

To one of the Honorable Judges of the Public Revenue Office of the Judicial District of the Capital – Court of Justice of the State of São Paulo

CLARA LEONEL RAMOS, Brazilian, married, journalist, id number RG 30.060.149-9, registered in the CPF/MF under the number 291.038.478-02, e-mail [paispeloclima@gmail.com](mailto:paispeloclima@gmail.com), resident at Rua Girassol, 1317, apto 53, Vila Madalena, São Paulo/SP, CEP: 05433-002; BRUNO DE ALMEIDA DE LIMA, Brazilian, married, biologist, id number RG 33.170.529-1, registered in the CPF/MF under the number 313.901.988-20, resident at Rua 10 A, 89, Recreio Santista, Peruíbe/SP, CEP: 11750-000, both members of the **FAMÍLIAS PELO CLIMA** (Families for Climate) movement, represented by their lawyers here subscribed (Docs 1 and 2), with basis on the article 381 of the New Brazilian Code of Civil Procedure, propose

### **EARLY PRODUCTION OF EVIDENCE CLAIM**

against the **GOVERNMENT OF THE STATE OF SÃO PAULO**, legal entity governed by public law, represented by the State's Attorney General, who must be served any legal documents at his office at rua Pamplona, 227, Jardim Paulista, São Paulo/SP, CEP 01405-000, based on the following.

#### **1. SUMMARY OF THE CLAIM**

It is an autonomous production of evidence suit, based on article 381 of the Code of Civil Procedure, aiming to force the defendant to produce evidence relating to implementation of the IncentivAuto Program – Automotive Regimen for New investments, created by the Decree number 61.130/19.

IncentivAuto is a program of the Government of the State of São Paulo that foresees the granting of financings of R\$ 1,000,000,000.00 (one billion Brazilian reais), minimum, to automotive vehicles manufactures, for expansion projects of their industrial plants, opening of new factories or the development of new products.

The reasons that justify the present autonomous production of evidence claim, under the terms of article 382 of the Code of Civil Procedure, reside in the potential illegality of IncentivAuto financing projects that do not reduce the emission of greenhouse effect gases, as stated by the State Act 13,798/2009, and the damage to the Treasury and to the environment due to the significant use of resources from the Fund for the Support of Taxpayers of the State of São Paulo (FUNAC) to finance, with conditions supported by the Public Authority, projects that might stimulate pollution and not observe the process of making socioeconomic development compatible with the protection of the climate system.

The evidence to be produced, listed below, making known facts and reasons currently unavailable, may justify or avoid the filing legal action, under the terms of item III of article 381 of the Code of Civil Procedure, or even enable the extrajudicial solution of conflicts, under the terms of item II of the same article.

## 2. FACTS THAT JUSTIFY THE CLAIM

On March 8<sup>th</sup>, 2019, by means of the publication of Decree 64.130, the Government of the State of São Paulo created an incentive program for automotive vehicles manufactures that foresees the financing, with resources from a public fund, for the expansion of industrial plants, opening of new factories and the development of new products (**Doc. 3**).

Article 2 - The automotive vehicles manufactures listed on chapter 87 of the Nomenclatura Comum do Mercosul - *NCM* present on this State may be beneficiaries.

The criteria determined by the program for the concession of financing are that the projects have the minimum investment of R\$ 1 billion and the creation of 400 new jobs and that resources received by the companies are used within the State of São Paulo.

Article 3 - In order to be beneficiaries of the program, the companies mentioned on article 2 must file the request at the Economic Development Office, addressed to the Evaluation Committee of the Economic Development Policy of the State of São Paulo, including, at least, investment project for the expansion of its industrial plants, the opening of new factories or the development of new products, listing the amount and the term of the investment, that cumulatively complies with the following requirements:

- I - investment superior to R\$ 1,000,000,000.00 (one billion Brazilian reais);
- II - creation of 400 (four hundred) new jobs, minimum;
- III - full use of the investment within the territory of the State of São Paulo.

