

CANADA

SUPERIOR COURT  
(Class Action Chambers)

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

DANIELLE DALLAIRE, residing and  
domiciled at [REDACTED]

No.: 500-06-000983-193

Applicant

v.

KIEKERT AG, legal person, having its  
principal place of business at Hoeseler Platz  
2, Heiligenhaus 42579 Germany

and

KIEKERT U.S.A., INC., legal person, having  
its principal place of business at 46941 Liberty  
Drive, Wixom, MI 48393

Defendants

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APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN  
THE STATUS OF REPRESENTATIVE  
(Art 574 C.C.P. and following)

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TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN THE  
CLASS ACTION CHAMBERS IN THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES  
AS FOLLOWS:

I. GENERAL PRESENTATION

1. The Applicant wishes to bring a class action on behalf of the Class hereinafter described, of which she herself is a member, namely:

*"All direct and indirect purchasers in Quebec who purchased or leased motor vehicles\* containing Side-Door Latches and Latch Minimodules or who purchased Side-Door Latches and Latch Minimodules, from September 1, 2008 to May 2013 (the "Class Period")."*

\*Motor vehicle is defined as: cars, sport utility vehicles (SUVs), vans, light trucks (weighing up to 10,000 lbs).

A. Overview

2. Beginning at least as early as September 1, 2008 and continuing through May 2013, or such other time as the anti-competitive effects of the Defendants' conduct ceased (the **Class Period**), the Defendants (as described in paragraphs 8 and 9 below) conspired with various corporations, persons, partnerships, firms and/or individuals not named in this

lawsuit, the identities of which are not presently known, to 1) fix, maintain, increase or control the price for the supply of Side-Door Latches and Latch Minimodules (as defined in paragraph 22 below), 2) to allocate sales, territories, customers or markets for the production or supply of Side-Door Latches and Latch Minimodules, 3) to fix, maintain, control, prevent, lessen or eliminate the production or supply of Side-Door Latches and Latch Minimodules, and/or 4) to rig bids for Side-Door Latches and Latch Minimodules (collectively the **Conspiracy**, as further defined in paragraphs 33 through 38 below).

3. The Conspiracy was targeted at automobile original equipment manufacturers (**OEMs**), who purchased Side-Door Latches and Latch Minimodules directly from the Defendants or one of them, and component manufacturers (**Tier I Manufacturers**), who purchased Side-Door Latches and Latch Minimodules directly from the Defendants or one of them before selling the Side-Door Latches and Latch Minimodules to OEMs.
4. As a consequence of the Defendants' collusive conduct, the Defendants and their co-conspirators eliminated or reduced competition in the Side-Door Latches and Latch Minimodules industry. Through their conduct, the Defendants effectuated an overcharge for Side-Door Latches and Latch Minimodules purchased by OEMs and Tier I Manufacturers.
5. OEMs and Tier I Manufacturers passed their increased costs for the purchase of Side-Door Latches and Latch Minimodules on to indirect purchasers of Side-Door Latches and Latch Minimodules, including but not limited to indirect purchasers in Quebec who purchased or leased vehicles containing Side-Door Latches and Latch Minimodules and Side-Door Latches and Latch Minimodules for replacement parts.
6. The Defendants' Conspiracy had the effect of overcharging both direct and indirect purchasers of Side-Door Latches and Latch Minimodules and direct and indirect purchasers of Side-Door Latches and Latch Minimodules suffered losses as a consequence of the Defendants' unlawful conduct.
7. Through this suit, Quebec direct and indirect purchasers of Side-Door Latches and Latch Minimodules seek to hold the Defendants accountable for their unlawful Conspiracy.

#### **B. The Parties**

8. Kiekert AG is a German corporation organized and existing under the laws of Germany with its principal place of business in Heiligenhaus, Germany. During the Class Period, Defendant Kiekert AG, directly and/or through its subsidiaries, which it wholly owned and/or controlled – manufactured, marketed and/or sold Side-Door Latches and Latch Minimodules that were sold and purchased throughout Canada, including in Quebec.
9. Kiekert U.S.A., Inc. is an American corporation with its principal place of business in Wixom, Michigan. Kiekert U.S.A., Inc. is a subsidiary and wholly owned and/or controlled by its parent, Kiekert AG. Kiekert U.S.A., Inc. manufactured, marketed and/or sold Side-Door Latches and Latch Minimodules that were sold and purchased throughout Canada, including in Quebec, during the Class Period. At all times during the Class Period, Kiekert U.S.A., Inc.'s activities in Canada and elsewhere were under the control and direction of its German parent.
10. The Defendant companies named in paragraphs 8 and 9 of this application are collectively referred to as the "**Kiekert Defendants**". Each of the Kiekert Defendants was an agent of

the other for the purposes of the manufacture, distribution, marketing and/or sale of the Side-Door Latches and Latch Minimodules.

