CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-001124-219

SUPERIOR COURT
(CLASS ACTION CHAMBER)

[redacted]**NOEL,** natural person, residing at [redacted] Québec, [redacted]

Petitioner

-vs.-

OTTO FUCHS Beteiligungen KG (f/k/a OTTO FUCHS – Kommanditgesellschaft), legal person duly constituted, having its address of service at North Rhine-Westphalia District court Iserlohn HRA 2592

and

Leiber Group GmbH & Co. KG, legal person duly constituted, having its address for service at Baden-Wurttemberg District court Stuttgart HRA 721549

and

Strojmetal Aluminium Forging GmbH, legal person duly constituted, having its addres for service at Baden-Wurttemberg District court Freiburg HRB 705411

and

Bharat Forge Aluminiumtechnik GmbH, legal person duly constituted, having its address for service at Saxony District court Chemnitz HRB 29755

and

Presswerk Krefeld GmbH & Co. KG, legal person duly constituted,

having its address for service at North Rhine-Westphalia District court Krefeld HRA 5046

and

Hirschvogel Aluminium GmbH, legal person duly constituted, having its address for service at Baden-Wurttemberg District court Jena HRB 404672

Respondents

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION & TO OBTAIN THE STATUS OF REPRESENTATIVE PLAINTIFF
(Art. 571 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER RESPECTFULLY ALLEGES AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

> All persons resident in Québec during the Class Period who purchased or leased an automobile, or purchased Replacement Parts, containing Forged Aluminum Products manufactured, marketed, distributed and/or sold by one or more of the Defendants (the "**Class**" and "**Class Members**")

2. Petitioner contends that beginning as early as April 2006 until at least April 2018 (the "**Class Period**"), the Defendants unlawfully conspired together, in the form of arrangements, agreements or otherwise, to fix supply, allocate sales and production markets, to eliminate competition, and to rig bids for certain Forged Aluminum Products (as described below) that are essential to the production of automobiles (the "**Conspiracy**" detailed further below);

3. On December 23, 2020, the German competition authority, the *Bundeskartellamt,* issued a press release advising that the Defendants had been fined an approximate 175 million euros

after two of the Defendants cooperated with the investigation, a copy of the press release found enclosed as **Exhibit P-1**;

4. Currently, the following automobile models have been implicated in the Conspiracy:

Vehicles Sold in Canada Containing the Forged Aluminum Products at Issue

Alfa Romeo			
Stelvio	Giulia		
Aston Martin			
V12			
Audi			
A3	A4	A5	A6
A7	A8	Q3	Q5
Q7	Q8	S3	S6
S8	SQ8	RS4	RS5
RS6 Avant	RS7	R8	TT
TT RS	E-TRON		
Bentley			
Continental GT			
BMW			
3-Series/M3	5-Series/M5	6-Series/M6	7-Series
M2	M4	X2	X3
X5	X6	i3	i8
Chevrolet			
Colorado			
Ferrari			
California	Portofino		
Ford			

Fusion			
Jaguar			
X-Type	XJ		
Lamborghini			
Gallardo	Hurucan	Urus	
Mercedes-Benz			
S-Class	SL	SLK	SLC
ST	C-Class	CL	CLS
G-Class	GLC	GLK	GT
GT4	E-Class	Maybach	
MINI			
Clubman	Mini	Countryman	
Porsche			
911S	914	918 Spyder	944
997 Turbo	Boxster	Cayman	Cayenne
Macan	Panamera	Taycan	
Rolls-Royce			
Cullinan	Dawn	Ghost	Phantom
Wraith			
Volkswagen			
Golf	Jctta	Passat	Phaeton
Touareg			
Volvo			
S60	S80	V70	