The institutional chart of the program involves the Economic Development Office, which evaluates and approves the project, and the Treasury Office of the State of São Paulo, that regulates the financing and includes the disbursement on the Annual Budget Law in order to implement the transference to the company.<sup>1</sup>

Automobiles Manufacturer - file new projects or adhesion requests for previous projects

Evaluation Committee of the Economic Development Policy of the State of São Paulo - Accredits the projects

Treasury Officer - Regulates the financings (Res. SFP 11 e 12)

FUNAC Guidance Council - decides about the concession of financing and warranties

SP Investe - Evaluates the schedule and the conclusion of the project

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<sup>1</sup> Article 4 - It pertains to the Evaluation Committee of the Economic Development Policy of the State of São Paulo to analyze the request mentioned on article 3 and, considering its viability and opportunity, and the technical areas consulted, to approve the project, if it's the case.

Article 5 - The companies listed on article 2, whose requests have been approved under the terms of article 4, will be accredited to receive financing from the Government of the State of São Paulo to: I - make the project's implementation viable; II - expand its working capital, after the conclusion of the aforementioned project.

Includes the disbursement foreseen on the LOA – Treasury Office – Automobiles Manufacturer

The resources destined for the financing program come from the Fund for the Support of Taxpayers of the State of São Paulo – FUNAC, in contracts that may foresee<sup>2</sup>:

\* the granting of discount over the outstanding balance for early payment;

\* discount of up to 25% of the outstanding balance of the financing;

On June, 10<sup>th</sup> 2019 the Governor of the State of São Paulo, by recommendation of the State's Attorney General, presented to the Legislative Assembly of the State of São Paulo, the Draft Law number 752 (**Doc. 4**), that authorizes the granting of subsidized financing to companies that have a project approved by the IncentivAuto Program. The mentioned draft law became a law on October 21<sup>st</sup> 2019, with the promulgation of Act number 17,185 (**Doc. 5**), foreseeing that on top of new projects, automotive vehicles manufactures may adhere to the Program with old projects, with the approval of the Evaluation Committee of the Economic Development Policy of the State of São Paulo.

On February 7<sup>th</sup> 2020, the Treasury and Planning Officer, edited the resolutions SFP 11 and SFP 12, which regulate pre IncentivAuto Program and the financing modalities for the companies with the resources from FUNAC (**Doc.6**).

The Resolution SFP 11 lists some obligations for the Program's adhesion candidates, among which are the reports that show the value of the entered project, and other obligations to the Paulista Agency for the Promotion of Investments and Competiveness (Investe São Paulo), such as the preparation of assessments for each project presented to the Program.

Article 2 – The report to be presented by the beneficiary of the regimen, under the terms of article 7 of the Decree 64,130/2019, for the monitoring of the execution schedule of the project, must include the amounts actually disbursed, among other elements needed for the determination of the project's investment value.

Article 3 – The Investe São Paulo - Paulista Agency for the Promotion of Investments and Competiveness, in the exercise of the attributions granted by article 8 of the Decree 64,130/2019, will indicate, in its report, the project's investment value under the terms of article 1.

1<sup>st</sup> paragraph – the beneficiary of the regimen may challenge the report, within 30 (thirty) days of being informed, presenting its reasons to the Evaluation Committee of the Economic Development Policy of the State of São Paulo.

2<sup>nd</sup> paragraph – FUNAC's Guidance Council will consider the report mentioned on the head provision, or, if it's the case, different decision by the Committee mentioned on the 1<sup>st</sup> paragraph, for the granting of the financing foreseen by article 5 of Decree 64.130/2019.

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<sup>2</sup> Article 6 – The financings mentioned on article 5 will be funded with the resources from the Fund for the Support of Taxpayers of the State of São Paulo – FUNAC.

1<sup>st</sup> paragraph – Resolution from the Treasury and Planning Officer will regulate the terms and conditions for the celebration of the financing contracts the article 5 refers to, established by the FUNAC's Guidance Council, that: 1 – may foresee the granting of discount over the debt balance for the early payment of the obligations determined; 2 – may give increasing discounts due to the value of the project's investment, limited to 25% of the outstanding balance.

2<sup>nd</sup> paragraph – It is the FUNAC's Guidance Council responsibility to issue the final decision about the concession of credit and the establishment of warranties.