11. At all material times, the Kiekert Defendants functioned as a joint enterprise in the Conspiracy to suppress and eliminate competition in the Side-Door Latches and Latch Minimodules industry. The business of each of the Kiekert Defendants is inextricably interwoven, and they operate collectively for their mutual benefit and profit.
12. Other corporations, persons, partnerships, firms and/or individuals not named in this application, because their identities are currently unknown to the Applicant, participated as co-conspirators in the Conspiracy and performed acts and made statements and agreements in furtherance of the Conspiracy. The co-conspirators were all persons whom it is reasonable to believe would have, in the absence of the Conspiracy, been likely to have competed with the Kiekert Defendants with respect to Side-Door Latches and Latch Minimodules. Reference by the Applicant to the Kiekert Defendants in this application includes reference to their co-conspirators as well.
13. Whenever reference is made in this application to any act, communication, agreement or transaction of a corporation, the Applicant is alleging that the corporation engaged in the act, communication, agreement or transaction by or through its directors, officers, employees and/or agents while they were actively engaged in the direction, management and/or control of the corporation's business.
14. The Applicant, Danielle Dallaire, is a resident of Quebec who purchased a motor vehicle equipped with the Defendants' Side-Door Latches and Latch Minimodules during the Class Period, in April 2009.

### ***C. The Door Latches Market and Governmental Investigations***

#### **The Door Latches Market is Generally Conducive to a Price-Fixing Conspiracy**

15. The structure and other characteristics of the automotive parts market and sub-markets in Canada and elsewhere are conducive to price-fixing arrangements and have made collusion particularly attractive. Specifically, with respect to each component part in the automotive parts market, including the Side-Door Latches and Latch Minimodules market, there are (1) high barriers to entry, and (2) inelasticity of demand.
16. A new entrant into the Side-Door Latches and Latch Minimodules market would face costly and lengthy start-up costs, including multi-million-dollar costs associated with manufacturing plants and equipment, energy, transportation, distribution infrastructure and long-standing customer relationships.
17. A collusive arrangement that raises product prices above competitive levels would, under basic economic principles, attract new entrants seeking to benefit from the supra-competitive pricing. But, where there are significant barriers to entry, new entrants are less likely. Thus, barriers to entry help to facilitate the formation and maintenance of cartels.
18. Demand is said to be "inelastic" if an increase in the price of a product results in only a small decline in the quantity sold of that product, if any. In other words, customers have nowhere to turn for alternative, cheaper products of similar quality, and so continue to purchase the product despite a price increase. Inelastic demand is a market characteristic

that facilitates collusion, allowing producers to raise their prices without triggering customer substitution and lost sales revenue.

19. Demand for Side-Door Latches and Latch Minimodules is highly inelastic because there are no close substitutes for these products. In addition, customers must purchase these components as an essential part of a vehicle, even if the prices are kept at supra-competitive levels.

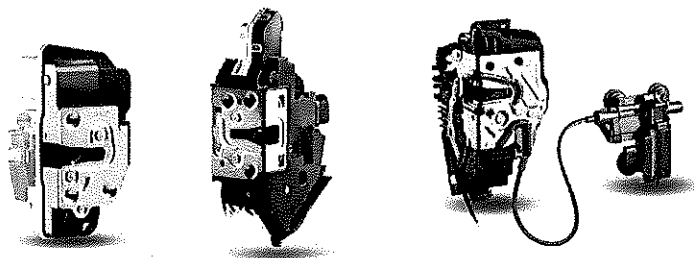
#### **Investigation and Guilty Pleas – Canada and the United States**

20. A press release from the Competition Bureau Canada indicates that the Bureau's investigation of international bid-rigging conspiracies among car parts suppliers resulted in 13 guilty pleas and over \$86 million in fines imposed by the courts in Canada, as appears from a copy of said press release dated October 19, 2018 which followed a similar press release dated February 14, 2018, disclosed *en liasse* as **Exhibit P-1**.
21. On March 7, 2017, the United States Department of Justice announced that Kiekert AG agreed to plead guilty to a criminal conspiracy to allocate sales, rig bids, and fix the prices of Side-Door Latches and Latch Minimodules sold to Ford Motor Company ("Ford") and its subsidiaries in the United States and elsewhere. As part of that guilty plea, Kiekert AG agreed to pay a \$6.1 million criminal fine for its role in the conspiracy alleged herein, as appears from copy of a press release from the United States Department of Justice disclosed as **Exhibit P-2**.

