CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: **500-06-001117-213**

S U P E R I O R C O U R T
(Class action)

FRANÇOIS DÉCARY-GILARDEAU

Applicant

v.

GENERAL MOTORS OF CANADA COMPANY

and

GENERAL MOTORS COMPANY

Respondents

AMENDED APPLICATION BY RESPONDENTS GENERAL MOTORS OF CANADA COMPANY AND GENERAL MOTORS COMPANY FOR LEAVE TO ADDUCE RELEVANT EVIDENCE

(Art. 574, 575, 18 and 19 C.C.P.)

TO THE HONORABLE CHRISTIAN IMMER S.C.J., RESPONDENTS GENERAL MOTORS OF CANADA COMPANY AND GENERAL MOTORS COMPANY RESPECTFULLY SUBMIT AS FOLLOWS:

I. INTRODUCTION

1. On January 1, 2021, the Applicant filed his *Demande d'autorisation pour exercer une action collective et pour être représentant*, as appears from the Court record, which was amended on October 8, 2021 (the "**Application for authorization**");

2. As also appears from the Application for authorization, the Applicant seeks authorization to institute a class action on behalf of the following class, as amended on October 8, 2021:

> *Toute personne physique, personne morale de droit privé, société ou association qui a loué et/ou acheté au Canada (subsidiairement au Québec) un véhicule GM, de marque Chevrolet, modèle Bolt EV, année 2017, 2018, 2019, 2020, 2021 ou 2022, ou modèle Bolt EUV 2022.*

(Hereinafter, the "**Group**")

3. The Applicant alleges that Respondents misrepresented the autonomy of the batteries of the Chevrolet Bolt EV model year 2017, 2018, (…) 2019, 2020, 2021 and 2022 (the "**Bolt EVs**") and the Bolt EUV (collectively the "**Bolts**"). The Applicant alleges these vehicles do not perform as represented in cold weather;

4. The Applicant further alleges that the Bolts' batteries suffer from a defect making these vehicles a fire hazard;

5. The Applicant suggests the following issues of fact and law to be dealt with collectively for the purposes of the proposed class action, as appears from paragraph 5 of the Application for authorization:

   (i) Les défenderesses ont-elles représenté aux membres que la capacité ou l'autonomie des batteries des Bolts EV et Bolts EUV se réduisait en hiver?

   (ii) Est-ce que les Bolts EV et Bolts EUV des membres sont défectueuses ou posent un danger d'incendie?

   (iii) Est-ce que la batterie des Bolts EV et Bolts EUV ou une de ses composantes est défectueuses?

   (iv) Est-ce que le défaut des batteries ou une composante reliée des Bolts EV 2017, 2018, 2019, 2020, 2021 et 2022, et Bolt EUV est couvert par la garantie du fabricant offerte par les défenderesses?

   (v) Est-ce que les défenderesses ont une obligation de diligence et une responsabilité en tant que fabricant ? Dans l'affirmative, les défenderesses ont-elles l'obligation de corriger et/ou réparer le défaut des batteries des Bolts EV 2017, 2018, 2019, 2020, 2021 et 2022, et Bolts EUV?

   (vi) Est-ce que les défenderesses ont rappelé les Bolts EV des membres afin de faire réduire la capacité ou l'autonomie de leurs batteries de dix pourcent (10%) ont demandé aux membres de réduire la capacité ou l'autonomie de leurs batteries de dix pourcent (10%) et ont demandé aux membres d'éviter d'épuiser la batterie à moins de 113 km?

   (vii) Est-ce que le défaut dans la batterie et la réduction de la capacité ou l'autonomie des Boltss EV et Bolts EUV des membres leur cause préjudice et leur donne le droit de réclamer l'annulation de la vente de leurs Bolts EV et Bolt EUV?

   (viii) Si oui, est-ce que les membres auraient droit à un remboursement total du prix payé pour leurs Bolts EV et Bolt EUV?

   (ix) Est-ce que les membres auraient droit de réclamer la correction et/ou réparation des Bolts EV et Bolt EUV?

(x) Est-ce que les membres auraient droit à une réduction du prix de vente, des dommages-intérêts ou une indemnité? Si oui, combien?

(xi) Est-ce que la responsabilité des défenderesses en dommages-intérêts compensatoires est engagée? Si oui, pour combien?

(xii) Est-ce que la responsabilité des défenderesses en dommages-intérêts punitifs est aussi engagée? Si oui, pour combien?