Resolution SFP 12, on the other hand, defines as the instrument which regulates the terms and conditions for the effect of the celebration of financing contracts of the IncentivAuto Program, the Deliberation of the Guidance Council of the Fund for the Support of Taxpayers of the State of São Paulo (CONFUNAC) number 27/2020. The deliberation brings as general conditions for the financing foreseen on the program<sup>3</sup>, the year 2032 for the last renewal of the Working Credit Limit made available by the State and the discount for the early payment of the financing installment due of up to 25% for projects worth more than R\$ 10,000,000,000.00 (ten billion Brazilian reais), observing the following parameters:

VIII – Discount for early payment of the installment due: a discount may be applied to the outstanding balance in case of early payment of the due installment, agreed upon considering the characteristics of the investment project approved, observing the increasing limits in relation to the investment value of the project, in accordance with the following parameters:

Project Value (Investment) in Brazilian reais	% Maximum Discount
starting at R\$ 1 billion and inferior to R\$ 2 billion	2.50%
starting at R\$ 2 billion and inferior to R\$ 3 billion	5.00%
starting at R\$ 3 billion and inferior to R\$ 4 billion	7.50%
starting at R\$ 4 billion and inferior to R\$ 5 billion	10.00%
starting at R\$ 5 billion and inferior to R\$ 6 billion	12.50%
starting at R\$ 6 billion and inferior to R\$ 7 billion	15.00%
starting at R\$ 7 billion and inferior to R\$ 8 billion	17.50%
starting at R\$ 8 billion and inferior to R\$ 9 billion	20.00%

<sup>3</sup> Article 5 – The financing granted with FUNAC’s resources, under the Funac – IncentivAuto modality, will observe the following general conditions: I – Revolving Credit Limit: available in the amount of up to 80% of ICMS owed in monthly calculation related to the financed company’s own operations, taking into account the debits due to the issue of goods resulting exclusively from the execution of the approved investment project, and the credits resulting from the taxes owed in previous operations, according to the determined by the contract celebrated with Desenvolve SP; II – Conditions for the use of the credit: the financial conditions of the Working Credit Limit, formed by remuneration interest, daily capitalized and other applicable conditions, will be informed to the financed company at the moment of the limit’s concession or renewal; III – Term: it will be terminated on the last day of the month following the Working Credit Limit’s concession or renewal; IV – The Renewal of the Working Credit Limit will be automatic, at the end of the term or on an earlier date, in the same month, in the hypothesis of early payment under the terms of Item VIII, conditional to the fulfillment of the main and ancillary obligations foreseen: a) On the financing contract; b) On the legislation related to ICMS, to be observed by the financed company in the condition of responsible for paying said tax; V- Due date of the contract: corresponds to the final date for the last Working Credit Limit renewal, that may not be later than December 31<sup>st</sup> 2032; VI – Payment: the main amount and additional charges are owed, in a single installment, at the end of the term determined in accordance with Item III; VII – Warranties: real or security warranties may be demanded, individually or cumulatively, at the discretion of the Cofunac’s administrator or financial agent; VIII – Discount for early payment of the installment due: a discount may be applied to the outstanding balance in case of early payment of the due installment, agreed upon considering the characteristics of the investment project approved, observing the increasing limits in relation to the investment value of the project, in accordance with the following parameters: Project Value (Investment) in Brazilian reais % Maximum Discount starting at R\$ 1 billion and inferior to R\$ 2 billion 2.50% starting at R\$ 2 billion and inferior to R\$ 3 billion 5.00% starting at R\$ 3 billion and inferior to R\$ 4 billion 7.50% starting at R\$ 4 billion and inferior to R\$ 5 billion 10.00% starting at R\$ 5 billion and inferior to R\$ 6 billion 12.50% starting at R\$ 6 billion and inferior to R\$ 7 billion 15.00% starting at R\$ 7 billion and inferior to R\$ 8 billion 17.50% starting at R\$ 8 billion and inferior to R\$ 9 billion 20.00% starting at R\$ 9 billion and inferior to R\$ 10 billion 22.50% starting at R\$ 10 billion 25.00% First paragraph – the investment project final allocation to a discount percentage listed on Item VIII must consider the total effective value of the investment project, considering the report issued by Investe São Paulo - Paulista Agency for the Promotion of Investments and Competiveness, according to article 8, II of the Decree 64,130 from March 8 2019. Second paragraph – The Working Credit Limit, granted under the terms of this article, will have its value determined considering the update of the information foreseen on article 4, paragraph 1, made before the advancement of the draft budget law of the reference fiscal year. Third paragraph – The Renewal of the Working Credit Limit to which Item IV refers will end when the sum of the payments made by the financed company throughout the contract reaches the amount previously agreed upon.