#### **D. Side-Door Latches and Latch Minimodules and the Conspiracy**

##### **Side-Door Latches and Latch Minimodules**

22. A "Side-Door Latch" secures the door to a vehicle body and may be locked to prevent unauthorized access to a vehicle from the exterior. A "Latch Minimodule" includes the Side-Door Latch and all of the related mechanical operating components, including the electric lock function. When reference is made herein to Side-Door Latches and Latch Minimodules this includes components and/or parts thereof.  
Some examples of Side-Door Latches and Latch Minimodules appear below:



23. Side-Door Latches and Latch Minimodules are recognized by major companies in the automotive industry – including the Kiekert Defendants – as important to both the safety and the consumer satisfaction of an automobile.
24. Side-Door Latches and Latch Minimodules are considered "safety-critical systems" due to federal and original equipment manufacturer ("OEM") regulations.
25. Side-Door Latches and Latch Minimodules are installed by OEMs in Vehicles as part of the automotive manufacturing process.

26. Before ordering Side-Door Latches and Latch Minimodules, OEMs and, in some circumstances, Tier I Manufacturers, request pricing from automotive part suppliers through requests for quotation (“RFQs”).
27. Once a supplier is awarded a contract to supply parts for a particular automobile model, the supplier typically supplies the parts for the lifespan of the model.
28. In response to RFQs for Side-Door Latches and Latch Minimodules, the Kiekert Defendants submitted price quotes to various OEMs and Tier I Manufacturers. In response to their submitted quotes, the Kiekert Defendants and the co-conspirators were awarded certain supply contracts.
29. Pursuant to these supply contracts, the Kiekert Defendants and the co-conspirators manufactured Side-Door Latches and Latch Minimodules in the Canada, the United States, Japan and elsewhere and then supplied the Side-Door Latches and Latch Minimodules to various OEMs and Tier I Manufacturers for installation in vehicles: 1) manufactured and sold in Canada, including in Quebec, 2) manufactured and sold in the United States, 3) manufactured and sold elsewhere, 4) manufactured in Canada and then exported to and sold elsewhere, 5) manufactured in the United States or elsewhere and then imported to and sold in Canada, including in Quebec, and/or 6) as replacement parts.
30. The affected OEMs included, but were not limited to: Ford Motor Company and certain of its subsidiaries, affiliates, and suppliers in Canada, the United States and elsewhere; Toyota Motor Corporation and certain of its subsidiaries, affiliates, and suppliers in Canada, the United States, Japan and elsewhere; Honda Motor Co., Ltd. and certain of its subsidiaries, affiliates, and suppliers in Canada, the United States, Japan and elsewhere; and General Motors Company and certain of its subsidiaries, affiliates, and suppliers in Canada, the United States and elsewhere.
31. The identities of all affected OEMs and Tier I Manufacturers who entered into supply contracts with the Kiekert Defendants and their co-conspirators are currently unknown to the Applicant.
32. The sale of the Side-Door Latches and Latch Minimodules – and the Conspiracy which led to their artificially inflated prices – resulted in substantial revenues for the Kiekert Defendants and their co-conspirators. The revenues of these companies were increased as a consequence of the Conspiracy.

### **The Conspiracy**

33. The Kiekert Defendants and their co-conspirators voluntarily colluded as between themselves and with other co-conspirators to use unlawful means to injure the economic interests of 1) OEMs and/or Tier I Manufacturers, and 2) indirect purchasers of the Side-Door Latches and Latch Minimodules.
34. Beginning at least as early as September 1, 2008 and continuing through May 2013, or such other time as the anti-competitive effects of the Kiekert Defendants’ conduct ceased, the exact dates being unknown to the Applicant, the Kiekert Defendants and their co-conspirators knowingly entered into one or more continuing agreement(s), understanding(s) and concert(s) of action to 1) increase or maintain the prices of Side-Door Latches and Latch Minimodules, and/or 2) suppress and eliminate competition with respect to the

manufacture, marketing, sale and/or distribution of Side-Door Latches and Latch Minimodules (collectively the "**Agreement**"), and to conceal their Agreement from OEMs, Tier I Manufacturers and industry stakeholders.