II. THE EVIDENCE THE RESPONDENTS SEEK LEAVE TO ADDUCE

6. In order to allow this Court to make a determination as to whether the Applicant has an arguable case as required by section 575, paras (2) and (4) CCP and whether the claims of the Class members raise identical similar or related issues of law or fact, as required by section 575 (1) CCP, Respondents are seeking leave to adduce relevant evidence, for the following reasons;

A. Cause of Action Pertaining to Misrepresentations of the Range of the Bolts

7. Applicant alleges that Respondents misrepresented the autonomy of the batteries of the (…) Bolts and that these vehicles do not perform as represented in cold weather, without providing nor explaining the representations he personally received at the time of purchase;

8. The allegations of the Applicant in relation to the alleged battery capacity limitation, found at paragraphs 2.12 to 2.15 of the Application for authorization, are not only incomplete, but also misleading. The Amended Application does not correct this issue;

9. Therefore, Respondents are seeking to adduce into evidence for the authorization hearing the following documents:

(a) 2017 Bolt EV Owner's Manual, as **Exhibit GM-1** (English and French versions);

(b) 2017 Canadian Limited Warranty and Owner Assistance Information, as **Exhibit GM-2** (English and French versions);

(c) (…);

(d) (…);

(e) (…);

(f) (…);

(g) Marketing material for 2017 Bolt EV, *en liasse*, as **Exhibit GM-7**;

10. These Exhibits will provide valuable information to the Court and demonstrate that Applicant's allegations pertaining to Respondents' representations as to the autonomy of the 2017 Bolt EV are implausible or manifestly incorrect;

11. As such, these Exhibits fill a factual gap left by the Application for authorization, will assist the Court in having a better understanding of the factual context in the present matter, and will be useful for the authorization debate;

B. Cause of Action Pertaining to the Recall and Alleged Battery Defect

11.1 In addition, the Applicant alleges that Respondents refuse to replace the batteries or more generally repair the Bolts;

11.2 Furthermore, at paragraph 2.52 and following of the Application for authorization, the Applicant does refer to notices sent by the Respondents, which provide information about the recall;

11.3 However, the Applicant does not address the latest notices, which discuss the availability of a remedy;

11.4 The Applicant's assertion is therefore incomplete. At all times, the Respondents acted diligently, to the best of their abilities in light of the available information;

11.5 More precisely, the Respondents are currently deploying a recall which constitutes a final remedy to the alleged defective batteries;

11.6 As such, the Respondents have already started the process and advising its consumers that a final remedy is available;

11.7 In addition to providing a more complete factual context, this evidence is relevant because it will assist the Court in determining the scope of the putative class action, the targeted time-frame, as well as the remedies available to the Group. Ultimately, the deployment of a recall addressing the issue with a final remedy are factual elements that are essential and indispensable for the analysis of the authorization criteria;

11.8 Respondents are thereby seeking to adduce into evidence for the authorization hearing the following documents:

(a) Notices – Safety Recall N212343881 dated October 2021 (English and French) as **Exhibit GM-8**;

(b) FAQs for Safety Recall N212343881 and N212345941 (English and French) as **Exhibit GM-9**;

11.9 In light of the fact that the recall for all targeted Bolts is currently being deployed, the Respondents ask this Court to reserve their rights to complete their relevant evidence closer to the authorization hearing;

12. The present Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

A. **GRANT** the present *Amended Application by Respondents General Motors of Canada Company and General Motors Company for Leave to Adduce Relevant Evidence*;

B. **ALLOW** Respondents General Motors of Canada Company and General Motors Company to file the following Exhibits into the Court record:

a. **GM-1**: 2017 Bolt EV Owner's Manual (English and French);

b. **GM-2**: 2017 Canadian Limited Warranty and Owner Assistance Information (English and French);

c. **GM-3**: (…);

d. **GM-4**: (…);

e. **GM-5**: (…);

f. **GM-6**: (…);

g. **GM-7**: Marketing material for 2017 Bolt EV, *en liasse*;

h. **GM-8**: Notices – Safety Recall N212343881 dated October 2021 (English and French);

i. **GM-9**: FAQs for Safety Recall N212343881 and N212345941 (English and French).

C. **RESERVE** General Motors of Canada Company and General Motors Company's right to file additional relevant evidence pertaining to the recall;

D. **THE WHOLE** without legal costs.

Montréal, November 3, 2021

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TAKE NOTICE that the foregoing *Amended Application by Respondents General Motors of Canada Company and General Motors Company for Leave to Adduce Relevant Evidence* will be presented for hearing and adjudication before the Honorable Justice Christian Immer of the Superior Court, at a date and time to be determined by the Court.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

Montréal, November 3, 2021

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Borden Ladner Gervais LLP
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AMENDED LIST OF THE EXHIBITS

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GM-2	2017 Canadian Limited Warranty and Owner Assistance Information (English and French)
GM-3	(…)
GM-4	(…)
GM-5	(…)
GM-6	(…)
GM-7	Marketing material for 2017 Bolt EV, *en liasse*
GM-8	Notices – Safety Recall N212343881 dated October 2021 (English and French)

GM-9 FAQs for Safety Recall N212343881 and N212345941 (English and French)

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