starting at R\$ 9 billion and inferior to R\$ 10 billion	22.50%
starting at R\$ 10 billion	25.00%

As it happens, beyond the discussions about budget and the convenience and opportunity, which the present preparatory claim does not intend to discuss, the IncentivAuto Program, as proposed, may not be complying with the State Policy on Climate Change, approved and instituted by State Act number 13,798/2009 (**Doc. 7**), and regulated by State Decree number 55,947/2020 (**Doc. 8**) and the National Policy on Climate Change – PNMC itself, as will be shown below:

### 3. PRELIMINARY

#### 3.1 PRELIMINARY OF JURISDICTION

Under the terms of paragraph 2 of article 381 of the New Code of Civil Procedure (NCPC) “the early production of evidence falls under the jurisdiction of the court in the judicial district where the evidence is to be produced or in the judicial district of the defendant’s domicile”.

As it concerns the production of evidence that may come to justify the filing of legal action (art. 381, II, NCPC) against the Government of the State of São Paulo, the jurisdiction is that of the Public Treasury courts of the court district of the Capital, which would also be responsible for the knowledge and trial of popular action against the Defender.

#### 3.2 PRELIMINARY OF THE PLAINTIFF’S INTEREST

The plaintiffs are citizens in full possession of their political rights (**Doc. 2**), with residence in the State of São Paulo and, by that having the standing in order to file popular action and the respective preparatory actions in accordance with Act 4,717/65.

The plaintiffs are also part of a global movement called Parents for Future, which in Brazil adopted the name “Famílias pelo Clima”, a collective that unites parents, aunts and uncles, grandparents, and other relatives with the goal of acting, in name of their children, demanding immediate actions for the containment of and adaptation to climate changes<sup>4</sup>.

What is being discussed herein might end violations to the rights of children who suffer with the environmental impacts, rights which are secured with absolute priority by Article 227 of the Federal Constitution, specially the rights to health, dignity, respect, on top of the right to be safe from all types of negligence and discrimination.

One stresses that air pollution is disproportionately dangerous to children and adolescents, given their special condition as a developing being; their metabolic, physiologic and behavioral characteristics<sup>5</sup>, different from those of adults, make children and adolescents particularly sensitive to environmental changes, including of the air.

Therefore, the relevance of the matter is undeniable, given the impact of the ruling on the human rights of a group of the population, and of children and adolescents, vulnerable to climate changes.

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<sup>4</sup> More information at: <https://www.facebook.com/familiaspeloclima/>

<sup>5</sup> UNICEF. Clear the Air for Children. Available at: [https://www.unicef.org/publications/files/UNICEF\\_Clear\\_the\\_Air\\_for\\_Children\\_30\\_Oct\\_2016.pdf](https://www.unicef.org/publications/files/UNICEF_Clear_the_Air_for_Children_30_Oct_2016.pdf). Viewed on August 21 2020.

Thus, we are before a situation of extreme relevance and impact, that calls upon society, as the now petitioner, to act in the defense of these rights, as foreseen by the 1988 “Citizen” Constitution. The goal is also to give visibility and to contribute to effectiveness of articles 225 and 227 of the Federal Constitution – which determine the shared duty of families, society and State, of guaranteeing with absolute priority the rights and best interests of children and adolescents, as well as the right of present and future generations to an environment ecologically balanced, essential to a sound quality of life.

So, present the standing and the interest of the plaintiffs for the present preparatory action as to make known the facts and reasons currently unavailable, that may justify or avoid the filing of legal action, under the terms of article 381, item III of the Code of Civil Procedure.