B) The Respondents

5. The Defendant OTTO FUCHS Beteiligungen KG (f/k/a OTTO FUCHS – Kommanditgesellschaft) ("**OTTO FUCHS**") is a German corporation with a registered office

in Meinerzhagen, Germany. During the Class Period, OTTO FUCHS manufactured, marketed, sold, and/or distributed Forged Aluminum Products including *inter alia* vehicle wheels to customers throughout Quebec, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries,. OTTO FUCHS is a vertically-integrated company that describes itself as an OEM in addition to being an aluminum forger. A corporation search for this Defendant is appended as **Exhibit P-2;**

6. The Defendant Leiber Group GmbH & Co. KG ("**Leiber Group**") is a German corporation with a registered office in Emmingen-Liptingen, Germany. During the Class Period, Leiber Group manufactured, marketed, sold, and/or distributed Forged Aluminum Products including *inter alia* engine, chassis, body and drive flange automotive parts to customers throughout Quebec, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. A corporation search for this Defendant is appended as **Exhibit P-3;**

7. The Defendant Strojmetal Aluminium Forging GmbH ("**Strojmetal**") is a German corporation with a registered office in Singen Hohentwiel, Germany. During the Class Period, Strojmetal manufactured, marketed, sold, and/or distributed Forged Aluminum Products, including *inter alia* suspension, decorative and powertrain automotive parts to customers throughout Quebec, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. A corporation search for this Defendant is appended as **Exhibit P-4;**

8. The Defendant Bharat Forge Aluminiumtechnik GmbH ("**Bharat**") is a German corporation with a registered office in Brand-Erbisdorf, Germany. During the Class Period, Bharat manufactured, marketed, sold, and/or distributed Forged Aluminum Products including *inter alia* swivel and bearing automotive parts to customers throughout Quebec, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. The Defendant Bharat cooperated with German competition authorities in their investigation of the Conspiracy. A corporation search for this Defendant is appended as **Exhibit P-5;**

9. The Defendant Presswerk Krefeld GmbH & Co. KG ("**Presswerk**") is a German corporation with a registered office in Krefelt, Germany. During the Class Period, Presswerk manufactured, marketed, sold, and/or distributed Forged Aluminum Products including *inter alia* linkage and suspension, brake foundation and steering automotive parts to customers

throughout Quebec, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. The Defendant Presswerk cooperated with German competition authorities in their investigation of the Conspiracy. A corporation search for this Defendant is appended as **Exhibit P-6;**

10. The Defendant Hirschvogel Aluminium Gmbh ("**Hirschvogel**") is a German corporation with a registered office in Gerstungen, Germany. During the Class Period, Hirschvogel manufactured, marketed, sold, and/or distributed Forged Aluminum Products including *inter alia* chassis, wheel and transmission automotive parts to customers throughout Quebec, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. The Defendant Hirschvogel cooperated with German competition authorities in their investigation of the Conspiracy. A corporation search for this defendant is appended as **Exhibit P-7;**

11. Each of the Defendants was an agent of the other for the purposes of manipulating the market and prices for Forged Aluminum Products. At all material times, the Defendants functioned as a joint enterprise in the Conspiracy to suppress and eliminate competition in the Forged Aluminum Products industry.

C) Unnamed Co-Conspirators

12. Other corporations, persons, partnerships, firms and/or individuals not named in this pleading, because their identities are currently unknown to the Plaintiff, participated as co-conspirators in the Conspiracy and performed acts and made statements and agreements in furtherance of the Conspiracy (the "**Co-conspirators**"). The Co-conspirators were all persons whom it is reasonable to believe would have, in the absence of the Conspiracy, competed with the Defendants with respect to Forged Aluminum Products;

13. Whenever reference is made in this pleading to any act, communication, agreement or transaction of a corporation, the Plaintiff 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;

D) The Automobile Industry

14. The automobile industry has certain important economic characteristics. In particular, demand for components used by Automotive Manufacturers is inelastic. 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. Customers have nowhere to turn for alternative products of similar quality. Demand for Forged Aluminum Products is highly inelastic because there are no close substitutes for these products;

15. In addition, the ultimate purchaser of a vehicle must purchase components made of Forged Aluminum Products as an essential part of the vehicle. Because of the intensely competitive nature of the automobile industry, the costs of inputs, including Forged Aluminum Products, are passed on by the Automotive Manufacturers to the ultimate purchasers of vehicles, in whole or in part;