35. The substantial terms of the Agreement included: 1) fixing, maintaining, increasing or controlling the price for the supply of Side-Door Latches and Latch Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere, 2) allocating sales, territories, customers or markets for the production or supply Side-Door Latches and Latch Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere, 3) fixing, maintaining, controlling, preventing, lessening or eliminating the production or supply of Side-Door Latches and Latch Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere, and/or 4) engaging in bid-rigging with respect to quotes for the supply of Side-Door Latches and Latch Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere.
36. With respect to the Conspiracy, "price" includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of Side-Door Latches and Latch Minimodules.
37. Bid-rigging, with respect to the Conspiracy, means:
  - a. an agreement or arrangement between or among the Kiekert Defendants and their co-conspirators whereby one or more of those persons agreed or undertook not to submit a bid or tender in response to a call or request for bids or tenders, or agreed or undertook to withdraw a bid or tender submitted in response to such a call or request, or
  - b. the submission, in response to a call or request for bids or tenders, of bids or tenders was arrived at by the agreement or arrangement between or among the Kiekert Defendants and their co-conspirators

where the agreement or arrangement was not made known to OEMs and/or Tier I Manufacturers calling for or requesting the bids or tenders for Side-Door Latches and Latch Minimodules at or before the time when any bid or tender was submitted or withdrawn by the Kiekert Defendants and/or their co-conspirators.

38. For the purpose of carrying out the Conspiracy, the Kiekert Defendants and their co-conspirators engaged in conduct that included, among other things:
  - a. participating in meetings, conversations and other communications to discuss the bids and price quotations to be submitted to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere;
  - b. participating in meetings, conversations and other communications to discuss the allocation among the companies of certain sales, territories, customers or markets for the production or supply of Side-Door Latches and Latch Minimodules;
  - c. agreeing, during those meetings, conversations and communications on bids and price quotations to be submitted to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere or, alternatively, agreeing that one or more of the companies not submit bids in response to RFQs or that one or more companies withdraw bids submitted in response to RFQs;
  - d. agreeing, during those meetings, conversations and communications to fix, maintain, increase or control the price for the supply of Side-Door Latches and Latch

- Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere;
- e. agreeing, during those meetings, conversations and communications to allocate among the companies certain sales, territories, customers or markets for the production or supply of Side-Door Latches and Latch Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere;
  - f. agreeing, during those meetings, conversations and communications to fix, maintain, control, prevent, lessen or eliminate the production or supply of Side-Door Latches and Latch Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere;
  - g. in order to effectuate the Agreement, exchanging information on: 1) bids and price quotations to be submitted to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere, 2) the allocation of certain sales, territories, customers or markets for the production or supply of Side-Door Latches and Latch Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere, and/or 3) the production and supply of Side-Door Latches and Latch Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere;
  - h. in accordance with the Agreement, submitting bids and price quotations to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere or, alternatively, declining to submit bids in response to RFQs or withdrawing bids submitted in response to RFQs;
  - i. in accordance with the Agreement, fixing, maintaining, increasing and/or controlling the price for the supply of Side-Door Latches and Latch Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere;
  - j. in accordance with the Agreement, allocating among the co-conspirators certain sales, territories, customers and/or markets for the production or supply of Side-Door Latches and Latch Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere;
  - k. in accordance with the Agreement, fixing, maintaining, controlling, preventing, lessening and/or eliminating the production and/or supply of Side-Door Latches and Latch Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere;
  - l. selling Side-Door Latches and Latch Minimodules to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere at collusive and non-competitive prices;
  - m. accepting payment for Side-Door Latches and Latch Minimodules sold to OEMs and/or Tier I Manufacturers in Canada, the United States, Japan and elsewhere at collusive and non-competitive prices which resulted in increased revenues for the Kiekert Defendants and their co-conspirators;
  - n. engaging in conversations and other communications for the purpose of monitoring and enforcing adherence to the agreed upon bid rigging and price fixing scheme; and
  - o. employing measures to keep their conduct secret.

#### ***E. Damages***

39. As a direct result of the anticompetitive and unlawful conduct alleged herein, the Applicant and Class members paid artificially inflated prices for Side-Door Latches and Latch Minimodules during the Class Period and have thereby suffered damages.
40. The Kiekert Defendants' price-fixing Conspiracy had the following effects, among others:

- a. Price competition has been restrained or eliminated with respect to Side-Door Latches and Latch Minimodules;
- b. The prices of Side-Door Latches and Latch Minimodules have been fixed, increased, maintained, or stabilized at artificially inflated levels;
- c. Direct and indirect purchasers of Side-Door Latches and Latch Minimodules in Canada, including in the province of Quebec, the United States, Japan and elsewhere have been deprived of free and open competition; and
- d. Direct and indirect purchasers of Side-Door Latches and Latch Minimodules in Canada, including in the province of Quebec, the United States, Japan and elsewhere paid artificially inflated prices for the Side-Door Latches and Latch Minimodules.

