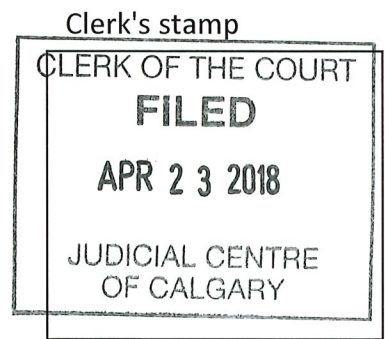


AMENDED this 23 day of April 2018 Pursuant to Rule 3.62
Dated the 23 day of April, 2018

FORM 10
[RULE 3.25]



~~CLERK OF THE COURT~~

COURT FILE NUMBER 1601-17138

COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Calgary

PLAINTIFF Robert Engen

DEFENDANTS Hyundai Auto Canada Corp., Hyundai Motor America, Hyundai Motor Manufacturing Alabama LLC, and Hyundai Motor Company

DOCUMENT **Brought under the *Class Proceedings Act***
AMENDED AMENDED STATEMENT OF CLAIM

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NOTICE TO DEFENDANTS You are being sued. You are defendants.
Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

Defined Terms

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) **“Class” or “Class Members”** means all persons in Canada, except for **Excluded Persons**, who own, owned, lease or leased one of the **Vehicles**;
- (b) **“Competition Act”** means the *Competition Act*, RSC 1985, c C-34;
- (c) **“Defendants”** means Hyundai Auto Canada Corp., Hyundai Motor America, Hyundai Motor Manufacturing Alabama LLC, and Hyundai Motor Company;
- (d) **“Equivalent Consumer Protection Statutes”** means the *Business Practices and Consumer Protection Act*, SBC 2004, c 2, the *Consumer Protection Act*, SS 1996, c C-30.1, the *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, the *Business Practices Act*, CCSM, c B120, the *Consumer Protection Act*, 2002, SO 2002, c 30, Sched. A, the *Consumer Protection Act*, CQLR, c P-40.1, the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, the *Consumer Protection Act*, RSNS 1989, C 92, *Consumer Protection Act*, RSNWT 1988, c C-17, and the *Business Practices Act*, RSPEI 1988, c B-7, as amended and any applicable regulations thereunder;
- (e) **“Equivalent Sale of Goods Statutes”** means the *Sale of Goods Act*, RSO 1990, c. S.1, as amended, ss. 15 and 51; *Sale of Goods Act*, RSBC 1996, c. 410, as amended, ss. 18 and 56; *Sale of Goods Act*, RSS 1978, c. S-1, as amended, ss. 16 and 52; *The Sale of Goods Act*, RSM 1987, c. S10, as amended, ss. 16 and 54; *Sale of Goods Act*, RSNS 1989, c. 408, as amended ss. 17 and 54; *Sale of Goods Act*, RSPEI 1988, c. S-1, as amended ss. 16 and 53; *Sale of Goods Act*, RSNB 1973, c. S-1, as amended ss. 15 and 50; and *Sale of Goods Act*, RSY 2002, c. 198, ss. 15 and 50; *Sale of Goods Act*, RSNL 1990, c. S-6, s. 16 and 54; and *Sale of Goods Act*, RSNWT 1988, c. S-2, as amended ss. 18 and 60;
- (f) **“Excluded Persons”** means:
 - (i) the **Defendants** and their officers and directors;