E) Forged Aluminum Products

16. Forged Aluminum Products include forged aluminum and aluminum alloys in various states of processing, from semi-finished aluminum products in need of further machine processing to finished aluminum products that require no further machine processing (the "**Forged Aluminum Products**");

17. Forging is a manufacturing process whereby a solid block of metal is pressed, pounded and squeezed under pressure to produce high-strength parts;

18. Raw aluminum requires processing before it is suitable for forging. Aluminum is particularly well-suited to forging for use in countless applications due to its light weight, resistance to corrosion, and its durability. Aluminum may be forged from a relatively pure state or in conjunction with other metals to form aluminum alloy products. Forged aluminum components are commonly found at points of stress and shock, including, but not limited to, pistons, gears and wheel spindles in automobiles and aircraft;

19. There are a number of costs associated with producing Forged Aluminum Products. In addition to the raw materials and labour, considerable amounts of energy costs are required

to produce the high temperatures and pressure required to make Forged Aluminum Products. A variety of equipment including dies, hammers, mechanical and screw presses and hydraulic presses. Materials such as water, caustic soda, nitric acid, lubricant and cleaning products are required. Collectively these costs are the "**Production Costs**";

20. The Production Costs create a high barrier to entry that made it less likely that new competitors would enter the Forged Aluminum Product market and undercut the Defendants' cartel prices;

21. The Defendants' collusive activity described herein engages all aspects of the manufacture of Forged Aluminum Products from partial forging of aluminum and aluminum alloys to be further processed by Tier 1 Manufacturers and OEMs to the design and manufacture of semi-finished and finished aluminum products to be included in vehicles and other machine;

22. The Defendants' Forged Aluminum Products are sold in the automotive, aviation and technology sectors worldwide, including in Quebec;

23. The sale of the Forged Aluminum Products and the Conspiracy which led to the Overcharge resulted in substantial revenues for the Defendants during the Class Period;

24. The Forged Aluminum Products at issue are standard features of every new vehicle and are installed by OEMs in new vehicles as part of the manufacturing process. Forged Aluminum Products are also installed in vehicles to replace warn out, defective or damaged Forged Aluminum Products. Forged Aluminum Products are typically manufactured for specific automobiles, and are developed over a year in advance of an automobile model entering the market;

25. Before ordering Forged Aluminum Products, prospective purchasers such as Automotive Manufacturers, OEMs and, in some circumstances, Tier I Manufacturers, request pricing from part suppliers through requests for quotation ("**RFQs**");

26. Once a supplier is awarded a contract to supply parts for a particular automobile model or other machine, the supplier typically supplies the parts for the duration of the model. Once

production of the model-specific part has begun, purchasers issue annual price reduction requests ("**APRs**") to the part suppliers throughout the term of the supply contract;

27. In response to RFQs for certain Forged Aluminum Products, the Defendants and their Co-conspirators submitted price quotes to various Automotive Manufacturers, OEMs and Tier I Manufacturers. In response to their submitted quotes, the Defendants and their Co-conspirators were awarded certain supply contracts;

28. Pursuant to these supply contracts, the Defendants and their Co-conspirators manufactured certain Forged Aluminum Products and then supplied the Forged Aluminum Products to various Automotive Manufacturers, OEMs and Tier I Manufacturers for installation 1) in vehicles manufactured in Europe and elsewhere and sold worldwide, including in Quebec, and/or 2) as Replacement Parts;

29. The identities of all affected Automotive Manufacturers, OEMs and Tier I Manufacturers who entered into supply contracts with the Defendants and their Co-conspirators are currently unknown to the Plaintiff but well-known to the Defendants. A list of makes and models of vehicles sold in Canada and known by the Plaintiff to contain the Defendants' Forged Aluminum Products was included at paragraph 4 of the present Application;

F) <u>The Respondents' Liability</u>

30. The Defendants willingly colluded as between themselves and with their Co-conspirators to use unlawful means to injure the economic interests of

    a. Automotive Manufacturers;
    b. OEMs;
    c. Tier I Manufacturers;
    d. Indirect purchasers of Forged Aluminum Products and Replacement Parts.