#### ***F. The Defendants' Liability***

41. The Kiekert Defendants' conduct and that of their co-conspirators was contrary to Part VI of the *Competition Act*.
42. Each of the Kiekert Defendants aided, abetted and/or counselled the other Defendants and their co-conspirators in the commission of the breaches of Part VI of the *Competition Act*. Each of the Kiekert Defendants therefore violated sections 21 and 22 of the *Criminal Code*.
43. The conduct of the Kiekert Defendants and their co-conspirators was also contrary to the competition laws of the United States, Japan and various European nations.
44. Further, for the purpose of giving effect to the Conspiracy and contrary to Part VI of the *Competition Act*, beginning at least as early as September 1, 2008 and continuing through May 2013 or such other time as the anti-competitive effects of the Kiekert Defendants' conduct ceased, the exact dates being unknown to the Applicant, the Kiekert Defendants, wherever incorporated who carried on business in Canada, implemented, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication to the corporation or any person from a person in a country other than Canada who was in a position to direct or influence the policies of the corporation, which communication was for the purpose of giving effect to a conspiracy, combination, agreement or arrangement entered into outside Canada, whether or not any director or officer of the corporation in Canada had knowledge of the conspiracy, combination, agreement or arrangement.
45. The purpose of the conspiratorial conduct of the Kiekert Defendants and their co-conspirators was to increase, fix, rig, maintain, control or stabilize the price of Side-Door Latches and Latch Minimodules. As a direct and foreseeable result of the Conspiracy, the prices of 1) Side-Door Latches and Latch Minimodules, and 2) motor vehicles containing Side-Door Latches and Latch Minimodules were artificially inflated, in Canada, including in the province of Quebec, and in the United States, Japan and elsewhere. The Applicant and Class Members were overcharged for Side-Door Latches and Latch Minimodules.
46. The conduct of the Kiekert Defendants in furtherance of the Conspiracy was unlawful and inequitable. The increased revenues that the Kiekert Defendants realized as a consequence of artificially inflating the prices of Side-Door Latches and Latch Minimodules are ill-gotten profits.
47. Pursuant to section 36 of the *Competition Act*, the Applicant and Class members are entitled to recover from the Kiekert Defendants an amount equal to the loss or damage suffered by them, together with any additional amount that the Court may allow.



48. Furthermore, the Kiekert Defendants failed to comply with their obligations under the *Civil Code of Quebec* such as, and without limiting the generality of the foregoing, those relating to their good faith obligation and duty not to cause injury to another.
49. The Kiekert Defendants intended to cause damage to the Applicant and Class members. Alternatively, the Kiekert Defendants knew or ought to have known that their actions would cause damage to the Applicant and Class members.
50. The Kiekert Defendants' anticompetitive and unlawful conduct, including their participation in the Conspiracy, was concealed and conducted in such a way as to prevent its discovery by the Applicant and the Class members.
51. Moreover, a reasonable person placed in the same circumstances would not have seen fit to investigate the legitimacy of the prices of the Kiekert Defendants' Side-Door Latches and Latch Minimodules.
52. Each of the Kiekert Defendants is jointly and severally liable for the actions of the other Defendant and their co-conspirators and for the damages allocated to each Defendant.

### **Punitive Damages**

53. A punitive damage award in this case is necessary to express society's condemnation of the conduct engaged in by the Kiekert Defendants and to achieve the goals of both specific and general deterrence.
54. The Kiekert Defendants intentionally engaged in unlawful conduct for their personal financial gain. The conduct of the Kiekert Defendants was planned and deliberate. It lasted for several years. The Kiekert Defendants profited from their misconduct. Their conduct was high-handed and represented a marked departure from ordinary standards of decent behavior.
55. Compensatory damages are insufficient in this case. The conduct of the Kiekert Defendants merits punishment and warrants a claim for punitive damages.

### **Unjust Enrichment**

56. Three criteria are required to establish unjust enrichment: 1) an enrichment, 2) a corresponding deprivation, and 3) the absence of any juristic reason for the enrichment.
57. In this case, the Kiekert Defendants were enriched by the artificially inflated prices of Side-Door Latches and Latch Minimodules caused by the Conspiracy. These artificially inflated prices resulted in increased revenues for the Kiekert Defendants.
58. The Applicant and Class members suffered a corresponding deprivation as a consequence of the inflated prices of Side-Door Latches and Latch Minimodules, namely: paying more for Side-Door Latches and Latch Minimodules and vehicles containing Side-Door Latches and Latch Minimodules than they would have in the absence of the Conspiracy.
59. There was no juristic reason or justification for the enrichment of the Kiekert Defendants; conversely, the conduct of the Kiekert Defendants was unlawful.

