

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-000876-173

(Class Action)  
SUPERIOR COURT

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**NICK BOUNTOUNIS [...]**

and

**IDAN ALON [...]**

Applicants

-vs-

**VOLKSWAGEN GROUP CANADA INC.**, legal person having its principal establishment at 300-4865 Marc-Blain Street, Ville St-Laurent, district of Montreal, Province of Quebec, H4R 3B2

and

**VOLKSWAGEN GROUP OF AMERICA INC.**, legal person having its principal establishment at 2200 Ferdinand Porsche Drive, City of Herndon, State of Virginia, 20171, United States of America

and

**VOLKSWAGEN AG**, legal person having its head office at Brieffach1998, D-38436, in the City of Wolfsburg, Germany

and

**DAIMLER AG**, legal person having its head

office at Mercedesstrasse 137, 70327, in the City of Stuttgart, Germany

and

**DAIMLER TRUCKS CANADA LTD.**, legal person having its head office at 110-6733 Mississauga Road, Mississauga, Province of Ontario, L5N 6J5

and

**DAIMLER TRUCKS NORTH AMERICA LLC**, legal person having its head office at 4747 Channel avenue, City of Portland, State of Oregon, 97217, United States of America

and

**BMW CANADA INC.**, legal person having its head office at 50 Ultimate Drive, Richmond Hill, Province of Ontario, L4S 0C8

and

**BMW OF NORTH AMERICA, LLC**, legal person having its head office at 300 Chestnut Ridge road, City of Woodcliff Lake, State of New Jersey, 07677, United States of America

and

**BMW MANUFACTURING CO., LLC**, legal person having its head office at 1400 Highway 101 South, City of Greer, State of South Carolina, 29651, United States of America

and

**BAYERISCHE MOTOREN WERKE AG**, legal person having its head office at Petuelring 130, 80788, in the City of Munich, Germany

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**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO  
APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFFS**  
(ARTICLES 571 AND FOLLOWING C.C.P)

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TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANTS STATE AS FOLLOWS:

I. **GENERAL PRESENTATION**

A) **THE ACTION: *THE GERMAN CAR CARTEL CLASS ACTION***

1. On July 21<sup>st</sup>, 2017, German news magazine *Der Spiegel* reported that for two decades, more than 200 managers and engineers of five large German automakers met in sixty different task forces to coordinate “*the development of cars, costs, suppliers, and markets*” and that these automakers “*cooperated in secrecy, as closely as one would expect it from the divisions of one company, of a German Auto Inc – or a cartel*”, Applicants disclosing an official English translation of the German *Der Spiegel* article as **Exhibit P-1**;
2. The sixty industry task forces discussed vehicle development, brakes, petrol and diesel engines, clutches and transmissions as well as exhaust treatment systems. The cartel appears to have colluded on everything from the soft-top of a convertible to the assessment of suppliers, as well as on the size of the urea (or AdBlue tank);
  - 2.1 Defendants conspired, agreed or arranged with each other directly or indirectly to fix, maintain, increase and/or control the price for the components used in and comprising part of the motor vehicles they manufacture and sell in Quebec and Canada;
  - 2.2 Defendants conspired, agreed or arranged with each other directly or indirectly to fix, maintain and control the design, technical characteristics, and development of components used in and comprising part of the motor vehicles they manufacture and sell in Quebec and Canada;
3. It appears that Defendant Volkswagen AG admitted to possible anti-competitive behavior in a letter to cartel authorities on July 4<sup>th</sup>, 2017;
4. It appears that the Defendants engaged in activities prohibited under the general rules of Quebec civil law, as well as under sections 45 and 46 of the *Competition Act*, R.S.C., 1985, c. C-34, which prohibits agreements between two or more persons to

prevent or unduly lessen competition or to unreasonably enhance the price of a product;

5. On July 22<sup>nd</sup>, 2017, it was revealed that EU antitrust regulators were investigating allegations of a cartel among the Defendants (hereinafter the "**German Car Cartel**"), as it appears from a Reuters article titled "*EU antitrust regulators say probing possible German car cartel*", Applicants disclosing **Exhibit P-2**;

5.1 It appears that Defendants colluded to fix prices on components, including of diesel emissions treatment systems, using industry committees;

