



CV-19-00627/47-0001

Court File No. ~~19-00001186-0001~~

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
MR JUSTICE GLUSTEIN)

THURSDAY, THE 5th

DAY OF NOVEMBER, 2020

(Signed November 6, 2020) SB

B E T W E E N:

KEITH McBAIN

Plaintiff

and

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

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

(CERTIFICATION FOR SETTLEMENT PURPOSES AND NOTICE APPROVAL)

THIS MOTION, made by the Plaintiff, for an order (1) certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6 for settlement purposes only; and, (2) approving the form and content of the notices of settlement approval hearing, the method of dissemination of such notices, and the procedure for opting out of or objecting to the Settlement was heard on November 5, 2020 virtually over Zoom.

ON READING the materials filed by the parties, including the Settlement Agreement between them, dated October 22, 2020 (the "Settlement Agreement"), a copy of which is

attached as Schedule "A," and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendants;

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

1. **THIS COURT ORDERS** that the capitalized terms herein have the same meaning as in the Settlement Agreement unless otherwise defined herein;

2. **THIS COURT ORDERS** that this action is certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, for settlement purposes only, on behalf of the following Settlement Class:

All persons (including individuals and entities), excluding Quebec Settlement Class Members, who purchased or leased a Settlement Class Vehicle (as listed in Exhibit "A" to the Settlement Agreement) in Canada, with the exception of (i) the Defendants, their directors, officers, and employees; (ii) persons who validly opt out of the Settlement; (iii) persons who purchased a Settlement Class Vehicle that had, prior to their purchase, been deemed a total loss or that had a branded title of "Dismantled," "Junk," "Salvage," or "Mechanically Unfit" (subject to verification through Carfax or other means); (iv) current or former owners or lessees of a Settlement Class Vehicle that previously released their claims in an individual settlement with any of the Defendants with respect to the issues raised in the Actions; and, (v) Class Counsel and presiding judges in the Actions;

3. **THIS COURT ORDERS** that this action is certified as a class proceeding, for settlement purposes only, on behalf of the Settlement Class in respect of the following common issue:

Do the Settlement Class Vehicles suffer from a defect that can cause engine seizure, stalling, failure, and/or fire?;

4. **THIS COURT ORDERS** that Keith McBain is appointed as the Representative Plaintiff for the Class;

5. **THIS COURT ORDERS** that McKenzie Lake Lawyers LLP and Strosberg Sasso Sutts LLP are appointed as Class Counsel;
6. **THIS COURT ORDERS** that Epiq Class Action Services Canada, Inc. is appointed as Notice Administrator to perform the duties and responsibilities set out in the Settlement Agreement and any other related duty or responsibility as ordered by this Court;
7. **THIS COURT ORDERS** that the form and content of the Short-Form Notice and Long-Form Notice, as set forth in Exhibits “B” and “C” to the Settlement Agreement and attached hereto as Schedules “B” and “C” (the “Pre-Approval Notice”), are hereby approved;
8. **THIS COURT ORDERS** that the Pre-Approval Notice shall be published and disseminated in accordance with section 6 of the Settlement Agreement and the Notice Plan, attached hereto as Schedule “D”;
9. **THIS COURT ORDERS** that the dissemination of the Pre-Approval Notice as provided for in the Notice Plan is the best notice practicable under the circumstances, constitutes sufficient notice to all Settlement Class Members entitled to notice, and satisfies the requirements of notice pursuant to sections 17 through 22, inclusive, of the *Class Proceedings Act, 1992*, SO 1992, c 6;
10. **THIS COURT ORDERS** that the Defendants shall pay the costs and fees of the Notice Administrator, including the costs associated with publishing and disseminating the Pre-Approval Notice, in accordance with the terms of the Settlement Agreement;
11. **THIS COURT ORDERS AND AUTHORIZES** the Defendants to provide the Notice Administrator with the names, mailing addresses and email addresses (if available) of Settlement