### **3.3 PRELIMINARY OF (PASSIVE) STANDING**

The IncentivAuto Program is a public policy for economic incentive for the automotive vehicles industry, developed and implemented by the State of São Paulo Government, as given by Decree number 61,130/19, edited by the Governor and the State Act number 17,185/19. Notwithstanding, the State Policy on Climate Change, approved and instructed by State Act number 13,798/2009 and regulated by State Decree number 55,947/2010, has as object the public administration in the sphere of the State of São Paulo and, more specifically, the Government of the State of São Paulo, when determining commitments and conditions for the implementation of public policies in the State.

Therefore, it is clear that the Government of São Paulo has standing for the present preparatory action and for eventual main actions that discuss issues relating to the aforementioned program.

## **4. MERIT: REASONS FOR THE EARLY PRODUCTION OF EVIDENCE**

The State Policy on Climate Change, approved and instructed by State Act number 13,798/2009 and regulated by State Decree number 55,947/2020, aims to establish the commitment of the State of São Paulo before the challenging global climate changes, approach the conditions for the necessary adaptations to the impacts resulting from climate changes, as well as contribute to the reduction or the stabilization of the concentration of greenhouse effect gases on the atmosphere<sup>6</sup>.

Said act first appeared on a draft law written by the Governor in 2009, and taken to ALESP on January 23 of the same year (**Doc. 9**), due to the evidence confirmed by Intergovernmental Panel regarding Climate Changes (IPCC) that human activities (or anthropogenic) are substantially increasing the atmospheric concentration of greenhouse effect gases, intensifying the natural greenhouse effect, that results on an additional heating of the Earth’s surface and atmosphere (**Doc. 10**).

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<sup>6</sup> Article 2, State Law number 13,798/2009.

The proposition's own explanatory memorandum, already pointed out the urgency of actions from the State of São Paulo in order to minimize the risks that the industrial development brings to the climate system:

The scientists from IPCC suggest that the climate system is under threat, being necessary urgent actions in order to battle the environmental dilemma. The global nature of climate change demands the greatest cooperation possible from all Nations, in all government levels and from the entirety of society. The response must be effective and appropriate, according to their respective abilities and social and economic conditions. It must, also, be faced immediately, under penalty of accumulating a high long term cost. Uncertainties, also in existence, on the forecasts related to climate change do not justify the inaction, neither from the government nor from society.

And, also, listed as necessary measures for battling climate change encouraging:

News technologies, making the existent processes more efficient and the use of renewable and sustainable energy sources that may considerably help the accomplishment of this goal, allowing us to reach better production and consumption levels. Among the alternatives for the mitigation of anthropogenic emissions of greenhouse effect gases one may mention: (i) changing from fossil fuels to other less polluting, like the ones from biomass; (ii) the conservation of energy, through more efficient production and more rational consumption, facts that reduce the environmental impact of human activities (or ecological/carbon footprint); (iii) the decrease or even the elimination of the emissions of greenhouse effect gases resulting from industrial processes, such as carbon dioxide in steel plants and cement industries, or even the substitution of chlorofluorocarbon for other less harmful substances;

With the public spirit and within the context of climate emergency, the Act number 13,798/2009, brought as fundamental principals for the public policies of the Government of the State of São Paulo that impact the climate system, the prevention principle, which consists of adopting public measures and policies able to mitigate known impacts on the Earth's climate system, and the principle of governmental action, important for maintaining ecologic balance, considering the environment as a public asset that must necessarily be protected.<sup>7</sup>

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<sup>7</sup> State Law number 13,798/2009 – Article 3 – The PEMC will observe the following fundamental principles:

I – precautionary, by which the absence of scientific certainty may not be used as reason to postpone effective measures for the prevention of environmental degradation where there is the threat of serious or irreversible damages to human civilization;

II – prevention, that consists of adopting measures and public policies capable of mitigating the known impacts on the Earth's climate system;

III – polluter pays, those who cause the environmental impact must bear the cost of the damage caused to the environment;

IV – civil society's participation in consulting and deliberative processes, with ample access to information, as well as to legal and administrative mechanisms, including those related to compensation and reparation of environmental damages;

V – sustainable development, by which environment protection is a key part of productive process, as to ensure life quality for all citizens and equally meet the needs of present and future generations;

Beyond the guiding principles for the public policies of the Government of the State of São Paulo, article 5 of the aforementioned act, defines its specific goals, of which the following are highlighted:

I – ensure that the socioeconomic development is compatible with the protection of the climate system;