5.2 Klaus Müller, head of the federation of German consumer organizations, urged ministers to coordinate claims for damages to relieve the burden on individual car owners and declared the following, as it appears from the United Kingdom's Sunday Times article on July 25<sup>th</sup>, 2017, titled "*Millions may be owed in Compensation in BMW, Daimler, VW Cartel Claims*", Applicants disclosing **Exhibit P-9**:

"Many customers have potentially paid much too high a price"  
Owners "could have paid a price driven by cartel agreements for a  
potentially inadequate car

6. Consequently, Applicants wishes to institute a class action on behalf of the following class of which they are members, namely:

**Class:**

All persons, entities, partnerships or organizations resident in Canada who purchased and/or leased one or more of the Defendants' Vehicles that were part of the German Car Cartel, or any other group to be determined by the Court;

Alternately (or as a subclass)

All persons, entities, partnerships or organizations resident in Quebec who purchased and/or leased one or more of the Defendants' Vehicles that were part of the German Car Cartel, or any other group to be determined by the Court;

## II. THE DEFENDANTS

- The Volkswagen Defendants:

7. Defendant Volkswagen AG (hereinafter "**VAG**") is a German vehicle manufacturer headquartered in Wolfsburg, Germany. It is the second largest automaker in the

world. VAG is responsible for the engineering, design, development, research manufacture and sale of passenger vehicles under the Audi, Bentley, Bugatti, Lamborghini, Porsche, SEAT, Škoda and Volkswagen models;

8. Defendant Volkswagen Group Canada Inc. (hereinafter "**VW Canada**") is a Canadian corporation with its head office in Ajax, Ontario, that does business throughout Canada, including within the province of Quebec, as it appears from a copy of an extract from the Registraire des entreprises, disclosed as **Exhibit P-3**;
9. VW Canada was, at all material times, a wholly-owned subsidiary of VAG;
10. Defendant Volkswagen Group of America Inc. (hereinafter "**VWGOA**") is the North American operational headquarters, and subsidiary of Defendant VAG;
11. During the Class Period, Defendants VAG, VW Canada and VWGOA (collectively, "**VW**"), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and sold automobiles through independent retailers, outlets, and authorized dealerships throughout Canada, including within the province of Quebec;
12. It appears that Volkswagen Vehicles that are sold in Canada are part of the German Car Cartel;
13. Given the close ties between the VW Defendants and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- **The Daimler Defendants:**

14. Defendant Daimler Trucks Canada Ltd. (hereinafter "**Daimler Canada**") is a Canadian corporation with its head office in Mississauga, Ontario. It is a subsidiary of non-party Daimler Nederland B.V. that does business throughout Canada, including within the province of Quebec, as it appears from a copy of an extract from the Registraire des entreprises, disclosed as **Exhibit P-4**;
15. Defendant Daimler Trucks North America LLC (hereinafter "**Daimler North America**") is an American corporation with its head office in Oregon. It is the largest heavy-duty truck manufacturer in North America and a leading producer of medium-duty trucks and specialized commercial vehicles. Daimler North America's operations consist of manufacturing, selling and servicing automobiles;
16. Defendant Daimler AG is a German corporation with its head office in Stuttgart, Germany;
17. Daimler AG owns several vehicle brands sold in Canada, including Mercedes-Benz, Mercedes-AMG and Smart Automobile;

18. During the Class Period, Defendants Daimler Canada and Daimler North America (collectively, "**Daimler**"), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and sold automobiles through independent retailers, outlets, and authorized dealerships throughout Canada, including within the province of Quebec;
  19. It appears that Daimler Vehicles that are sold in Canada are part of the German Car Cartel;
  20. Given the close ties between the Daimler Defendants and considering the preceding, they are all solidarily liable for the acts and omissions of the other;
- **The BMW Defendants:**
21. Defendant BMW Canada Inc. (hereinafter "**BMW Canada**") is a Canadian corporation with its head office in Richmond Hill, Ontario, as it appears from a copy of an extract from the Registraire des entreprises, disclosed as **Exhibit P-5**;
  22. Defendant BMW of North America, LLC (hereinafter "**BMW NA**") is an American corporation with its head office in New Jersey. It is a subsidiary of BMW AG;
  23. Defendant BMW Manufacturing Co. LLC (hereinafter "**BMW Manufacturing**") is an American corporation with its head office in South Carolina. It is a subsidiary of BMW AG and it is part of its global manufacturing network;
  24. Defendant BMW AG is a German corporation with its head office in Munich, Germany. It is a parent company of Defendants BMW NA and BMW Manufacturing. BMW AG manufactures and sells automobiles and motorcycles through independent retailers, outlets, and authorized dealerships in North America and throughout the world;
  25. During the Class Period, Defendants BMW Canada, BMW NA, BMW Manufacturing, and BMW AG (collectively, "**BMW**"), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and/or sold automobiles, and motorcycles through independent retailers, outlets, and authorized dealerships throughout Canada, including within the province of Quebec;
  26. It appears that BMW Vehicles that are sold in Canada are part of the German Car Cartel;
  27. Given the close ties between the BMW Defendants and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