Class Members for the purpose of disseminating the Pre-Approval Notice and otherwise implementing the Settlement Agreement;

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

13. **THIS COURT ORDERS** that the form and content of the Opt-Out Form, attached hereto as Schedule “E,” is approved;

14. **THIS COURT ORDERS** that Settlement Class Members may exclude themselves from this Action by submitting an Opt-Out Form to the Notice Administrator by mail, courier, or email on or before February 12, 2021 (the “Opt-Out Deadline”);

15. **THIS COURT ORDERS** that all Settlement Class Members who do not validly opt out of this Action by the Opt-Out Deadline shall be bound by the terms of the Settlement Agreement, if it is approved by this Court, and may not opt out of this Action in the future;

16. **THIS COURT ORDERS** that a Settlement Class Member who wishes to file with the Court an objection or comment on the Settlement Agreement must submit to the Notice Administrator, on or before February 12, 2021 (the “Objection Deadline”), a written statement

providing the following information: (i) the Settlement Class Member's name, mailing address, telephone number, and email address (if available); (ii) the model, model year, and VIN of his, her or its Settlement Class Vehicle; (iii) a brief statement of the nature of and reason for the objection, including all factual and legal grounds for the objection; and, (iv) whether the Settlement Class Member intends to appear in person or through counsel at the Settlement Approval Hearing, and if appearing by counsel, the name, address, telephone number, and email address of counsel;

17. **THIS COURT ORDERS** that any Settlement Class Member who elects to opt out of this Action in accordance with the provisions of this Order may not also object to or comment on the Settlement Agreement and that any such objection or comment received therefrom shall be deemed withdrawn;

18. **THIS COURT ORDERS** that the motion for approval of the Settlement Agreement (the "Settlement Approval Hearing") will be heard at the Toronto Courthouse, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5 on February 23, 2021 at 10:00am. At the Settlement Approval Hearing, the Representative Plaintiff will seek the following orders:

- (a) an order approving the Settlement Agreement, the content and manner of notice to the Settlement Class of such approval, and the Claim Form;
- (b) an order approving Class Counsel Fees; and,
- (c) any other order that the Court may deem appropriate;

19. **THIS COURT ORDERS** that the date and time of the Settlement Approval Hearing set forth in the Pre-Approval Notice are subject to adjournment by the Court without further notice to Settlement Class Members;

20. **THIS COURT ORDERS** that Class Counsel must file their motion materials in support of approval of the Settlement Agreement and corresponding Settlement, and their motion materials in support of Class Counsel Fees claimed pursuant to section 10 of the Settlement Agreement, no less than seven (7) days before the Settlement Approval Hearing;

21. **THIS COURT ORDERS** that this Order is contingent upon a parallel order being made by the Superior Court of Québec in the action titled *Pelletant v Hyundai Auto Canada Corp et al*, bearing Superior Court of Québec Court File No 500-06-0010103-198, and the terms of this Order shall not be effective unless and until such an order is made by the Superior Court of Québec;

22. **THIS COURT ORDERS** that if the Settlement Agreement is not approved, is terminated in accordance with its terms, or otherwise fails to take effect for any reason, this Order, including certification for settlement purposes and all Opt-Out Forms received pursuant to this Order, shall be set aside and declared null and void and of no force or effect, without the need for any further order of this Court;

23. **THIS COURT ORDERS** that any party affected by this Order may apply to the Court for further directions;

24. **THIS COURT ORDERS** that in the event of a conflict between this Order and the terms of the Settlement Agreement, this Order shall prevail.

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ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JAN 08 2021

PER / PAR:




The Honourable Justice Benjamin Glustein

KEITH McBAIN
Plaintiff

-and-

HYUNDAI AUTO CANADA CORP et al
Defendants

CV-19-00627147-004

Court File No. 19-00001186-000F

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT

~~LONDON~~
Toronto

ORDER

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