## II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT

60. The facts giving rise to an individual claim by the Applicant against the Kiekert Defendants are as follows:
- a. during the Class Period, the Applicant, Danielle Dallaire, purchased a 2010 Honda Insight, as shown in the April 22, 2009 contract of purchase, disclosed as **Exhibit P-3**;
  - b. in light of the Kiekert Defendants' anticompetitive and unlawful conduct, the Applicant was deprived of free and open competition and, as a result, paid an artificially inflated price for the motor vehicle equipped with Side-Door Latches and Latch Minimodules which she purchased;
  - c. the Applicant suffered damages as a result of the Kiekert Defendants' anticompetitive and unlawful actions, namely the difference between the artificially inflated price paid for the motor vehicle she purchased equipped with Side-Door Latches and Latch Minimodules and the price she would have normally paid in a market where free and open competition prevails;
  - d. the Kiekert Defendants' anticompetitive and unlawful actions were camouflaged and were not brought to the attention of the Applicant;
  - e. the Applicant did not and could not know that the Kiekert Defendants were involved in anticompetitive and unlawful conduct and breaching their obligations.

61. The Applicant's damages are a direct result of the Kiekert Defendants' conduct.

62. Thus, the Applicant is justified in claiming damages from the Kiekert Defendants.

## III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE CLASS

63. The facts giving rise to the individual claims by each of the members of the Class against the Kiekert Defendants are as follows:
- a. every member of the Class has purchased Side-Door Latches and Latch Minimodules and/or purchased or leased a motor vehicle equipped with Side-Door Latches and Latch Minimodules ;
  - b. in light of the Kiekert Defendants' anticompetitive and unlawful conduct, every member of the Class was deprived of transactions in a free and open market and, as a result, paid an artificially inflated price for the purchase of Side-Door Latches and Latch Minimodules and/or for the purchase or rental of motor vehicles equipped with these components;
  - c. every member of the Class suffered damages equal to the difference between the artificially inflated price paid for Side-Door Latches and Latch Minimodules and / or motor vehicles equipped with these components that they purchased or leased, and the price they should have normally paid in a market where free and open competition prevails;
  - d. the Kiekert Defendants' anticompetitive and unlawful actions were camouflaged and were not brought to the attention of the Class members;
  - e. the Class members did not and could not know that the Kiekert Defendants were involved in anticompetitive and unlawful conduct and breaching their obligations;
  - f. every member of the class suffered damages as a direct result of the Kiekert Defendants' anticompetitive and unlawful conduct;
  - g. thus, each Class member is justified in claiming damages suffered as a result of

the Kiekert Defendants' anticompetitive and unlawful conduct.

#### IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

64. The composition of the Class makes it difficult or impractical to apply the rules relating to the mandate to sue or be sued on behalf of others or for consolidation of proceedings, having regard to Article 575 (3) of the *Civil Code of Procedure*, in that:
- a. the number of people in the Class is estimated at several million, given the sales figures of the Kiekert Defendants and the widespread use of the products described herein;
  - b. Class members are numerous and scattered across the entire province;
  - c. the names and addresses of the persons who are part of the Class are unknown to the Applicant;
  - d. all the facts alleged in the foregoing paragraphs demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain mandates and to join them together into one action;
  - e. in these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Class to effectively pursue their respective legal rights and gain access to justice.
65. The claims of the members of the Class raise identical, similar or related issues of law or fact.
66. Individual issues, if any, pale by comparison to the numerous common issues that are significant to the outcome of the litigation.
67. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, namely, the Kiekert Defendants' misconduct.
68. The questions of fact or of law that concern the members of the Class Action and the Applicant are listed in the following paragraphs and are identical, similar or related for each:
- a. Have the Kiekert Defendants conspired and/or entered into an agreement or arrangement that had the effect of unduly restricting competition in the sale of Side-Door Latches and Latch Minimodules and/or artificially increasing the price of Side-Door Latches and Latch Minimodules and, if so, during what period did this conspiracy and bid rigging have an effect on the Applicant and the Class members?
  - b. Does the participation of the Kiekert Defendants in the conspiracy and bid rigging constitute a fault for which they are jointly and severally liable towards the Applicant and the Class members?
  - c. Did the conspiracy and bid rigging result in an increase in the price paid by the Applicant and Class members in Quebec for the purchase of Side-Door Latches and Latch Minimodules and/or the purchase and/or rental of motor vehicles equipped with Side-Door Latches and Latch Minimodules and, if so, does this increase constitute a damage to the Applicant and to each of the members of the Class?
  - d. What is the total amount of damages suffered by the Applicant and the Class members?
  - e. Are the Kiekert Defendants liable to pay punitive damages and if so, in what amount?
  - f. Are the Applicant and Class members justified in claiming the reimbursement of the costs incurred in the present matter, namely the costs of investigation, the

- extrajudicial fees and disbursements of attorneys for the Applicant?
- g. Were the Kiekert Defendants unjustly enriched and if so, should the Kiekert Defendants disgorge their profits?