III – establish types of production transition that generate behavioral changes, as to stimulate an environmentally positive modification of the consume patterns, of economic activities, of transportation and of the use of urban and rural land, focusing on the reduction of the emissions of greenhouse effect gases and the increase of the absorption through sinks;

VIII – create and expand the reach of economic, financial and fiscal instruments, including the use of the State’s purchasing power, for the ends of this act;

As if it wasn’t enough, the state climate law, in its article 6, also lists as guide lines for the Public Power the use of practices which reduce the emissions of greenhouse effect gases and taking into account for the economic policies factors related to climate change:

III – promote and cooperate to the development, implementation, dissemination, and exchange of technology, practices and processes which control, reduce or prevent the anthropic emissions of greenhouse effect gases not controlled by the Montreal Protocol in all pertinent sectors, including the energy, transport, industry, farming, forestry and waste management sectors;

VI – consider the factors related to climate change in social, economic and environmental policies and measures, as well as employ adequate methods, following the example of impact assessment, nationally formulated and determined, and aiming to minimize the negative effects of climate change in the economy, public health and the quality of the environment;

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VI – common responsibilities, however different, by which the more developed, in a spirit for a proactive partnership for conservation, protection and restoration of the health and the integrity of the earth ecosystem, must take the initiative of fighting the global climate change and its negative effects, with urgency for the effective action;

VII – government action, important for maintaining ecologic balance, considering the environment a public asset to necessarily be protected, considering the collective enjoyment, with rationality when using the land, the underground, the water and the air, through the State’s inspection of the quality of the environment, on top of the planning and monitoring of the sustainable use of natural resources;

VIII – the cooperation, both national and international, between States, entities, and citizens acting in good faith, in a spirit of partnership for the achievement Humanity’s greater principles and goals;

IX – wide publicity, to ensure absolute transparency in the broadcast of public information about the levels of contaminating emissions, the quality of the environment and the potential risks to health, as well the plans for the mitigation and adaptation to impacts on the climate;

X – environmental education, in order to educate society, since elementary school, for the construction of actions fitting the common good, encourage the studies, the research and the implementation of technologies directed to the rational use and the protection of environmental resources.

It is also worth stressing that the State Policy on Climate Change gives the Government of the State of São Paulo the task of proposing and fostering projects that favor the reduction of the emissions of greenhouse effect gases.

Article 11 – The Public Power is responsible for proposing and fostering measures that favor sustainable standards of production, trade and consumption, as to reduce the demand for supplies, use less harmful materials and generate less waste, resulting in a reduction of the emission of greenhouse effect gases.

Article 12 – For the effects of article 11 one must consider the initiatives in the following areas, among others:

(...)

XIII – industry, through the encouragement of the development and implementation of technologies that use less energy and are less polluting, production processes that minimize the use of supplies, and the responsibility over the destination of the waste generated by consumption.

The state climate policy charges the Executive Power with the obligation of implementing economic policies for boosting projects that seek development by reducing the emission of greenhouse effect gases:

Article 22 – For the goals of this act, the Executive Power must:

I - create economic instruments and encourage financial credit for measures for the mitigation of the emissions of greenhouse effect gases and for the adaptation to the impacts of climate change.

Lastly, it is important to say that the National Policy on Climate Change – PNMC, introduced by Decree number 12,187/2009, also demands that the public policies that have impacts on climate observe the precautionary, prevention and citizen participation principles and that the action within the state sphere must be integrated with the national ones, in addition to setting forth that the implementation of measures for encouraging the adaptation to climate change is also a responsibility of the States. The articles 3, item V and 4, item V, of aforementioned Decree determine:

Article 3 – The PNMC and the actions resulting from it, executed under the responsibility of the political entities and that of the public administration bodies, will observe the precautionary, prevention, citizen participation, sustainable development and common - but differentiated - responsibilities principles, the last one in the international sphere, and, regarding the measures to be adopted during its execution, the following must be considered:

(...)

V – the actions within the national sphere for fighting against climate changes, current, present and future, must consider and integrate actions promoted by public and private entities within the state and municipal spheres;

Article 4 – The National Policy on Climate Change will aim to:

(...)