- (ii) the authorized motor vehicle dealers of the **Defendants** and the officers and directors of those dealers; and
- (iii) the heirs, successors and assigns of the persons described in subparagraphs (i) and (ii);
- (g) **“Fair Trading Act”** means the *Fair Trading Act*, RSA 2000, c. F-2 and applicable regulations thereunder;
- (h) **“Panoramic Sunroofs”** means the factory-installed sunroofs or replacement sunroofs manufactured by the Defendants which are equipped on the Vehicles;
- (i) **“Representations”** means the representations and omissions made by the **Defendants** described in paragraphs 36 and 37;
- (j) **“Sale of Goods Act”** means the *Sale of Goods Act*, RSA 2000, c S-2;
- (k) **“Vehicles”** means the following vehicles, which are equipped with factory-installed or replacement **Panoramic Sunroofs**:
 - (i) 2013-~~2012~~ 2018 model year Hyundai Santa Fe Sport vehicles;
 - (ii) 2013-~~2012~~ 2018 model year Hyundai Santa Fe vehicles;
 - (iii) 2013-~~2012~~ 2018 model year Hyundai Elantra GT vehicles;
 - (iv) 2011-~~2010~~ 2018 model year Hyundai Sonata vehicles;
 - (v) 2011-~~2010~~ 2018 model year Hyundai Tucson vehicles; and
 - (vi) 2011-~~2010~~ 2018 model year Hyundai Veloster vehicles.

The Parties

2. The Plaintiff, Robert Engen, is an individual resident in the City of Lethbridge, in the Province of Alberta.
3. The Defendant, Hyundai Auto Canada Corp. (**“Hyundai Canada”**) is a federal corporation incorporated pursuant to the laws of Canada and extra-provincially registered in Alberta. Hyundai Canada carries on business in Calgary, Alberta and throughout

Canada. Hyundai Canada is the sole distributor of the Hyundai-branded vehicles in Canada. Hyundai Canada does not manufacture any automobiles in Canada, but is involved with, has responsibilities for and provides direction for the engineering, design, development, research, marketing, promotion, importing, sale and distribution of Hyundai vehicles in or for Canada.

4. The Defendant, Hyundai Motor America (“HMA”), is a corporation organized under the laws of California, with its principal place of business in Fountain Valley, California.
5. The Defendant, Hyundai Motor Manufacturing Alabama LLC (“HMMA”) is a corporation organized under the laws of Delaware, with its principal place of business in Montgomery, Alabama. To the best of the Plaintiff’s knowledge, HMMA manufactures certain models of the Vehicles, including but not limited to, the Hyundai Sonata and the Hyundai Santa Fe.
6. Together, HMA and HMMA manufacture and distribute certain models of the Vehicles which are sold across North America, including in Alberta and elsewhere in Canada.
7. The Defendant, Hyundai Motor Company (“HMC”) is a corporation organized and existing under the laws of the Republic of Korea and has its principal place of business in Seoul, South Korea. HMC manufactures the Vehicles and / or parts of the Vehicles and distributes or causes the Vehicles and / or parts of the Vehicles to be distributed and sold worldwide, including in Alberta and Canada.
8. The business of each of Hyundai Canada, HMA, HMMA, and HMC, is inextricably interwoven for the purposes of designing, engineering, manufacturing, testing, inspecting, promoting, marketing, distributing and selling the Vehicles in Canada.
9. Collectively the Defendants, Hyundai Canada, HMA, HMMA and HMC will be referred to as the “**Defendants**”.
10. The promotion, marketing, distribution and sale of the Vehicles were undertaken by the Defendants, or any of them, in Alberta and elsewhere in Canada.

11. The Defendants hold themselves out as building affordable cars that offer great value. The Defendants also represent their “unwavering commitment to quality”. They also advertise that “[t]here’s no substitute for peace of mind”.

The Class Members

12. This claim is brought by the Plaintiff who seeks Court approval to advance this Action as a class action on behalf of the proposed Class Members, being all persons in Canada, except for the Excluded Persons, who own, owned, lease or leased one of the Vehicles.

The Defendants Install the Panoramic Sunroof

13. Starting in or around 2011, the Defendants started installing large expansive Panoramic Sunroofs. The Panoramic Sunroofs were new alternatives to the traditional sunroof. They are wider and longer and span almost the entire length of a Vehicle roof. The Panoramic Sunroofs are marketed as a luxury upgrade and command an enhanced selling price. The Defendants marketed the Panoramic Sunroofs as providing “exceptional openness and luxury”.
14. The Panoramic Sunroofs create engineering, installation and manufacturing challenges. As detailed below, the Defendants have failed to satisfactorily meet these engineering, installation and manufacturing challenges and have thereby caused harm to Class Members.