## V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

69. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;
70. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:
- **GRANT** the class action of the Applicant; and each of the members of the Class;
  - **CONDEMN** the Defendants, jointly and severally, to pay compensatory damages valued at \$ 50,000,000 to be adjusted, and **ORDER** collective recovery of those sums;
  - **CONDEMN** the Defendants, jointly and severally, to pay punitive damages valued at \$ 5,000,000 to be adjusted, and **ORDER** collective recovery of those sums;
  - **CONDEMN** the Defendants, jointly and severally, to pay the costs incurred for any investigation necessary to establish their liability in this case, including the extrajudicial fees and disbursements of attorneys for the Applicant;
  - **CONDEMN** the Defendants, jointly and severally, to pay interest at the legal rate plus the additional indemnity provided for in article 1619 of the *Civil Code of Quebec* on the above sums from the date of service of the application to authorize a class action;
  - **CONDEMN** the Defendants to bear the costs of the present action including expert fees and notice fees;
  - **RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;
71. The Applicant requests that she be attributed the status of representative of the Class and is able to ensure adequate representation of the members of the Class for the following reasons:
- a. She is a member of the Class;
  - b. The Applicant is ready and available to manage and direct the present action in the interest of the members of the Class that she wishes to represent and is determined to lead the present action 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 before the Courts and the Fonds d'aide aux actions collectives, as the case may be, and to collaborate with her attorneys;
  - c. Applicant has the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;
  - d. Applicant has given the mandate to her attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
  - e. Applicant, with the assistance of her attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;

- f. Applicant has given instructions to her attorneys to put information about this class action on their website and to collect the coordinates of those Class members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;
- g. Applicant is in good faith and has instituted this action for the sole goal of having her 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 the Kiekert Defendants' conduct;
- h. Applicant understands the nature of the action;
- i. Applicant's interests do not conflict with the interests of other Class members and further, Applicant has no interest that is antagonistic to those of other members of the Class;
- j. Applicant is prepared to be examined out-of-court on her allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;
- k. Applicant has spent time researching this issue on the internet and discussing with her attorneys to prepare this file. In so doing, she is convinced that the problem is widespread.

72. The Applicant proposes, in the best interests of the Class members, that this class action be brought before the Superior Court, sitting in the District of Montreal, for the following reasons:

- a. a great number of the members of the Class reside in the judicial district of Montreal;
- b. many of the purchases of Side-Door Latches and Latch Minimodules and/or purchases or leases of motor vehicles containing Side-Door Latches and Latch Minimodules were concluded in the judicial district of Montreal;
- c. the Applicant's attorneys practice their profession in the judicial district of Montreal.

73. The whole cause of action arose in Quebec.

74. The present application is well founded in fact and in law.

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

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an application to institute proceedings in damages;

**DESIGNATE** the Applicant, Danielle Dallaire, as representative of the persons included in the Class herein described as:

*"All direct and indirect purchasers in Quebec who purchased or leased motor vehicles\* containing Side-Door Latches and Latch Minimodules or who purchased Side-Door Latches and Latch Minimodules, from September 1, 2008 to May 2013 (the "Class Period")."*

\*Motor vehicle is defined as: cars, sport utility vehicles (SUVs), vans, light trucks (weighing up to 10,000 lbs).

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

- a. Have the Kiekert Defendants conspired and / or entered into an agreement or arrangement that had the effect of unduly restricting competition in the sale of Side-Door Latches and Latch Minimodules and/or artificially increasing the price of Side-Door Latches and Latch Minimodules and, if so, during what period did this conspiracy and bid rigging have an effect on the Applicant and the Class members?
- b. Does the participation of the Kiekert Defendants in the conspiracy and bid rigging constitute a fault for which they are jointly and severally liable towards the Applicant and the Class members?
- c. Did the conspiracy and bid rigging result in an increase in the price paid by the Applicant and Class members in Quebec for the purchase of Side-Door Latches and Latch Minimodules and/or the purchase and / or rental of motor vehicles equipped with Side-Door Latches and Latch Minimodules and, if so, does this increase constitute a damage to the Applicant and to each of the members of the Class?
- d. What is the total amount of damages suffered by the Applicant and the Class members?
- e. Are the Kiekert Defendants liable to pay punitive damages and if so, in what amount?
- f. Are the Applicant and Class members justified in claiming the reimbursement of the costs incurred in the present matter, namely the costs of investigation, the extrajudicial fees and disbursements of attorneys for the Applicant?
- g. Were the Kiekert Defendants unjustly enriched and if so, should the Kiekert Defendants disgorge their profits?