**III. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFFS (SECTION 575 C.C.P.):**

**A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT**

**Applicant Bountounis' Claim against Volkswagen**

28. Applicant Nick Bountounis ("**Bountounis**") is member of the Class on behalf of which he wishes to exercise a class action in light of the fact that during the Class Period, he leased two vehicles and has suffered damages as a result of the Defendants' anti-competitive and unlawful activities;
29. In 2015, Bountounis leased a 2015 Volkswagen Jetta TSI from Volkswagen Prestige in Ville St-Laurent, Quebec;
30. Bountounis leased the vehicle for 48 months and currently pays \$342.00 per month, as it appears from a copy of Applicant's lease disclosed as **Exhibit P-6**;
31. Prior to his current lease, Bountounis had leased a different Volkswagen Jetta for 48 months at a cost of approximately \$375.00 per month, Applicant Bountounis disclosing a copy of his first lease as **Exhibit P-7**;
32. The Defendants' conduct was kept a secret and the German Car Cartel was not known to Bountounis at the time that he leased both vehicles, nor could it have been known, even through the exercise of reasonable diligence;
33. In fact, Bountounis could have never imagined that industry competitors such as VW, Daimler and BMW would unlawfully conspire to the detriment of vulnerable and unsuspecting Class members;
34. Nonetheless, on July 4<sup>th</sup>, 2017, it appears VW made some kind of a voluntary disclosure to Germany's Federal Cartel Office and the EU Commission, alleging "*involvement in presumptive antitrust violations*" (*Der Spiegel* claims that Defendant Daimler also reported itself to the authorities), Applicants disclosing the July 22<sup>nd</sup>, 2017, Forbes article titled "*Dieseldgate Product Of Vast VW- BMW-Daimler Car Cartel Conspiracy, Fresh Report Says*", as **Exhibit P-8**;
35. The Defendants are large international corporations that have global manufacturing and distribution operations;
36. The German Car Cartel had and continues to have a significant impact on competition;
37. Due to the Defendants' anticompetitive illegal activities, Bountounis was deprived of

the benefit of a competitive market and therefore paid a higher price for both his Volkswagen Jetta leases (the cost of which is always based on the retail purchase price);

38. Consequently, Bountounis suffered and will continue to suffer numerous serious damages caused directly by the intentional fault of Defendants;
39. The damages suffered by Bountounis are equal to the difference between the artificially inflated price that he paid and the price that he should have paid in a competitive market system;
40. Bountounis has since discovered that this situation is being investigated by EU antitrust regulators and that *"Volkswagen is looking at fines approaching 22 billion EUR (\$25 billion)"*, Exhibit P-8;
41. Bountounis suspects that Defendant VW was the first to reveal the existence of the German Car Cartel to the EU Commission on July 4<sup>th</sup>, 2017, in order to receive full immunity for its participation in the infringement (Forbes reports that *"In cases like these, who first rats out the other conspirators can get away with a lesser sentence, or none at all. There is no leniency for being second"*, Exhibit P-8);
42. Had Bountounis been aware of the German Car Cartel, he would have never leased a vehicle from any of the Defendants;
43. The Defendants' violations were intentional, calculated, malicious and vexatious;
44. Bountounis instructed his attorneys to file the present action on his behalf and on behalf of all Class members after he learnt about the existence of the German Car Cartel;
45. Bountounis' damages are a direct result of the Defendants' anticompetitive and illegal price-fixing activities;
46. In these circumstances, Bountounis' claim for damages is justified;