Defective Panoramic Sunroofs

15. The Panoramic Sunroofs are made out of tempered glass, which, after undergoing a particular manufacturing process, is stronger than non-tempered glass. As part of the tempering process, the glass is coated with a ceramic paint. The ceramic paint is applied on top around the edges of the glass and has both a functional and esthetic purpose. The ceramic paint can be seen as a black band along the edge of the glass.

16. However, ceramic paint also significantly weakens the structural integrity and strength of the glass used in the Panoramic Sunroofs. This impact is due to variable thermal expansion rates between the ceramic paint and the glass, and chemical interactions with the glazing on the glass. The result is overall stress to, and weakening of, the glass.
17. In addition to the compromised structural integrity, the glass used in the Panoramic Sunroofs is thinned to decrease its overall weight, in order to maximize fuel efficiency. The increased thinness of the glass results in further overall weakness.
18. In order for the Panoramic Sunroofs to withstand water leaks, and to minimize road and wind noise, they must be installed tightly. This tightness puts additional pressure on the integrity and stability of the Panoramic Sunroofs.
19. The result of the foregoing is that the Panoramic Sunroofs lacks proper stability and integrity, leaving them susceptible to spontaneous shattering under everyday driving conditions.

Knowledge of the Defective Panoramic Sunroofs

20. Starting in mid-2012, Vehicle owners began reporting that the Panoramic Sunroofs were shattering. At that time, the United States National Highway Traffic and Safety Administration (“NHSTA”) commenced an investigation.
21. In addition, Korea Automobile Testing & Research Institute (“KATRI”), the Korean governmental automotive safety division, launched its own investigation into the shattering Panoramic Sunroofs and the sunroofs of other automobile manufacturers in December 2012. In or around November 2013, KATRI issued the results of its investigation, namely that Panoramic Sunroofs were susceptible to shattering. The Defendants were aware of the KATRI investigation and were advised as to KATRI’s findings in respect of the Panoramic Sunroofs.

22. Similarly, in April 2014, Transport Canada commenced an investigation into the shattering of the Panoramic Sunroof. That investigation is ongoing, and no report has been issued on the Panoramic Sunroofs situation in Canadian conditions.

The Defendants Fail to Disclose the Shattering Sunroof

23. Despite customer complaints, investigations, and findings of various government authorities relating to the Panoramic Sunroofs, which extend to a variety of Hyundai makes and models, including the Vehicles, the Defendants only issued a very limited recall of the Vehicles equipped with the Panoramic Sunroofs. Specifically, the Defendants only issued a limited recall of a specific subset of 2012 Veloster.
24. In respect of the Veloster, the recall provided that the Defendants were recalling certain of the 2012 Hyundai Veloster because the Panoramic Sunroofs may have been damaged during assembly at the factory and such damage may cause subsequent fracture of the Panoramic Sunroofs.
25. Despite repeated consumer complaints, and the Defendants' knowledge of the shattering of the Panoramic Sunroofs in the Vehicles, the Defendants have failed to warn the Plaintiff and the Class Members of this risk, and continue to sell the Vehicles without any warning to consumers, and have failed to adequately remedy the problem. To date, with the exception of the limited recall of the 2012 Hyundai Veloster, the Defendants have failed to acknowledge that the Panoramic Sunroofs are defective, continue to deny the existence of the problem and have failed to adequately remedy the defect.
26. Moreover, the Defendants represent that their vehicles undergo rigorous safety and performance testing before being sold to the public. They also advertise the Vehicles as being exceptionally safe, which they boast will provide customers with unshakable peace of mind.