31. Beginning at least as early as April 2006 and continuing until at least April 2018, the exact dates being unknown to the Plaintiff but well known to the Defendants, the Defendants and their Co-conspirators knowingly entered into a continuing agreement, understanding and concert of action to: increase or maintain the prices of certain Forged Aluminum Products; suppress and eliminate competition with respect to the manufacture, marketing, sale and/or distribution of certain Forged Aluminum Products; and to conceal their collusive conduct

from Automotive Manufacturers, OEMs, Tier I Manufacturers, industry stakeholders, regulators, and consumers (the "**Agreement**") ;

32. The substantial terms of the Agreement included:

a. fixing, maintaining, increasing or controlling the price for the supply of certain Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, Canada, the United States, Japan and elsewhere;

b. allocating sales, territories, customers or markets for the production or supply of certain Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, Canada, the United States, Japan and elsewhere;

c. fixing, maintaining, controlling, preventing, lessening or eliminating the production or supply of certain Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, Canada, the United States, Japan and elsewhere, and/or

d. engaging in bid-rigging with respect to quotes for the supply of certain Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, Canada, the United States, Japan and elsewhere.

33. With respect to the Conspiracy, "price" includes any discount, rebate, allowance, price concession or other advantage in relation to the supply of the Forged Aluminum Products;

34. Bid-rigging, with respect to the Conspiracy, means:

a. an agreement or arrangement between or among the 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 arrived at by the agreement or arrangement between or among the Defendants and their Co-conspirators;

where the agreement or arrangement was not made known to Automotive Manufacturers, OEMs and/or Tier I Manufacturers calling for or requesting the bids or tenders for Forged

Aluminum Products at or before the time when any bid or tender was submitted or withdrawn by the Defendants or their Co-conspirators;

35. For the purpose of carrying out the Conspiracy, the 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 Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, 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 Forged Aluminum Products;

c. agreeing, during those meetings, conversations and communications on bids and price quotations (including APRs) to be submitted to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, 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 (including APRs) for the supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, 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 Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, 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 Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, Canada, the United States, Japan and elsewhere;

g. in order to effectuate the Agreement, exchanging information on:

i. bids and price quotations (including APRs) to be submitted to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, Canada, the United States, Japan and elsewhere;

ii. the allocation of certain sales, territories, customers or markets for the production or supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, Canada, the United States, Japan and elsewhere; and/or

iii. the production and supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, Canada, the United States, Japan and elsewhere;

h. in accordance with the Agreement, submitting bids and price quotations (including APRs) to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, 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 (including APRs) for the supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, Canada, the United States, Japan and elsewhere;

j. in accordance with the Agreement, allocating among the companies certain sales, territories, customers and/or markets for the production or supply of Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, 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 Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, Canada, the United States, Japan and elsewhere;

l. selling Forged Aluminum Products to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, Canada, the United States, Japan and elsewhere at collusive and non-competitive prices; and

m. accepting payment for Forged Aluminum Products sold to Automotive Manufacturers, OEMs and/or Tier I Manufacturers in Europe, Canada, the United States, Japan and elsewhere at collusive and non-competitive prices which resulted in increased revenues for the Defendants.

