their unrepaired Affected Vehicle to charity, and purchased a 2018 Toyota C-HR.

124. Approximately five months after Mr and Ms McCloskey donated their Affected Vehicle to charity, Mr McCloskey received a notice from Kia Canada for a recall related to the Engine Defect (Transport Canada Recall # 2020-597). The notice indicated that owners who had already paid for repairs related to the Engine Defect could obtain reimbursement from Kia Canada for those repair expenses. Mr McCloskey reached out to Kia Canada to request compensation for his losses, but Kia Canada refused to provide any compensation to Mr McCloskey.

125. As a result of the Engine Defect in the McCloskeys' 2012 Kia Sportage, Mr McCloskey has suffered, and will continue to suffer damages, including, but not limited to, towing

expenses, inconvenience, loss of use of the Affected Vehicle, and loss of the Affected Vehicle's value for trade-in or sale.

126. At all material times, Mr and Ms McCloskey followed Kia Canada's maintenance recommendations and/or schedules for their 2012 Kia Sportage. Their Affected Vehicle had been serviced at Northland Kia shortly before the September 1, 2020 catastrophic engine failure and only had 99,178 km on its odometer at the time of the September 1, 2020 catastrophic engine failure.

127. Neither the Defendants nor any of their agents, affiliates, predecessors, or subsidiaries informed Mr or Ms McCloskey of the existence of the latent Engine Defect prior to their purchase of their Affected Vehicle. Had Mr and Ms McCloskey known of the Engine Defect in the 2012 Kia Sportage at the time of purchase, they would not have purchased the Affected Vehicle or would have paid substantially less to purchase the Affected Vehicle.

(2) Ms Kapron's Experience

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

129. Ms Kapron's 2017 Hyundai Tucson had a Nu 2.0-litre GDI Engine.

130. On or around October 24, 2020 at approximately 5:30 pm, while driving in the far left lane on the Queen Elizabeth Way freeway during heavy traffic, Ms Kapron experienced an engine seizure followed by a non-collision engine fire in her 2017 Hyundai Tucson.

131. The engine seizure was sudden and unexpected and came without warning: no warning lights and no previous problems with the vehicle. While driving in the far left lane on the Queen Elizabeth Way freeway, Ms Kapron heard clicking noises coming from the Engine. When she tried to accelerate to move over, her 2017 Hyundai Tucson experienced a sudden loss of power. It would not accelerate or produce power and felt like it was running out of gas.

132. Ms Kapron turned on her hazard lights and was able to merge to the shoulder. Once on the shoulder, Ms Kapron phoned her husband to tell him about the engine seizure. Ms Kapron then noticed smoke coming from her 2017 Hyundai Tucson. Another motorist pulled over and yelled at Ms Kapron to get out of her vehicle because it was on fire.

133. Ms Kapron quickly exited her 2017 Hyundai Tucson. Within seconds of her exiting the vehicle, the vehicle burst into flames.

134. Firefighters and police attended the scene. It took five firefighter trucks approximately 90 minutes to extinguish the fire.

135. Ms Kapron reported the non-collision engine fire to Hyundai Canada. Hyundai Canada refused to honour Ms Kapron's warranty and refused to provide her with a rental car.

136. The Ontario Provincial Police impounded Ms Kapron's 2017 Hyundai Tucson at the scene. Although Ms Kapron's automobile insurer asked the Defendants to investigate the non-collision engine fire, the Defendants never had the vehicle released to them. Ms Kapron phoned Hyundai Canada for an update five times in the year following the non-collision

engine fire. She learned that the Defendants never examined her vehicle or investigated the cause of the non-collision engine fire in her vehicle.

137. The sudden and unexpected engine seizure and non-collision engine fire in Ms Kapron's 2017 Hyundai Tucson was a life-threatening and dangerous occurrence. Fortunately, Ms Kapron was able merge to the shoulder and quickly exit the vehicle to avoid serious personal injuries.

138. The non-collision engine fire in Ms Kapron's 2017 Hyundai Tucson was considered a total loss event for insurance purposes. Unfortunately, the insurance indemnity Ms Kapron received did not fully compensate her for her losses. For example, the insurance indemnity did not fully cover the amount Ms Kapron still owed on her car loan (the insurance indemnity was approximately $15,000 plus tax, but at the time of the non-collision engine fire, Ms Kapron still owed approximately $19,050 on her car loan). Ms Kapron had to pay approximately $5,000 out of pocket to pay off her car loan and purchase a replacement vehicle.

139. The non-collision engine fire left Ms Kapron without a vehicle for several weeks. Without her 2017 Hyundai Tucson, Ms Kapron found it difficult to commute to work. Neither Hyundai Canada or her automobile insurer would provide her with a rental car. She borrowed vehicles from friends and family when she could. If she could not borrow a vehicle from friends and/or family, Ms Kapron was forced to take time off from work and lost wages as a result. Approximately one month after the engine seizure and non-collision engine fire, Ms Kapron purchased a new vehicle.