27. The defective Panoramic Sunroofs are something that the Defendants knew or ought to have known about before they began importing, distributing and selling the Vehicles to Class Members.
28. Despite the Defendant's knowledge regarding the defective Panoramic Sunroofs and the danger that the Panoramic Sunroofs pose for the Plaintiff and the Class Members, the Defendants failed to adequately warn consumers at the time of Vehicle purchase or lease, and failed to instruct dealers to do so. The Defendants have not made any reasonable efforts to alert Class Members about the defective Panoramic Sunroofs and their dangers. Despite their knowledge of the defective Panoramic Sunroofs the Defendants have continued to conceal the problem from the Class Members and potential customers. Further, the Defendants have failed to adequately remedy the defective Panoramic Sunroofs.

Dangers of the Panoramic Sunroof

29. The spontaneous shattering of Panoramic Sunroofs endangers drivers, passengers and others on the road.
30. The Defendants have already acknowledged the danger of the spontaneous shattering of the Panoramic Sunroofs in connection with the Veloster Recall. The Advisory detail of the Veloster Recall states that:

On certain vehicles, the panoramic sunroof may have been damaged during an automated assembly procedure at the factory. This damage may result in subsequent fracture of the sunroof glass. Sunroof glass panel breakage, while the vehicle is in motion, could cause driver distraction, which could result in a crash causing property damage and/or personal injury. Additionally, broken glass inside the vehicle poses a risk of injury to vehicle occupants. Correction: Dealers will inspect and, if necessary, replace the panoramic sunroof glass assembly.

The Plaintiff

31. The Plaintiff, Robert Engen purchased a new 2013 Hyundai Santa Fe in September 2012, from Integrity Hyundai, an authorized Hyundai dealership (the “**Hyundai Dealership**”) located in Lethbridge, Alberta (“**Engen Santa Fe**”). At the time of purchase, the Engen Santa Fe was equipped with a factory-installed Panoramic Sunroof. Prior to purchasing the Engen Santa Fe, the Plaintiff did considerable research to identify the appropriate car for him, his wife and their children, including researching the internet, reviewing the Defendants’ website, and speaking with dealership personnel at the Hyundai Dealership.
32. The Plaintiff liked the Panoramic Sunroof and it was an attractive feature, for which he was willing to and did pay extra.
33. In August 2016, the Plaintiff was driving when the Panoramic Sunroof in the Engen Santa Fe shattered, showering everyone inside the vehicle with glass. The Panoramic Sunroof shattered without warning and with no indication that any object had made contact with it beforehand. Shards of the glass from the Panoramic Sunroof fell all over the car, including the front seat, on Mr. Engen and his wife, and over the back seat, on the two child restraint systems located in the backseat of the vehicle, which, fortunately, were not occupied at the time of the incident. Mr. Engen’s wife sustained cuts and abrasions over her body.
34. The Plaintiff transported the Engen Santa Fe to the Hyundai Dealership the next day. The Hyundai Dealership advised that they would be contacting Hyundai Canada to determine how to proceed. The Hyundai Dealership retained possession of the Engen Santa Fe for approximately two weeks. The Plaintiff was then advised that the Hyundai Dealership would replace the shattered Panoramic Sunroof which had been factory installed, with an identical replacement Panoramic Sunroof.
35. Had the Defendants adequately disclosed the defective Panoramic Sunroof, the Plaintiff would not have purchased the Engen Santa Fe. In the alternative, he would not have

selected the more expensive model with the Panoramic Sunroof. The Engen Santa Fe remains within the scope of the Defendants' new vehicle limited warranty.

Representations

36. The Defendants made, approved or authorized a number of consistent, common and uniform representations in, among other things, their written warranties, vehicle manuals, television and radio advertisements, media releases, internet, social media and print media advertising, website(s), sales brochures, posters, dealership displays and other marketing materials in relation to the Vehicles.
37. As used in this Statement of Claim, the term "Representations" includes the following common and consistent representations made by the Defendants (whether expressly or by omission) to the effect that:
- (a) The Vehicles are:
 - (i) of exceptional quality in all facets of [their] design and engineering;
 - (ii) equipped with an uncompromising level of standard safety features;
 - (iii) equipped with a long list of standard safety features to help provide added confidence on the road;
 - (b) The Vehicles:
 - (i) would be reasonably fit for the purposes of driving on roads in Canada;
 - (ii) would be safe for the purposes of driving on roads in Canada;
 - (iii) were of merchantable quality; and
 - (iv) were free from defects.
- (the "**Representations**")
38. The Representations were made by the Defendants to the Plaintiff and the Class Members.