36. The acts in furtherance of the Conspiracy were carried out, at least in part, within Canada and were an unreasonable restraint of trade and commerce;

37. Each of the Defendants aided, abetted and/or counselled the other Defendants and Co-conspirators in the commission of the Conspiracy;

38. The conduct of the Defendants and their Co-conspirators was also contrary to the competition laws of the United States, Japan and various European nations including Germany, where it was illegal and contrary to Section 1 of the *Sherman Antitrust Act*, Article 101 of the *Treaty of the Functioning of the European Union*, Article 53 of the *European Economic Area Agreement*, section 1 of the German *Act Against Restraint of Competition* and Article 19 of the Japanese *Antimonopoly Act*;

39. 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 April 2006 and continuing until at least April 2018, the exact dates being unknown to the Plaintiff but well known to the Defendants, the 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;

40. The conduct of the Defendants and their Co-conspirators increased the price of Forged Aluminum Products in Canada, including in the province of British Columbia, and in Europe, the United States, Mexico, Japan and elsewhere. The Plaintiff and Class Members were overcharged for Forged Aluminum Products;

41. As a consequence of the Overcharge, economic losses and damages were incurred by direct purchasers of the Forged Aluminum Products, including the Automotive Manufacturers, OEMs, Tier I Manufacturers and/or purchasers or Replacement Parts;

42. Economic losses and damages were also incurred by indirect purchasers of Forged Aluminum Products who 1) purchased and/or leased new vehicles containing Forged Aluminum Products, and/or 2) purchased Replacement Parts for their vehicles, including the Plaintiff and Class Members;

43. The Defendants and their Co-conspirators intended to cause damage to the Plaintiff and Class Members. Alternatively, the Defendants and their Co-conspirators knew or ought to have known that their actions would injure the Plaintiff and Class Members as the ultimate purchasers and consumers of the Forged Aluminum Products;

44. The conduct of the Defendants in furtherance of the Conspiracy was unlawful and inequitable. The increased revenues that the Defendants realized as a consequence of artificially inflating the prices of Forged Aluminum Products are ill-gotten profits;

45. The Defendants are each responsible for the actions of all the Co-conspirators, even if a particular Defendant did not manufacture a particular Forged Aluminum Product, because the Conspiracy affected all the Forged Aluminum Products;

G) Investigation into Cartel and Resulting Fines

46. On December 23, 2020, the German Bundeskartellamt announced that it had imposed fines totaling approximately €175 million on the Defendants OTTO FUCHS, Leiber Group, Strojmetal, Bharat and Presswerk in relation to their participation in the Conspiracy. No fine was imposed on the Defendant Hirschvogel for its participation in the Conspiracy in accordance with German whistleblower protection legislation, under which Hirschvogel successfully applied for leniency. The Defendants Bharat and Presswerk received partial leniency in the form of reduced fines for their cooperation with German authorities in uncovering the Conspiracy;

47. Forged Aluminum Products are not exempt from competition regulation and thus, the Plaintiff reasonably considered the Forged Aluminum Products industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the Defendants' prices for Forged Aluminum Products.

Accordingly, the Plaintiff and Class Members did not discover, and could not discover through the exercise of reasonable diligence, the existence of the Conspiracy before its initial public disclosure on December 23, 2020;

48. The Defendants and their Co-conspirators actively, intentionally and fraudulently concealed the existence of the Conspiracy from the public, including the Plaintiff and Class Members. The Defendants and their Co-conspirators represented to customers and others that their pricing and bidding activities were unilateral, thereby misleading the Plaintiff. The affirmative acts of the Defendants alleged herein, including acts in furtherance of the Conspiracy, were fraudulently concealed and carried out in a manner that precluded detection;

49. The Defendants and their Co-conspirators' anti-competitive Conspiracy was self-concealing. The Defendants took active, deliberate and wrongful steps to conceal their participation in the Conspiracy. Because of the Defendants and their Co-conspirators' agreements, understandings and conspiracies were kept secret, the Plaintiff and Class Members were unaware of the Defendants and their Co-conspirators' unlawful conduct during the relevant period, and they did not know, at the time, that they were paying supra-competitive prices for Forged Aluminum Products and/or new vehicles containing Forged Aluminum Products.