#### **Applicant Alon's Claim against Volkswagen**

- 46.1 Applicant Idan Alon ("Alon") is member of the Class on behalf of which he wishes to exercise a class action in light of the fact that during the Class Period, he purchased three (3) Volkswagen vehicles and has suffered damages as a result of the Defendants' anti-competitive and unlawful activities;



- 46.2 Alon currently owns a 2016 Volkswagen Jetta TSI 1.4L, which he purchased around the month of March 2016, as it appears from his vehicle registration certificate disclosed as **Exhibit P-10**;
- 46.3 Alon purchased the 2016 Volkswagen Jetta TSI 1.4L for approximately \$17,000.00 plus taxes from Volkswagen Valleyfield;
- 46.4 Prior to purchasing his most recent vehicle, a few years ago Alon had purchased a 2011 Volkswagen Jetta 2.5L for approximately \$13,000.00 from Montreal Auto Prix;
- 46.5 In 2009, Alon had purchased a 2004 Volkswagen Jetta 2.0L for approximately \$10,000.00 from Volkswagen Prestige in Ville St-Laurent, Quebec;
- 46.6 Due to the Defendants' anticompetitive illegal activities, Alon was deprived of the benefit of a competitive market and therefore paid a higher price for all three of the Volkswagen Jetta he purchased;
- 46.7 Had Alon been aware of the German Car Cartel, he would have never purchased a vehicle from any of the Defendants;
- 46.8 Alon's damages are a direct result of the Defendants' anticompetitive and illegal price-fixing activities;
- 46.9 In these circumstances, Alon's claim for damages is justified;

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

- 47. All Class members, regardless of which of the Defendants they contracted with, have a common interest both in proving the commission of unlawful activities (the German Car Cartel in the present case) by all of the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by Defendants;
- 48. The nature of the interest necessary to establish the standing of the Applicants must be viewed from the perspective of the common interest of the proposed Class and not solely from the perspective of the representative plaintiffs;
- 49. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether the Defendants unlawfully engaged in price fixing;
- 50. The claims of every member of the Class are founded on very similar facts to the Applicants' claims against VW;

51. Requiring a separate class action against each Defendant based on very similar questions of fact and identical questions of law would be a waste of resources;
52. Every member of the Class purchased or leased a vehicle from one of the Defendants during the Class Period;
53. The same legal issues are present in the action of each Class member against each Defendant (each Defendant faces more or less the same issues regarding the German Car Cartel);
54. By reason of Defendants' unlawful conduct, Applicants and members of the Class have suffered damages, which they may collectively claim against the Defendants;
55. Although the Applicants themselves do not have a personal cause of action against, or a legal relationship with, each of the Defendants, the Class contains enough members with personal causes of action against each Defendant;
56. The facts and legal issues of the present action support a proportional approach to class action standing that economizes judicial resources and enhances access to justice;
57. Each Class member has paid an artificially inflated price for their vehicle as a result of the anticompetitive and collusive activities engaged in by the Defendants;
58. Each Class member has suffered damages equivalent to the difference between the artificially inflated price paid for their vehicle and the price that should have been paid in a competitive market system;
59. The damages suffered by the Class members are directly attributable to the Defendants' anti-competitive and illegal price-fixing activities and with respect to which each Class member is justified in claiming damages;
60. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the present Application;
61. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
  - a) Did the Defendants conspire, coalesce, or enter into any agreement or arrangement that unduly restricts competition in the sale or lease of their vehicles and, if so, during what period did this cartel have its effects on Class members?
  - b) Does the participation of the Defendants in the cartel constitute a fault triggering their solidary liability to Class members?

- c) Has the effect of the cartel been an increase in the price paid in Canada (alternately in Quebec) for the purchase or lease of the Defendants' vehicles and, if so, does the increase constitute a damage for each Class member?
- d) What is the total amount of damages suffered by all Class members?
- e) Is the Defendants' solidary liability triggered with respect to the following costs incurred or to be incurred on behalf of Class members in present matter:
  - the costs of investigation;
  - the extrajudicial fees of counsel for the Applicants, Plaintiffs and Class members; and
  - the extrajudicial disbursements by counsel for the Applicants, Plaintiffs and Class members?

