

C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Collective action)

N°: 500-06-000903-183

ASSOCIATION POUR LA PROTECTION
AUTOMOBILE

Plaintiff

-and-

DENIS GAUDREAU

Designated Person

vs.

KIA CANADA INC.

Defendant

APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE
(Art. 574 C.C.P.)

TO THE HONOURABLE JUSTICE PIERRE-C. GAGNON OF THE SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, DEFENDANT RESPECTFULLY
SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. Defendant Kia Canada Inc. (hereinafter "**Kia**") seeks leave to file additional evidence for the purpose of the authorization hearing;
2. More specifically, Kia seeks the Court's authorization to file copies of its warranty manuals setting out the warranty terms available and applicable to purchasers of the Kia Forte for the model years 2010, 2011, 2012, 2013, 2014 and 2015 (hereinafter the "**Additional Evidence**"), in order to ensure that the Court has the neutral facts and essential information necessary to fairly consider the criteria for authorization set out at Article 575 of the *Civil Code of Procedure* (hereinafter "**C.C.P.**");

II. PROCEDURAL BACKGROUND

3. On or about January 26, 2018, Plaintiff filed an *Application for Authorization to Institute a Class Action* against Kia, the whole as more fully appears from the Court record;
4. On or about February 12, 2018, Plaintiff filed a *Modified Application for Authorization to Institute a Class Action* (hereinafter the "**Modified Application**"), the whole as more fully appears from the Court record;

5. As appears from the Modified Application, Plaintiff is asking the Court to authorize the following class:

“Toutes personne ou groupement sans personnalité juridique qui ont acheté ou loué à long terme au Québec un véhicule automobile Kia de modèle Forte 2010 à 2015 dont le moteur est ou a été affecté par un problème d'éraflures entre les cylindres et les pistons.”

6. In the Modified Application, Plaintiff alleges, *inter alia*, that the Designated Person was advised by the Kia St-Jean dealership that the warranty on his vehicle had expired;
7. Plaintiff remains vague in its Modified Application as to whether the putative class includes Forte owners/lessors who may still have warranty coverage;
8. Furthermore, Plaintiff makes the following vague allegations in its Modified Application with respect to Kia's warranty:

“2.46 Kia n'a procédé à aucun rappel et, dans certains cas, n'a même pas respecté sa propre garantie conventionnelle en refusant de réparer des moteurs bruyants encore sous garantie;

2.47 Kia ne pouvait ignorer l'existence des garanties légales de qualité et de durabilité qui étendent ses obligations au-delà de la garantie conventionnelle;”

9. Plaintiff remains vague in its allegations as to whether Kia's warranty, or any remedy thereunder, applies to any members of the putative class;

III. APPLICATION FOR LEAVE TO SUBMIT ADDITIONAL EVIDENCE

10. Kia respectfully submits that additional necessary, useful and reasonable evidence is required to consider the Modified Application, in order to allow this Honourable Court to take cognizance of the relevant facts in order to determine whether the proposed Designated Person has a *prima facie* case against Kia, as required by Article 575 C.C.P.;
11. Kia wishes to complete the record and allow this Honourable Court to be made fully aware of the terms of the conventional warranties alleged by the Plaintiff itself in the Modified Application;
12. The Additional Evidence will ensure that Kia protects its right to objectively answer vague, ambiguous and general allegations which, if not answered by objective and relevant evidence, may lead this Honourable Court on the wrong path when assessing whether the threshold required to authorize the class action is met;
13. The Additional Evidence proposed by Kia will allow this Honourable Court to decide whether the criteria for authorization are met, not only in the interest of proportionality, but also for the better administration of justice by having a rigorous and comprehensive authorization hearing;

14. Moreover, the Additional Evidence proposed by Kia would also be helpful to determine an appropriate class description and identify the questions to be dealt with collectively, if necessary, as required by Article 576 C.C.P.;
15. The Additional Evidence which Kia wishes to submit is attached hereto, filed in support of these presents as **Schedule A**;
16. It is essential for the Court to have the benefit of this Additional Evidence to make an informed decision at the authorization stage.

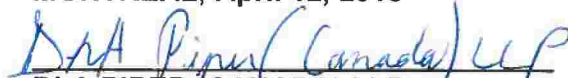
FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present application;

AUTHORIZE Defendant to submit the Additional Evidence filed herewith as **Schedule A**, within thirty (30) days of judgment to be rendered on this Application;

THE WHOLE without costs, save in the event of contestation.

MONTREAL, April 12, 2018



DLA PIPER (CANADA) LLP

(Me Pablo Guzman/Me Tania da Silva)

Attorneys for Defendant

NOTICE OF PRESENTATION

TO: Me Mathieu Charest-Beaudry
TRUDEL JOHNSTON & LESPÉRANCE
750, Côte de la Place d'Armes
Montréal (Québec) H2Y 2X8
mathieu@tjl.quebec


Me François Pinard-Thériault
JEAN-FRANÇOIS BERTRAND AVOCATS
390, boulevard Charest Est
Québec (Québec) G1K 3H4
fpinard@jfbertrandavocats.com

Co-attorneys for Plaintiff

TAKE NOTICE that the foregoing Application for Leave to Adduce Relevant Evidence will be presented for adjudication before a judge appointed by the Honourable Pierre-C. Gagnon, J.S.C., at a date, time and place to be confirmed.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, April 12, 2018


DLA PIPER (CANADA) LLP
(Me Pablo Guzman/Me Tania da Silva)
Attorneys for Defendant

No: 500-06-000903-183

SUPERIOR COURT
(Collective action)

**ASSOCIATION POUR LA PROTECTION
AUTOMOBILE**
Plaintiff

-and-

DENIS GAUDREAU
Designated individual

vs.

KIA CANADA INC.
Defendant

**APPLICATION FOR LEAVE TO ADDUCE
RELEVANT EVIDENCE &
SCHEDULE A**

**COPY FOR:
TRUDEL JOHNSTON & LESPÉRANCE &
JEAN-FRANÇOIS BERTRAND AVOCATS**

Maitre Pablo Guzman
PG/jfb

Our file: 46051-00006



DLA Piper (Canada) LLP
1501, McGill College Avenue
Suite 1400
Montreal, QC, H3A 3M8
Telephone: 514 392-8406
Fax: 514 392-8376

BH 0834