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

50. The Petitioner [redacted] Noel purchased his car, a used Mercedes-Benz 2017 GLC, from [redacted] CANADA INC., an automobile dealer doing business as [redacted] on July 31st 2020, the whole as evidenced by the purchase agreement **Exhibit P-1**;

51. In light of the Defendants' anticompetitive and unlawful conduct, the Petitioner was indeed deprived of free and open competition and, as a result, paid an artificially inflated price for the automobile containing Forged Aluminum Products which he purchased;

52. The Petitioner suffered damages as a result of the Defendant's anticompetitive and unlawful actions, namely the difference between the artificially inflated price paid for the automobile and the price he would have paid in a market where free and open competition prevailed;

53. The Defendants' anticompetitive and unlawful actions were fraudulently concealed and were not brought to the attention of the Petitioner, who did not and could not know that the Defendants were involved in anticompetitive and unlawful actions and breaching their obligations;

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

54. The facts giving rise to the individual claims by each of the members of the Class against the Defendants are as follows:

a. every member of the Class has purchased or leased an automobile, or purchased Replacement Parts, containing Forged Aluminum Products manufactured, marketed, distributed and/or sold by one or more of the Defendants;

b. in light of the 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 or lease of an automobile and or Replacement Parts, containing Forged Aluminum Products;

c. every member of the Class suffered damages equal to the difference between the artificially inflated price paid for the leased or purchased automobile or the purchased Replacement Parts, and the price they should have normally paid in a market where free and open competition prevails;

d. the Defendants' anticompetitive and unlawful actions were fraudulently concealed and were net brought to the attention of the Class members;

e. the Class members did not and could not know that the 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 Defendants' anticompetitive and unlawful conduct;

g. thus, each Class member is justified in claiming damages suffered as a result of the Defendants' anticompetitive and unlawful conduct.

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

55. Petitioner is unaware of the specific number of Class Members who purchased or leased an automobile, or purchased Replacement Parts, containing Forged Aluminum Products, but Class members are likely well over a hundred thousand and are scattered across the entire province of Quebec;

56. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if Class Members themselves could afford such individual litigation, it would place an unjustifiable burden on the courts. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;

57. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain individual mandates and to join them together in one action;

58. 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 rights and to obtain access to justice;

B) The claims of the members of the Class raise identical, similar or related issues of law or fact

59. Individual questions pale by comparison to the numerous common questions are significant to the outcome of this litigation;

60. The damages sustained by Class Members flow from a common nucleus of operative facts, namely, Respondents' misconduct;

61. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:

a. Have the Defendants conspired and/or entered into an agreement or arrangement that had the affect of unduly restricting competition in the sale or lease of an automobile, or purchase of Replacement Parts, containing Forged Aluminum Products manufactured, marketed, distributed and/or sold by one or more of the Defendants and, if so, during what period did this conspiracy and bid rigging have an effect on the Petitioner and the Class members?

b. Does the participation of the Defendants in the conspiracy and bid rigging constitute a fault for which they are jointly and severally liable towards the Petitioner and the Class members?

c. Did the conspiracy and bid rigging result in an increase in the price paid by the Petitioner and Class members in Quebec for the purchase or lease of an automobile, or purchase of Replacement Parts, containing Forged Aluminum Products manufactured, marketed, distributed and/or sold by one or more of the Defendants and, if so, does this increase constitute a damage to the Petitioner and to each of the members of the Class?

d. What is the total amount of damages suffered by the Petitioner and the Class members?

e. Are the Defendants liable to pay punitive damages and if so, in what amount?

f. Was there fraudulent concealment by the Defendants, justifying an extension of the limitation period and is the discoverability rule applicable to extend the limitation under s. 36(4) of the Competition Act?

g. Are the Petitioner and Class members justified in claiming the reimbursement of the costs incurred in the present matter, namely the costs and extrajudicial fees of the investigation, and disbursements of attorneys for the Petitioner?