140. As a result of the Engine Defect in her 2017 Hyundai Tucson, Ms Kapron has suffered, and will continue to suffer damages, including, but not limited to, inconvenience, loss of use of the vehicle, and loss of income.

141. At all material times, Ms Kapron followed Hyundai Canada's maintenance recommendations and/or schedules for her 2017 Hyundai Tucson. Her vehicle had been serviced within three months of the engine seizure and non-collision engine fire and only had approximately 80,000 km on its odometer at the time of the engine seizure and non-collision engine fire.

142. Neither the Defendants nor any of their agents, affiliates, predecessors, or subsidiaries informed Ms Kapron of the existence of the latent Engine Defect prior to her purchase of the vehicle. Had Ms Kapron known of the Engine Defect in the 2017 Hyundai Tucson at the time of purchase, she would not have purchased the vehicle or would have paid substantially less to purchase the vehicle.

CAUSES OF ACTION

Negligent Design, Manufacture, and Testing

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

144. At all material times, the Defendants, or any of them, owed a duty of care to Mr McCloskey, Ms Kapron, and the Class Members to:

(a) exercise reasonable care in the design, research, development, testing, and manufacturing of the Affected Vehicles and their Engines before marketing, advertising, promoting, distributing, leasing, and/or selling them as fit for their intended and/or reasonably foreseeable use;

(b) ensure that the Affected Vehicles were fit for intended and/or reasonably foreseeable use;

(c) conduct appropriate testing to determine that the Affected Vehicles were fit for their intended and/or reasonably foreseeable use;

(d) take all reasonable steps necessary to avoid manufacturing a product that is unreasonably dangerous to those who use it;

(e) exercise reasonable care in the warranting, servicing, and repair of the Affected Vehicles;

(f) monitor, investigate, evaluate, and follow up on reports of defects in the Affected Vehicles;

(g) properly, adequately, and fairly warn of the magnitude and scope of the latent Engine Defect;

(h) ensure that consumers and the public were kept fully and completely informed of all defects associated with the Affected Vehicles in a timely manner;

(i) not withhold from consumers and the public material facts concerning the safety, performance, and reliability of the Affected Vehicles; and,

(j) provide a timely and effective fix to rectify the Engine Defect.

145. The reasonable standard of care expected in the circumstances required the Defendants to act fairly, reasonably, honestly, candidly and with due care in the course of designing, researching, developing, testing, and manufacturing the Affected Vehicles and having them certified, imported, marketed and distributed. The Defendants, through their employees, officers, directors and agents, failed to meet the reasonable standard of care in that regard.

146. Mr McCloskey's, Ms Kapron's, and the Class Members' damages were caused by the negligence of the Defendants. Such negligence includes, but is not limited to, the following:

(a) the Defendants failed to exercise reasonable care in the design, research, development, testing, and/or manufacturing of the Affected Vehicles before marketing, advertising, promoting, distributing, warranting, leasing, and selling the Affected Vehicles as suitable and safe for use in an intended and/or reasonably foreseeable manner;

(b) the Defendants failed to ensure that the Affected Vehicles were safe, free of defects, and of merchantable quality;

(c) the Defendants failed to adequately test the Affected Vehicles and their Engines in a manner that would fully disclose the magnitude and scope of the Engine Defect;

(d) the Defendants failed to provide Mr McCloskey, Ms Kapron, and the Class Members with proper, adequate, fair, and timely warning of the latent Engine Defect;

(e) the Defendants failed to design and establish an effective and timely procedure for repair of the Engine Defect;

(f) the Defendants failed to adequately monitor, evaluate, and act upon reports of the Engine Defect;

(g) the Defendants failed to provide any or any adequate updates and/or current information to Mr McCloskey, Ms Kapron, and the Class Members in a timely fashion respecting the Engine Defect as such information became available;

(h) after becoming aware of problems with the Affected Vehicles, the Defendants failed to issue adequate warnings, failed to issue a timely recall, and failed to otherwise act prudently in a timely manner to alert Ms McCloskey, Ms Kapron, the Class Members, and the public to the latent Engine Defect;

(i) the Defendants represented that the Affected Vehicles were safe and fit for their intended purposes when the Defendants knew or ought to have known that these representations were false;

(j) the Defendants made representations regarding the Affected Vehicles' safety and fitness that were unreasonable given that the Defendants knew or ought to have known of the Engine Defect;

(k) the Defendants knowingly and intentionally concealed from Mr McCloskey, Ms Kapron, and the Class Members that the Affected Vehicles suffered from the Engine Defect (and the costs, risks, and diminished value of the Affected Vehicles as a result of the Engine Defect); and,

(l) the Defendants failed to timely cease the manufacturing, marketing, distribution, leasing, and/or sale of the Affected Vehicles when they knew or ought to have known of the Engine Defect and the associated safety risks.