**C) THE COMPOSITION OF THE CLASS**

- 62. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
- 63. Combined, during the Class Period the Defendants undoubtedly have sold and/or leased hundreds of thousands of cars to Class members across the province of Quebec and Canada using the illegal practice;
- 64. In 2016, global sales revenue for Volkswagen is reported at 217.3 billion Euros, Daimler's at 153.3 billion Euros and BMW's at 94.2 billion Euros, Exhibit P-8;
- 65. The number of persons included in the Class is likely in the hundreds of thousands in the province of Quebec (many members may have claims against multiple Defendants);
- 66. The names and addresses of all persons included in the Class are not known to the Applicants, however, are in the possession of the Defendants;
- 67. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
- 68. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;

69. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

**D) THE CLASS MEMBERS REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFFS IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**

70. Applicants Bountounis and Alon request that they be appointed the status of representative plaintiffs;
71. Applicants are both members of the Class;
72. Applicant Bountounis is your average *père de famille* and works full-time as a digital technician at a company in Montreal;
- 72.1 Applicant Alon is a real estate agent and is a broker in good standing with the Organisme d'autoréglementation du courtage immobilier du Québec (OACIQ);
- 72.2 Both Applicants discovered the existence of the German Car Cartel by coming across the news online and then contacted their attorneys;
73. Prior to initiating the present class action, Applicants spoke to friends and family and realized that there are many other victims of the German Car Cartel;
74. Applicants mandated their attorneys, who have experience in class actions, to take the present action on their behalf and in the interest of the Class members with causes of action against the Defendants;
75. As for identifying other Class members, Applicants draw certain inferences from the situation, and this based on the number of the Defendants' vehicles they see on the road. Applicants realize that by all accounts, there is a very important number of Class members that find themselves in an identical situation, and that it would not be useful for them to attempt to identify them given their sheer number;
76. Applicants want to hold Defendants accountable for their misconduct and is taking this action so that they and the Class members can recover sums overpaid as a result of their collusion and price-fixing;
77. Applicants are ready and available to manage and direct the present action in the interest of the members of the Class that they wish to represent and are determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Class, as well as to dedicate the time necessary for the present action and to collaborate with their attorneys;

78. Applicants have given the mandate to their attorneys to obtain all relevant information with respect to the present action and intend to continue to keep informed of all developments;
79. Applicants have the capacity and interest to fairly and adequately protect and represent the interest of the Class members;
80. Applicants, with the assistance of their attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other Class members and to keep them informed;
- 80.1 On July 25<sup>th</sup>, 2017, Applicant Bountounis took the time to meet with and speak to journalists from the Journal de Montréal and the Montreal Gazette about the present class action, Applicants disclosing the newspaper articles as Exhibit P-11;
81. Applicants are accessible to Class members, as are their attorneys who have user-friendly websites and are active on social media platforms such as LinkedIn, Twitter and Facebook;
82. Applicants are in good faith and have instituted this action for the sole purpose of having their rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Defendants' unlawful conduct;
83. Applicants have read this amended Application prior to its court filing and reviewed the exhibits in support thereof;
84. Applicants understand the nature of the action;
85. Applicants' interests are not antagonistic to those of other members of the Class;
86. Applicants' interest and competence are such that the present class action could proceed fairly;

#### **IV. DAMAGES**

87. During the Class Period, it appears that the Defendants have generated aggregate amounts in the billions of dollars while intentionally violating price-fixing laws;
88. All of the Defendants' misconduct is reprehensible and to the detriment of unsuspecting Class members;
89. All of the Defendants must be held accountable for the breach of obligations imposed on them by legislation in Canada and Quebec, including:

- a) The *Competition Act*, notably sections 45 and 46; and
- b) *The Civil Code of Quebec*, notably articles 6, 7, and 1457.

90. In light of the foregoing, the following damages may be claimed against the Defendants:
- a) compensatory damages, in an amount to be determined, on account of the damages suffered.