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

62. The action that the Petitioner wishes to institute on behalf of the Class Members is an action in damages;

63. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the Class Members;

CONDEMN the Defendants, jointly and severally, to pay compensatory damages valued at $10,000.00 per Class Member, to be adjusted, and **ORDER** collective recovery of those sums;

CONDEMN the Defendants, jointly and severally, to pay punitive damages valued at $5,000.00 per Class Member, 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 Petitioner;

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;

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

CONDEMN the Defendants to bear the costs of the present action including expert 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;

A) <u>The Petitioner requests that he be attributed the status of representative of the Class</u>

64. Petitioner is a Class Member;

65. Petitioner is ready and available to manage and direct the present action in the interest of Class Members that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefits of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec, and to collaborate with his attorneys;

66. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of Class Members;

67. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

68. Petitioner, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed;

69. Petitioner has given instructions to his attorneys to put information about this class action on its website and to collect the coordinates of Class Members who wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;

70. Petitioner is in good faith and has instituted this action for the sole goal of having his 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 Defendants' conduct;

71. Petitioner understands the nature of the action;

72. Petitioner's interests are not antagonistic to those of other Class Members and Petitioner's interests do not conflict with the interests of other Class Members;

B) <u>The Petitioner suggests that this class action be exercised before the Superior Court of Quebec in the district of Montreal</u>

73. A great number of Class Members likely reside in the judicial district of Montreal and in the appeal district of Montreal;

74. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

75. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE to the Petitioner the status of representative of the persons included in the class herein described as:

> All persons resident in Québec during the Class Period who purchased or leased an automobile, or purchased Replacement Parts, containing Forged Aluminum Products manufactured, marketed, distributed and/or sold by one or more of the Defendants (the "**Class**" and "**Class Members**")

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

a. Have the Defendants conspired and/or entered into an agreement or arrangement that had the affect of unduly restricting competition in the sale or lease of an automobile, or purchase of Replacement Parts, containing Forged Aluminum Products manufactured, marketed, distributed and/or sold by one or more of the Defendants and, if so, during what period did this conspiracy and bid rigging have an effect on the Petitioner and the Class members?
b. Does the participation of the Defendants in the conspiracy and bid rigging constitute a fault for which they are jointly and severally liable towards the Petitioner and the Class members?
c. Did the conspiracy and bid rigging result in an increase in the price paid by the Petitioner and Class members in Quebec for the purchase or lease of an automobile, or purchase of Replacement Parts, containing Forged Aluminum Products manufactured, marketed, distributed and/or sold by one or more of the Defendants and, if so, does this increase constitute a damage to the Petitioner and to each of the members of the Class?

d. What is the total amount of damages suffered by the Petitioner and the Class members?
e. Are the Defendants liable to pay punitive damages and if so, in what amount?
f. Was there fraudulent concealment by the Defendants, justifying an extension of the limitation period and is the discoverability rule applicable to extend the limitation under s. 36(4) of the Competition Act?
g. Are the Petitioner and Class members justified in claiming the reimbursement of the costs incurred in the present matter, namely the costs and extrajudicial fees of the investigation, and disbursements of attorneys for the Petitioner?

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

GRANT the class action of the Petitioner and each of the Class Members;

CONDEMN the Defendants, jointly and severally, to pay compensatory damages valued at $10,000.00 per Class Member, to be adjusted, and **ORDER** collective recovery of those sums;

CONDEMN the Defendants, jointly and severally, to pay punitive damages valued at $5,000.00 per Class Member, 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 Petitioner;

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;

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

CONDEMN the Defendants to bear the costs of the present action including expert 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 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 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 group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein by email to the Quebec Class Members that have joined the Quebec case, by putting the notice up on the Quebec class action registry and the Canadian Bar Association class action database, and by putting the notice up on Class Counsel's website.

THE WHOLE with costs, including all publication fees.

Montreal, January 28, 2021

Me Sébastien A. Paquette
Champlain avocats
Attorneys for the Petitioner

SUMMONS

(Articles 145 and following CCP)

Filing of a judicial application

Take notice that the Petitioner 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.

Defendants' answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame Est, Montreal, Québec, H2Y 186, 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 Petitioner's lawyer or, if the Petitioner is not represented, to the Petitioner.