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

Failure to Warn

148. The Defendants owed a duty of care to Mr McCloskey, Ms Kapron, and the Class Members to warn Mr McCloskey, Ms Kapron, and the Class Members of the latent Engine Defect.

149. The Defendants breached their duty of care, as they failed to warn Mr McCloskey, Ms Kapron, and the Class Members of the latent Engine Defect and its associated safety risks.

150. Mr McCloskey's, Ms Kapron's, and the Class Members' damages were caused by the negligence of the Defendants. Such negligence includes, but is not limited to, the following:

(a) the Defendants failed to provide Mr McCloskey, Ms Kapron, and the Class Members with proper, adequate, fair, and timely warning of the latent Engine Defect;

(b) the Defendants failed to provide Mr McCloskey, Ms Kapron, and the Class Members with proper, adequate, fair, and timely warning of the magnitude and scope of the Engine Defect; and,

(c) the Defendants failed to adequately monitor, evaluate, and act upon reports of the Engine Defect.

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

Breach of Warranties

152. As part of the purchase agreements, the Defendants expressly and/or impliedly warranted to Class Members that the Affected Vehicles were free from defects in material and workmanship and fit for their intended and/or reasonably foreseeable use.

153. Through the New Vehicle Limited Warranty and Powertrain Limited Warranty, Kia Canada and Hyundai Canada expressly warranted to Class Members that the Affected Vehicles were to be free from defects in material and workmanship for a period of five years or 100,000 km. These warranties are applicable to the Engine Defect.

154. Despite and contrary to the foregoing warranties, the Defendants manufactured and distributed Affected Vehicles when they knew or ought to have known of the latent Engine Defect and concealed or failed to disclose the latent Engine Defect to Mr McCloskey, Ms Kapron, and the Class Members.

155. The Defendants have breached their warranties with Class Members, and as a result, Class Members have suffered damages.

Unjust Enrichment

156. The Defendants caused Mr McCloskey, Ms Kapron, and the Class Members to pay for an Affected Vehicle and/or repairs that they would not have otherwise purchased or leased; or, in the alternative, for which they should have paid less than they did.

157. As a result, the Defendants were enriched by the payment or overpayment.

158. Mr McCloskey, Ms Kapron, and the Class Members suffered a deprivation equal to the Defendants' enrichment.

159. There is no juristic reason for the Defendants' enrichment and Mr McCloskey's, Ms Kapron's, and the Class Members' corresponding deprivation. Mr McCloskey, Ms Kapron, and the Class Members are entitled to restitution for the Defendants' unjust enrichment.

DAMAGES

160. Mr McCloskey, Ms Kapron, and the Class Members have suffered losses and damages caused by the wrongful and negligent acts of the Defendants.

161. Mr McCloskey and the Class Members face the loss of the ability to sell, or exercise lease purchase options for, the Affected Vehicles at the Class Members' anticipated fair market value.

162. Mr McCloskey, Ms Kapron, and the Class Members have suffered or will suffer inconvenience and have incurred or will incur special damages arising from any necessary repairs to the Affected Vehicles, including loss of income, loss of use of the Affected Vehicles during any such repair periods, diminished value of the Affected Vehicles, the costs associated with the use of other automobiles or other expenses during such periods.

163. The Defendants' conduct described above was deliberate, reckless, wanton, entirely without care, secretive, callous, willful, disgraceful and in contemptuous disregard of the rights, personal safety and interests of Mr McCloskey, Ms Kapron, the Class Members and the public.

164. This conduct renders the Defendants liable to pay punitive damages to Mr McCloskey, Ms Kapron, and the Class Members.

PLACE OF TRIAL

165. Mr McCloskey and Ms Kapron propose that this action be tried in Toronto, Ontario.

SERVICE OUTSIDE OF ONTARIO WITHOUT LEAVE

166. Mr McCloskey and Ms Kapron plead and rely on rule 17.02(g) and (p) of the *Rules of Civil Procedure*, allowing for service on the foreign Defendants outside of Ontario without a court order. Specifically, pursuant to rule 17.02(g) and (p), this originating process may be served outside Ontario without a court order because this proceeding consists of claims in respect of a tort committed in Ontario and claims against a person carrying on business in Ontario.

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Plaintiffs

-and-

KIA CANADA INC et al
Defendants

Court File No. CV-22-00675588-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

FRESH AS AMENDED STATEMENT OF CLAIM

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