39. Despite the Representations, the Vehicles were sold or leased when they were negligently manufactured, designed, tested, assembled, built and equipped with the Panoramic Sunroofs.

Breach of Express and Implied Warranty

40. The Defendants provide purchasers of the Vehicles with a uniform written Warranty. The Defendants provide a 5-year / 100,000 km new vehicle comprehensive warranty, which:

Covers repair or replacement of any component manufactured or originally installed by Hyundai that is defective in material or factory workmanship, under normal use and maintenance.
(**“Warranty”**)

41. The Warranty has certain limits and exclusions (including radio, paint, and battery); however, the Panoramic Sunroofs are not excluded from the Warranty.
42. The Defendants expressly or impliedly warranted to the Plaintiff and the Class Members that the Vehicles:
- (a) would be reasonably fit for the purposes of driving on roads in Canada;
 - (b) would be safe for the purposes of driving on roads in Canada;
 - (c) are of merchantable quality;
 - (d) are free from defects; and
 - (e) are of acceptable quality.

43. Despite and contrary to the foregoing warranties and representations, the Vehicles were sold or leased when they were negligently manufactured, designed, tested, assembled, built and equipped with the Panoramic Sunroofs.

44. The Panoramic Sunroofs in question are a warranted component of the Vehicles. The Vehicles are defective under the terms of the Warranty and any similar or related extended warranties.

45. As a result of the Panoramic Sunroofs and their propensity to shatter, the Vehicles are not reasonably fit, reasonably safe, of a merchantable quality or of a reasonably acceptable quality for the purposes of driving on roads in Canada, and contain defects.
46. The Defendants have breached their Warranty to the Class Members, and as a result the Class Members have suffered damages.
47. The proposed Representative Plaintiff and the Class Members plead and rely on the *Alberta Sale of Goods Act*, ss. 16 and 52, as well as the Equivalent Sale of Goods Statutes.

Negligence

48. The Defendants owed a duty of care to the Plaintiff and the Class Members to ensure that the Vehicles were engineered, designed, developed, tested and manufactured free of dangerous defects. Moreover, the Defendants owed the Class Members a duty to warn the Class Members that the Vehicles had Panoramic Sunroofs which had been reported to shatter.
49. The Defendants knew, and it was reasonably foreseeable, that the Class Members would trust and rely on the Defendants' skill and integrity when purchasing the Vehicles. The Defendants also knew, and it was reasonably foreseeable, that if the Vehicles possessed a dangerous defect, the value of the Vehicles would diminish and the Vehicles could be subject to recalls, both of which would cause loss and damage to the Class Members.
50. The reasonable standard of care in the circumstances required the Defendants to act fairly, reasonably, honestly, candidly and with due care in the course of engineering, designing, developing, testing and manufacturing the Vehicles and having the Vehicles marketed and distributed. The Defendants, through their employees, officers, directors and agents, failed to meet the reasonable standard of care required and expected of the Defendants and owed to the Class Members.

51. The negligence of the Defendants caused loss and damage to the Plaintiff and the other Class Members. Had the Defendants complied with the required and expected standard of care, the Vehicles would have been sold without the Panoramic Sunroofs, or, alternatively, they would have been offered or acquired at prices that represented their true value.

Negligent Misrepresentation

52. The Defendants were in a proximate and special relationship with the Plaintiff and the Class Members by virtue of, amongst other things:
- (a) their design and manufacture of the Panoramic Sunroofs and Vehicles in question;
 - (b) their sale of the Vehicles to the Plaintiff and other Class Members;
 - (c) their skill, experience and expertise in the design and manufacture of sunroofs and vehicles in general;
 - (d) their knowledge of design and manufacturing defects, as well as incident histories, when the Class Members had no such knowledge or practical method of obtaining such information; and
 - (e) the fact that the Class Members had no option but to rely on the Representations of the Defendants in respect of the Vehicles and their features, attributes and safety.
53. The Defendants owed a duty of care to the Plaintiff and the Class Members. It was intended by the Defendants and reasonably foreseeable that the Class Members would rely upon the Representations when purchasing the Vehicles and would suffer the damages described below as a result.
54. The Representations were false and were made negligently.