#### V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

91. The action that the Applicants wish to institute on behalf of the members of the Class is an action in damages and for a declaratory judgment of extracontractual civil liability;
92. The conclusions that the Applicants wish to introduce by way of an originating application are:

**GRANT** Plaintiffs' action against Defendants on behalf of all the Class members;

**DECLARE** the Defendants liable for the damages suffered by the Applicants and each of the Class members;

**CONDEMN** the Defendants, solidarily, to pay the Plaintiffs and the Class members an amount equal to the sum of the Defendants' revenues, as well as of the other members of the cartel, generated by the artificially inflated portion of the sale/lease price of their vehicles in Canada (alternately in Quebec), and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants, solidarily, to pay the costs incurred for any investigation necessary to establish their liability in the present proceeding, including the extrajudicial class counsel fees and extrajudicial disbursements, including expert fees, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

**ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;

93. The interests of justice favour that this Application be granted in accordance with its conclusions;

## **VI. JURISDICTION**

94. The Applicants suggest that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, for the following reasons:
- a) There exists a real and substantial connection between the province of Quebec and the damages suffered by Applicants<sub>s</sub> and Class members;
  - b) A great number of the Class members, including the Applicants<sub>s</sub>, reside in the district of Montreal;
  - c) Volkswagen Canada has its principal place of business in the district of Montreal;
  - d) The Applicants'<sub>s</sub> attorneys practice their profession in the district of Montreal;

### **FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an originating application in damages;

**APPOINT** the Applicants<sub>s</sub> the status of representative plaintiffs<sub>s</sub> of the persons included in the Class herein described as:

#### **Class:**

All persons, entities, partnerships or organizations resident in Canada who purchased and/or leased one or more of the Defendants' Vehicles that were part of the German Car Cartel, or any other group to be determined by the Court;

Alternately (or as a subclass)

All persons, entities, partnerships or organizations resident in Quebec who purchased and/or leased one or more of the Defendants' Vehicles that were part of the German Car Cartel, or any other group to be determined by the Court;

(hereinafter referred to as the "Class")

[...]

**DECLARE** the nature of the action to be one of extracontractual civil liability;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Did the Defendants conspire, coalesce, or enter into any agreement or arrangement that unduly restricts competition in the sale or lease of their vehicles and, if so, during what period did this cartel have its effects on Class members?
- b) Does the participation of the Defendants in the cartel constitute a fault triggering their solidary liability to Class members?
- c) Has the effect of the cartel been an increase in the price paid in Canada (alternately in Quebec) for the purchase or lease of the Defendants' vehicles and, if so, does the increase constitute a damage for each Class member?
- d) What is the total amount of damages suffered by all Class members?
- e) Is the Defendants' solidary liability triggered with respect to the following costs incurred or to be incurred on behalf of Class members in present matter:
  - the costs of investigation;
  - the extrajudicial fees of counsel for the Applicants, Plaintiffs and Class members; and
  - the extrajudicial disbursements by counsel for the Applicants, Plaintiffs and Class members?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** Plaintiffs' action against Defendants on behalf of all the Class



members;

**DECLARE** the Defendants liable for the damages suffered by the Applicants and each of the Class members;

**CONDEMN** the Defendants, solidarily, to pay the Plaintiffs and the Class members an amount equal to the sum of the Defendants' revenues, as well as of the other members of the cartel, generated by the artificially inflated portion of the sale/lease price of their vehicles in Canada (alternately in Quebec), and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants, solidarily, to pay the costs incurred for any investigation necessary to establish their liability in the present proceeding, including the extrajudicial class counsel fees and extrajudicial disbursements, including expert fees, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

**ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;

**DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

**ORDER** the publication of a notice to the members of the Class in accordance with

article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of LA PRESSE, the MONTREAL GAZETTE and the Globe and Mail;

**ORDER** that said notice be published on the Defendants' various websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating "Notice Concerning German Car Cartel Class Action";

**ORDER** the Defendants to send an Abbreviated Notice by e-mail to each Class member, to their last known e-mail address, with the subject line "Notice of a Class Action";

**ORDER** the Defendants and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class members, including their names, addresses, phone numbers and email addresses;

**RENDER** any other order that this Honourable Court shall determine;

**THE WHOLE** with costs including publication fees.

Montréal, July 26<sup>th</sup>, 2017

*(s) Renno Vathilakis Inc.*

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**RENNO VATHILAKIS INC.**

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Co-counsel for Applicant Nick Bountounis