V – implement measures to promote the adaptation to climate change by the 3 (three) spheres of the Federation, with the participation and collaboration of economic and social agents interested or beneficiary, in particular those especially vulnerable to its adverse effects;

However, the IncentivAuto Program, when utilizing the resources from FUNAC in order to finance, with government subsidies, expansion and production projects from automotive vehicles factories in projects worth at least R\$ 1,000,000,000.00 (one billion Brazilian reais), might be disregarding factors connected to climate change, supporting projects that do not privilege sustainable standards for production through the reduction of the emission of greenhouse effect gases and by not encouraging the implementation of less-polluting technologies, as determined by the legal provisions mentioned above.

The norms which define the institutional chart of the IncentivAuto Program (Decree number 61,130/19, State Act number 17,185/19 and Resolutions SFP 11 and 12), bring no demands for environmental compensation that aim to reduce the emission of greenhouse effect gases in projects for the expansion of industrial plants, implementation of new factories or development of new products – essentially polluting activities.

It is possible, however, that the projects submitted to IncentivAuto are in accordance with the State Policy on Climate Change, even if the Public Power does not express the need for the compliance with it on the institutional chart of the program, which might be verified by means of the documents needed for the concession of the financing.

It is worth noting that within the norms that regulate the IncentivAuto there is no mention regarding the confidentiality of the projects that are submitted to the Government of the State for financing.

Therefore, publicizing the facts and reasons, currently unavailable, about the projects submitted to the IncentivAuto Program with the intention of being beneficiaries of the financing, which utilizes public resources, is justified not only by needing to observe the public administration principles and the amount of public resources involved in the Program, but also in order to verify the observance of and the respect to what the State Policy on Climate Changes stipulates.

In view of the foregoing, the goal of this autonomous action is the production of evidence, by the Defendant, to clarify, through documental evidence, the following:

1. Documental evidence of the entirety of each project submitted to the IncentivAuto Program;
2. Documental evidence of the analyses and reports prepared within the sphere of the Evaluation Committee of the Economic Development Policy of the State, the State Treasury Office, Guidance Council of the Fund for the Support of Taxpayers of the State of São Paulo (CONFUNAC), the Investe São Paulo - Paulista Agency for the Promotion of Investments and Competiveness, or any other body of the Government of the State of São Paulo;
3. Documental evidence of eventual IncentivAuto financing contracts hitherto celebrated;

4. Documental evidence of the control over all of the investment projects filed at the Economic Development Office, addressed to the Evaluation Committee of the Economic Development Policy of the State of São Paulo, with the goal of becoming beneficiaries of the IncentivAuto Program, itemized by the name of the company, date of filing, type of project (expansion of industrial plants, implementation of new factories or the development of new products), project status (approved, denied or pending approval), total value of the investment requested and date of approval or denial.

Said evidences will allow not only the prior knowledge concerning the compliance with the principles of public administration and the amount of public resources destined for the IncentivAuto Program, but also so that the Plaintiffs, as citizens, can assess if its implementation has been respecting the State Policy on Climate Change expressed in State Act number 13,798/2009.

It is exactly the possibility foreseen in article 381, item III, of the New Code of Civil Procedure:

Art. 381. The early production of evidence shall be admissible in cases in which:  
III – prior knowledge of the facts may either justify or avoid the filing of the suit.

The production of evidence concerning the facts precisely identified throughout the course of this claim may foster or avoid the filing of popular action by the Plaintiffs against the Defendant, aiming to annul IncentivAuto Program's acts that are harmful to the public coffers and to the environment, because they do not respect the current legislation for battling the effects of climate changes, under the terms of article 381, item III, of the Code of Civil Procedure (2015).

## 5. CLAIM

In view of the foregoing, requests:

- a) That the present autonomous action for the production of evidence is judged completely valid so that the Defendant is made to produce the documental evidences listed from 1 to 4, in chapter 4 which addresses the merits of the claim;
- b) The service of process upon the Defendant for the claim and for the monitoring of the production of evidence;

The value of the claim is determined at R\$ 1,000.00.

Terms under which requests approval.

São Paulo, September 25<sup>th</sup> 2020

**Flavio Siqueira Junior**  
OAB/SP 284.930

**Sheila Santana de Carvalho**  
OAB/SP 343.588