55. The Plaintiff and Class Members reasonably relied on the Representations in deciding to purchase the Vehicles. Their reliance can be inferred on a class-wide basis from the purchase of the Vehicles. Had the Representations not been made, the Class Members would not have purchased the Vehicles, or would not have paid the premium price for the Panoramic Sunroofs, as set out above.
56. The Plaintiff and the Class Members suffered damages as a result of relying on the Representations in purchasing the Vehicles. The Defendants are liable to pay damages to the Class Members.

Unjust Enrichment

57. The Defendants caused the Plaintiff and the Class Members to pay money for a dangerous product that the Class Members should not have paid for or, in the alternative, for which the Class Members should have paid less than they did.
58. As a result, the Defendants were enriched by the payment or overpayment.
59. The Plaintiff and Class Members suffered a deprivation corresponding to the Defendants' enrichment.
60. There is no juristic reason for the Defendants' enrichment and the Class Members' corresponding deprivation. The Class Members are entitled to restitution for the Defendants' unjust enrichment.

Statutory Causes of Action

Competition Act

61. The Defendants made the Representations to the Plaintiff, the Class Members and the public at large, and in doing so breached s. 52 of the *Competition Act* because the Representations:

- (a) were made for the purpose of promoting the supply or use of the Vehicles for the business interests of the Defendants;
 - (b) were made to the public; and
 - (c) were false and misleading in a material respect.
62. The Representations caused the Class Members to purchase the Vehicles where they otherwise would not have, or to purchase the Vehicles at a price which was above their true value.
63. The Class Members suffered losses as a result of the Defendants' breaches of s. 52 of the *Competition Act*, and, pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay the damages resulting from those breaches in an amount to be proven at the trial of this action.

Fair Trading Act and Equivalent Consumer Protection Statutes

64. The Plaintiff and Hyundai Canada are located in Alberta for the purposes of the *Fair Trading Act*. The Plaintiff's purchase of the Engen Santa Fe is a consumer transaction for the purposes of the *Fair Trading Act*.
65. The other Class Members in Alberta who purchased or leased the Vehicles entered into consumer transactions for the purposes of the *Fair Trading Act*.
66. Class Members resident in British Columbia, Saskatchewan, Manitoba, Ontario, Prince Edward Island, Newfoundland and Labrador, Quebec, Nova Scotia, the Northwest Territories, and the Yukon Territory who purchased or leased the Vehicles for personal, family or household purposes and not for resale or for the purposes of carrying on business (as those concepts apply in the various Provinces and Territories), are consumers located in those Provinces and Territories for the purposes of the Equivalent Consumer Protection Statutes. The Defendants, and in particular Hyundai Canada,

carried on business in those Provinces and Territories and were, amongst other things, suppliers for the purposes of the Equivalent Consumer Protection Statutes.

67. The Defendants' Representations were made and received by the Plaintiff and Class Members in Alberta for the purpose of the *Fair Trading Act*.
68. The Representations concerned material facts that affected the decisions of Class Members to acquire their Vehicles.
69. The Representations constitute unfair, unconscionable or otherwise prohibited practices under the *Fair Trading Act* and Equivalent Consumer Protection Statutes, given that, among other things, the Defendants knew, or ought to have known, that:
 - (a) the Representations were false, misleading or deceptive;
 - (b) the Class Members would rely on the Representations to their disadvantage;
 - (c) the Vehicles did not have the performance characteristics, capabilities, uses, benefits or qualities as set out in the Representations;
 - (d) the Vehicles were not of the particular standard, quality or grade as set out in the Representations;
 - (e) the Class Members were unable to receive all expected benefits from the Vehicles; or
 - (f) the consumer transactions were excessively one-sided in favour of the Defendants.
70. The Representations were made before the Plaintiff and other Class Members entered into the agreements to purchase the Vehicles.
71. The Class Members are entitled to the remedies available under the *Fair Trading Act* and the Equivalent Consumer Protection Statutes, including cancellation of the

purchase, lease or other related agreements as well as damages pursuant to ss. 7 to 7.3 and 13 of the *Fair Trading Act* and equivalent provisions of the Equivalent Consumer Protection Statutes.