Montréal, July 26<sup>th</sup>, 2017

*(s) LPC Avocat Inc.*

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Co-counsel for Applicant Nick Bountounis

**SUMMONS**  
(ARTICLES 145 AND FOLLOWING C.C.P)

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**Filing of a judicial application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of Montreal.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

#### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

#### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

#### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Copy of official official English translation of the German Der Spiegel article published on July 21<sup>st</sup>, 2017;
- Exhibit P-2:** Copy of the July 22<sup>nd</sup>, 2017, Reuters article titled "*EU antitrust regulators say probing possible German car cartel*";
- Exhibit P-3:** Copy of an extract from the Registraire des entreprises for Volkswagen Group Canada Inc.;
- Exhibit P-4:** Copy of an extract from the Registraire des entreprises for Daimler Trucks Canada Ltd.;
- Exhibit P-5:** Copy of an extract from the Registraire des entreprises for BMW Canada Inc.;
- Exhibit P-6:** Copy of Applicant's 48-month lease for a 2015 Volkswagen Jetta TSI;
- Exhibit P-7:** Copy of Applicant's previous 48-month lease for a Volkswagen Jetta;

**Exhibit P-8:** Copy of July 22<sup>nd</sup>, 2017, Forbes article titled “*Dieseldate Product Of Vast VW-BMW-Daimler Car Cartel Conspiracy, Fresh Report Says*”;

**Exhibit P-9:** Copy of United Kingdom’s Sunday Times article dated July 25<sup>th</sup>, 2017, titled “MILLIONS MAY BE OWED COMPENSATION IN BMW, DAIMLER, VW CARTEL CLAIMS”;

**Exhibit P-10:** Copy of Volkswagen vehicle registration in the name of Idan Alon;

**Exhibit P-11:** Copy of newspaper articles in Journal de Montreal and the Montreal Gazette on July 25<sup>th</sup>, 2017;

These exhibits are available on request.

### **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montréal, July 26<sup>th</sup>, 2017

*(s) Renno Vathilakis Inc.*

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**RENNO VATHILAKIS INC.**

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Co-counsel for Applicant Nick Bountounis

Montréal, July 26<sup>th</sup>, 2017

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

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Co-counsel for Applicant Nick Bountounis

**NOTICE OF PRESENTATION**  
(articles 146 and 574 al. 2 N.C.P.C.)

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**TO: VOLKSWAGEN GROUP CANADA INC.**  
300-4865 Marc-Blain Street  
Ville St-Laurent, Quebec, H4R 3B2  
**Defendant**

**VOLKSWAGEN GROUP OF AMERICA**  
2200 Ferdinand Porsche Drive  
Herndon, Virginia, 20171, USA  
**Defendant**

**VOLKSWAGEN AG**  
Brieffach1998, D-38436  
Wolfsburg, Germany  
**Defendant**

**DAIMLER AG**  
Mercedesstrasse 137, 70327  
Stuttgart, Germany  
**Defendant**

**DAIMLER TRUCKS CANADA LTD.**  
110-6733 Mississauga Road,  
Mississauga, Ontario, L5N 6J5  
**Defendant**

**DAIMLER TRUCKS NORTH AMERICA**  
4747 Channel avenue  
Portland, Oregon, 97217, USA  
**Defendant**

**BMW CANADA INC.**  
50 Ultimate Drive  
Richmond Hill, Ontario, L4S 0C8  
**Defendant**

**BMW OF NORTH AMERICA, LLC**  
300 Chestnut Ridge road  
Woodcliff Lake, New Jersey, 07677, USA  
**Defendant**

**BMW MANUFACTURING CO., LLC**  
1400 Highway 101 South  
Greer, South Carolina, 29651, USA  
**Defendant**

**Bayerische Motoren Werke AG**  
Petuelring 130, 80788,  
Munich, Germany  
**Defendant**

**TAKE NOTICE** that Applicant's *Amended Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

**GOVERN YOURSELVES ACCORDINGLY.**

Montréal, July 26<sup>th</sup>, 2017

*(s) Renno Vathilakis Inc.*

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**RENNO VATHILAKIS INC.**  
Co-counsel for Applicant Nick Bountounis

Montréal, July 26<sup>th</sup>, 2017

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**  
Me Joey Zukran  
Co-counsel for Applicant Nick Bountounis