The interests of justice favour that this motion be granted in accordance with its conclusions;

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

- **GRANT** the class action of the Applicant and each of the members of the Class;
- **CONDEMN** the Defendants, jointly and severally, to pay compensatory damages valued at \$ 50,000,000 to be adjusted, and **ORDER** collective recovery of those sums;
- **CONDEMN** the Defendants, jointly and severally, to pay punitive damages valued at \$ 5,000,000 to be adjusted, and **ORDER** collective recovery of those sums;
- **CONDEMN** the Defendants, jointly and severally, to pay the costs incurred for any investigation necessary to establish their liability in this case, including the extrajudicial fees and disbursements of attorneys for the Applicant;
- **CONDEMN** the Defendants, jointly and severally, to pay interest at the legal rate plus the additional indemnity provided for in article 1619 of the *Civil Code of Quebec* on the above sums from the date of service of the application to authorize a class action;
- **CONDEMN** the Defendants to bear the costs of the present action including expert fees and notice fees;
- **RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class.

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

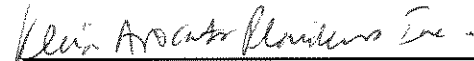
**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the Class members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the Class in accordance with articles 576 and 579 C.C.P. within sixty (60) days from the judgment to be rendered herein;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;


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

Montreal, March 11, 2019



**Klein Avocats Plaideurs Inc.**  
500, Place d'Armes, suite 1800  
Montreal, Quebec, H2Y 2W2  
**Attorneys for the Applicant**

TRUE COPY

  
Klein Avocats Plaideurs Inc.

**SUMMONS**  
(articles 145 and following C.C.P.)

**Filing of a judicial application**

Take notice that the applicant has filed this originating application in the office of the Superior Court in the judicial district of Montréal.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the Montréal courthouse situated at 1, Notre-Dame Est, Montréal, Québec, 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 applicant.

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 an applicant 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 applicant'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 originating application, the Applicant intends to use the following exhibits:

EXHIBIT P-1:	<i>En liasse</i> copy of the Competition Bureau Canada's press releases dated October 19, 2018 and February 14, 2018
EXHIBIT P-2:	Copy of a United States Department of Justice press release dated March 7, 2017
EXHIBIT P-3:	Copy of the Applicant's contract of purchase relating to the purchase of her vehicle

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.

CANADA

**SUPERIOR COURT**  
**(Class Action Chambers)**

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
No.: 500-06-000983-193

\_\_\_\_\_  
**DANIELLE DALLAIRE**, residing and domiciled  
at \_\_\_\_\_

Applicant

v.

**KIEKERT AG**, legal person, having its principal  
place of business at Hoeseler Platz 2,  
Heiligenhaus 42579 Germany

and

**KIEKERT U.S.A., INC.**, legal person, having its  
principal place of business at 46941 Liberty  
Drive, Wixom, MI 48393

Defendants

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

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**TO:** **KIEKERT AG**, having its principal place of business at Hoeseler Platz 2, Heiligenhaus 42579  
Germany

and

**KIEKERT U.S.A., INC.**, having its principal place of business at 46941 Liberty Drive, Wixom, MI  
48393

**Defendants**

**TAKE NOTICE** that the *Application for authorization to institute a class action and to obtain the status of representative* will be presented before one of the honourable judges of the Superior Court sitting in the Class Action Chambers at the Montréal Courthouse located at 1, Notre-Dame Est, at a date and time to be determined by the Class Action Chambers coordinator.

**GOVERN YOURSELVES ACCORDINGLY.**

Montreal, March 11, 2019



**Klein Avocats Plaideurs Inc.**

Attorneys for the Applicant

TRUE COPY

  
Klein Avocats Plaideurs Inc.

CANADA

SUPERIOR COURT  
(Class Action Chambers)

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
No.: 500-06-000983-193

\_\_\_\_\_

DANIELLE DALLAIRE

Applicant

v.

KIEKERT AG ET AL.

Defendants

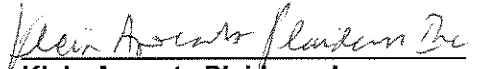
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**ATTESTATION OF ENTRY IN THE NATIONAL CLASS ACTION REGISTER**  
**(ART 55 of the Regulation of the Superior Court of Québec in civil matters)**

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The Applicant, through her attorneys, attests that the *Application for authorization to institute a class action and to obtain the status of representative* will be entered into the national class action register.

Montreal, March 11, 2019

  
**Klein Avocats Plaideurs Inc.**  
Attorneys for the Applicant

TRUE COPY  
  
Klein Avocats Plaideurs Inc.