72. The Class Members are entitled, to the extent necessary, to a waiver of any notice requirements under the *Fair Trading Act* or of the Equivalent Consumer Protection Statutes, particularly as the Defendants have concealed the actual state of affairs from the Class.

General and Special Damages

73. As a result of the dangerous defects in the Vehicles, and the failures by the Defendants to disclose the existence of the defective Panoramic Sunroofs, the Class has suffered damages. The Defendants have not issued a recall, and are replacing the defective Panoramic Sunroofs with the same type of sunroof, thereby failing to remedy the underlying defect. Because of the continued existence of this harmful and dangerous defect, the value of each of the Vehicles is reduced.
74. The Plaintiff pleads that the Class Members' damages were sustained in Alberta and in the rest of Canada, as applicable.

Waiver of Tort

75. In the alternative to damages, the Plaintiff pleads that he and the Class Members are entitled to claim "waiver of tort" and thereby to claim an accounting or other restitutionary remedy for disgorgement of the revenues generated by the Defendants as a result of the sale of the Vehicles, due to the failure of the Defendants to disclose the defective Panoramic Sunroofs.

A Class Proceeding is Appropriate

76. There are a number of issues common to all of the claims of the proposed Class Members, including:

- (a) A determination of the nature and extent of the duties owed to purchasers;
 - (b) The allegations regarding breaches of duties owed to the Class Members and breaches of contract;
 - (c) Whether the Panoramic Sunroofs have a propensity to spontaneously shatter;
 - (d) Whether the Defendant's knew or should have known that their Panoramic Sunroofs have a propensity to spontaneously shatter and, if so, when they discovered or ought to have discovered this;
 - (e) Whether the Defendants failed to disclose and concealed the existence of the Panoramic Sunroof's propensity to spontaneously shatter from the Class Members;
 - (f) Whether the Defendants made the Representations and misrepresented the characteristics of the Vehicles intentionally or negligently;
 - (g) Whether the Defendants have breached their Warranty obligations;
 - (h) Whether the Defendants' conduct breached the *Sale of Goods Act* and the Equivalent Sale of Goods Statutes, the *Competition Act* and / or the *Fair Trading Act* and Equivalent Consumer Protection Statutes; and
 - (i) Whether the actions of the Defendants merit an award of punitive damages.
77. In the alternative, a determination of the common issues will substantially advance the proceedings even though some issues relating to individual assessment of damages may remain to be determined.
78. The proposed Representative Plaintiff can fairly and adequately represent the interests of the Class Members.

79. Class Members, as individuals, cannot match the resources of the Defendants. The claims of many Class Members would not be economical to pursue individually. The Class Members would be denied access to justice in the absence of a class proceeding.
80. It is unlikely that an individual could or would seek prospective relief to deter future misconduct by the Defendants. The Defendants are sufficiently large and well-resourced that an individual lawsuit would be unlikely to have any significant impact on their manufacturing, sales and distribution policies, procedures and practices. This class proceeding will impact the Defendants such that they will have to ensure that their policies, procedures and practices are sufficient to protect their customers.
81. The proposed Representative Plaintiff and Class Members propose that the Trial of the common issues take place at the Court House in the City of Calgary, in the Province of Alberta.
82. The proposed Representative Plaintiff and Class Members plead and rely on the *Class Proceedings Act*, SA 2003, c C-16.5 and the *Alberta Rules of Court*, Alta Reg 124/2010.