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 case required by the Code, cooperate with the Petitioner 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 files, 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

Exhibit P-1: Copy of the Bundeskartellamt press release, December 23, 2020;
Exhibit P-2: Copy of a corporate search for Respondent **OTTO FUCHS** Beteiligungen KG;
Exhibit P-3: Copy of a corporate search for Respondent Leiber Group GmbH & Co. KG;
Exhibit P-4: Copy of a corporate search for Respondent Strojmetal Aluminium Forging GmbH;
Exhibit P-5: Copy of a corporate search for Respondent Bharat Forge Aluminiumtechnik GmbH;
Exhibit P-6: Copy of a corporate search for Respondent Presswerk Krefeld GmbH & Co. KG;
Exhibit P-7: Copy of a corporate search for Respondent Hirschvogel Aluminium Gmbh;
Exhibit P-8: Copy of the Aluminium and Aluminiunm Alloys website page from Respondent OTTO FUCHS Beteiligungen KG;
Exhibit P-9: Copy of the Wheel Overview website page listing automotive suppliers from Respondent OTTO FUCHS Beteiligungen KG;
Exhibit P-10: Copy of the Automotive Aluminium website page from Respondent Leiber Group GmbH & Co. KG;
Exhibit P-11: Copy of the Credentials website page listing automotive suppliers for Respondent Leiber Group GmbH & Co. KG;
Exhibit P-12: Copy of the Aluminium Alloys website page from Respondent Strojmetal Aluminium Forging GmbH;

Exhibit P-13: Copy of a company brochure listing automotive suppliers for Respondent Strojmetal Aluminium Forging GmbH;
Exhibit P-14: Copy of Process website page listing the Aluminium forging process from Respondent Bharat Forge Aluminiumtechnik GmbH;
Exhibit P-15: Copy of Customers website page listing automotive suppliers from Respondent Bharat Forge Aluminiumtechnik GmbH;
Exhibit P-16: Copy of the Products website page listing Aluminium products forged by Respondent Presswerk Krefeld GmbH & Co. KG;
Exhibit P-17: Copy of website page from search engine listing automobile suppliers for Respondent Presswerk Krefeld GmbH & Co. KG;
Exhibit P-18: Copy of a company brochure listing Aluminium products forged by Respondent Hirschvogel Aluminium Gmbh;
Exhibit P-19: Copy of Automotive News Europe Magazine 2015 listing automotive suppliers of Respondent Hirschvogel Aluminium Gmbh;
Exhibit P-20 Copy of Automotive News Europe Magazine 2018 listing automotive suppliers of Respondent Hirschvogel Aluminium Gmbh.

The exhibits in support of the application are available upon request.

Notice of Presentation on 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.

Montreal, January 28, 2021

Me Sébastien A. Paquette
Champlain avocats
Attorneys for the Petitioner

NOTICE OF PRESENTATION

(Articles 146 and 574 CCP)

TO: OTTO FUCHS Beteiligungen KG (f/k/a OTTO FUCHS – Kommanditgesellschaft), legal person duly constituted, having its address of service at North Rhine-Westphalia District court Iserlohn HRA 2592

and

Leiber Group GmbH & Co. KG, legal person duly constituted, having its address for service at Baden-Wurttemberg District court Stuttgart HRA 721549

and

Strojmetal Aluminium Forging GmbH, legal person duly constituted, having its addres for service at Baden-Wurttemberg District court Freiburg HRB 705411

and

Bharat Forge Aluminiumtechnik GmbH, legal person duly constituted, having its address for service at Saxony District court Chemnitz HRB 29755

and

Presswerk Krefeld GmbH & Co. KG, legal person duly constituted, having its address for service at North Rhine-Westphalia District court Krefeld HRA 5046

and

Hirschvogel Aluminium GmbH, legal person duly constituted, having its address for service at Baden-Wurttemberg District court Jena HRB 404672

TAKE NOTICE that Petitioner's 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 YOURSELF ACCORDINGLY.

Montreal, January 28, 2021

Me Sébastien A. Paquette
Champlain avocats
Attorneys for the Petitioner