Punitive Damages

83. The conduct of the Defendants merits punitive damages in that the conduct constituted high-handed, malicious and reprehensible conduct that departs to a marked degree from the standards expected of automobile manufacturers, engineers, designers, marketers and distributors.

Real and Substantial Connection to Alberta

84. The Plaintiff proposes to serve this claim on the Defendants, HMA, HMMA and HMC outside of Alberta. Service outside of Alberta is necessary, and permitted pursuant to Rule 11.25(1), (2) and (3) of the *Alberta Rules of Court*, Alta Reg 124/2010 in that the Defendants, HMA, HMMA and HMC, are incorporated outside of Alberta, and there is no head office or address for service in Alberta or Canada.

85. Where this claim is served on Defendants outside of Alberta, it will be served on the basis that a real and substantial connection exists between Alberta and the facts on which the claim is based. That connection arises from the following:
- (a) A contract was made, performed and breached in Alberta;
 - (b) A tort was committed in Alberta:
 - (i) The Engen Santa Fe was sold to the Plaintiff in Alberta;
 - (ii) Representations as to the Vehicles, including the Engen Santa Fe were made in Alberta;
 - (c) The Defendants distribute, market, promote and sell the Defendants' Vehicles in Alberta, and derive revenue from such distribution;
 - (d) The Defendants, HMA, HMMA and HMC, although outside of Alberta, are necessary and proper parties to the action brought against Hyundai Canada who will be served in Alberta; and
 - (e) The claim relates to a breach of an equitable duty in Alberta.

Remedy sought:

86. The Representative Plaintiff and Class Members seek:
- (a) An order certifying this Action as a class proceeding and appointing the Plaintiff as the representative of a class to be certified by the Court;
 - (b) A finding that the Defendants misrepresented the characteristics of the Vehicles intentionally or negligently;
 - (c) A finding that the Defendants breached the express and implied warranties in relation to the Vehicles;

- (d) A finding that the Defendants contravened the *Sale of Goods Act* and the equivalent provisions in the Equivalent Sale of Goods Statutes;
- (e) A finding that the Defendants violated Part VI of the *Competition Act*;
- (f) A finding that the Defendant engaged in unfair practices contrary to Part 2 of the *Fair Trading Act* and the equivalent provisions in the Equivalent Consumer Protection Statutes;
- (g) A declaration that it is not in the interests of justice to require notice be given pursuant to s. 7.2(3) of the *Fair Trading Act* (and any equivalent provisions of the Equivalent Consumer Protection Statutes) and waiving any such notice provisions;
- (h) An Order for the statutory remedies available under the *Fair Trading Act* (and the Equivalent Consumer Protection Statutes), including rescission of the purchase of the Vehicles as well as the rescission of any financing, lease or other agreements related to the Vehicles;
- (i) Statutory damages pursuant to the *Sale of Goods Act* and the Equivalent Sale of Goods Statutes, *Competition Act*, the *Fair Trading Act* and the Equivalent Consumer Protection Statutes in an amount to be determined by this Honourable Court;
- (j) A declaration that the Defendants were negligent in the engineering, design, development, research, manufacture, marketing and distribution of the Vehicles;
- (k) General and special damages in an amount to be proven at trial;
- (l) Punitive or aggregated damages in an amount to be proven at trial;
- (m) An Order, pursuant to s. 30 of the *Class Proceedings Act*, RSA 2003, c C-16.5 directing an aggregate monetary award;

- (n) An Order, pursuant to s. 32 of the *Class Proceedings Act*, RSA 2003, c C-16.5 allowing for the use of standard claim forms or other documentary evidence or such other procedure as warranted under the circumstances;
- (o) An Order that the damages be paid by the Defendants into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court;
- (p) Pre-judgment and post-judgment interest;
- (q) The costs of this Action on a substantial indemnity basis;
- (r) The costs of administering the plan of distribution of the recovery in this Action; and
- (s) Such further and other relief as may be required and as this Honourable Court deems to be just and appropriate having regard to the circumstances.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at CALGARY, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.