



Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued
Délivré par voie électronique : 08-Jun-2021
London

STEVEN SCOTT

Plaintiff

and

SUBARU CANADA, INC. and SUBARU OF AMERICA, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date June 8, 2021

Issued by

Local registrar

Address of
court office London Court House
80 Dundas Street
London ON N6A 6A3

TO:

SUBARU CANADA, INC.

560 Suffolk Court
Mississauga ON, L5R 4J7
Canada

AND

SUBARU OF AMERICA, INC.

One Subaru Drive
Camden NJ, 08103
USA

CLAIM

1. The Plaintiff, on his own behalf and on behalf of all Class Members, seeks:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff of the proposed national class pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
 - (b) general damages and special damages assessed individually or in the aggregate in the amount of \$50,000,000;
 - (c) punitive and/or aggravated damages in the amount of \$15,000,000;
 - (d) a reference to decide any issues not decided at the trial of the common issues;
 - (e) costs of administration and notice, plus applicable taxes, pursuant to section 26(9) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
 - (f) costs of this action pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
 - (g) prejudgment interest and post judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and
 - (h) such further and other relief as to this Honourable Court seems just.

THE PARTIES

The Plaintiff

2. The Plaintiff, Steven Scott, is a resident of Chase, British Columbia.

3. In or around March 6, 2017, the Plaintiff purchased a 2016 Subaru Outback model from Richmond Subaru, an authorized Subaru dealer in Richmond, British Columbia.
4. The Plaintiff's vehicle began having problems shortly after it was purchased and after having only been driven for approximately 6,560 kilometers. The vehicle began experiencing issues with its electrical system, denying the Plaintiff the ability to close his passenger window from the driver's console. He called Hilltop Subaru in Vernon, British Columbia, where a technician assisted him in resolving this issue.
5. In addition to this issue with the passenger window, the Plaintiff has experienced other issues with the vehicle's electrical system including the vehicle's battery being drained after leaving the tail gate open for approximately 15 minutes and the power lift tail gate failing to function.
6. The issues culminated on June 12, 2019 when the Plaintiff's vehicle would not start. The Plaintiff contacted Subaru's roadside assistance and a tow truck was dispatched. The technician on scene gave the vehicle a boost to its battery and advised the Plaintiff to purchase a new battery. That same day, the Plaintiff purchased a new battery, as well as a battery charger from Lordco Parts Ltd.
7. The Plaintiff then telephoned Hilltop Subaru in order to book an appointment to have his vehicle examined and was scheduled to come in on July 15, 2019.
8. On July 15, 2019, technicians at Hilltop Subaru examined the Plaintiff's vehicle and determined that the vehicle's battery was at medium health and no parasitic drain was found.

9. Since that date, the Plaintiff has had to recharge his vehicle's battery twice. Further, he keeps a spare battery in the vehicle in case his current battery fails, which has happened on numerous occasions.
10. Since purchasing the vehicle, the Plaintiff has incurred approximately \$500 in out-of-pocket expenses and significant time in dealing with issues related to the Electrical Defect, hereinafter defined. The presence of the Electrical Defect, has caused the Plaintiff significant anxiety.
11. The Plaintiff was not aware of the Electrical Defect at the time of purchasing the vehicle. Had the Plaintiff been aware of the Electrical Defect, he would not have purchased the vehicle.

The Class

12. The Plaintiff seeks to represent the following class (the "**Class**" or "**Class Members**") of which the Plaintiff is a member:

All persons resident in Canada who purchased or leased the following model year ("**MY**") Subaru vehicles: MY 2015-19 Outback; MY 2015-19 WRX; MY 2015-19 Forester; MY 2015-19 Legacy; and MY 2019 Ascent (the "**Class Vehicles**").

13. The Plaintiff does not have information to calculate the total number of Class Members. However, such information is known to the Defendants.

The Defendants

14. The Defendant, Subaru Canada, Inc., is a corporation incorporated under the laws of the province of Ontario with its head office located in Mississauga, Ontario.

15. The Defendant, Subaru of America, Inc., is a corporation with its principle place of business located in Camden, New Jersey.
16. The Defendants, Subaru Canada, Inc. and Subaru of America, Inc. (collectively “**Subaru**” or the “**Defendants**”) are responsible for the design, production, manufacture, distribution, marketing, sale, and service of Subaru vehicles, including the Class Vehicles. The business of each of the Defendants is inextricably interwoven with that of the other and each is the agent of the other with respect to manufacturing, engineering, design, development, research, regulatory compliance, and promoting, marketing, distribution, sale, and lease of the vehicles in Canada, through authorized dealers.

NATURE OF THIS ACTION

17. This class action concerns the life threatening, negligent, and dangerous design, production, and manufacture of defective electrical components in the Class Vehicles.
18. As early as February 2015, despite their longstanding knowledge of the material and manufacturing defect, the Defendants failed to disclose to the Plaintiff and Class Members that the Class Vehicles are predisposed to sudden and unexpected battery failure and premature battery replacement (the “**Electrical Defect**” or “**Defect**”).
19. At the time they are manufactured and sold, the Class Vehicles are predisposed to one or more Electrical Defects in materials and/or workmanship in that the Class Vehicles’ electrical system suffers from a defect that subjects the vehicle batteries and electrical systems (including charging) to a continuous parasitic drain. The continuous parasitic drain renders the batteries incapable of powering the Class Vehicles for any reasonably

expected run time and/or mileage. The Electrical Defect predisposes Class Vehicles to sudden and unexpected battery failure and premature battery replacement.

20. The Defect typically manifests during the warranty period or shortly after the warranty period has expired. After the Defect has manifested, Class Members have presented their vehicles for repair during the warranty period, only to be advised by Subaru that the battery simply needs to be recharged. This is a blatant effort by Subaru to evade warranty obligations.
21. As such, Subaru's warranty practices require the Plaintiff and Class Members to personally finance premature battery replacement even if the Class Vehicle is under warranty when the Electrical Defect manifests.
22. Moreover, Subaru has failed to rectify the electrical systems within the Class Vehicles, either at the time of manufacturing or through warranty repairs, to remedy the Defect. As such, the Plaintiff and the Class have been forced to replace the batteries in their Class Vehicles on multiple occasions.
23. Subaru has not only failed to disclose to consumers that the Class Vehicles were predisposed to the Electrical Defect and would therefore suffer from premature battery failure, but it also failed to disclose that the Defect would diminish the intrinsic and resale value of the Vehicles.
24. Despite their longstanding knowledge of the material and manufacturing, Subaru has failed to: (1) recall Class Vehicles to repair the Defect; (2) offer its customers suitable repairs, electrical system repairs and/or battery replacements free of charge; and (3) offer

to reimburse its customers who have incurred out-of-pocket expenses to replace batteries or repair their electrical systems due to the Defect.

25. Subaru's conduct in marketing and selling the Class Vehicles is in breach of its warranties and in violation of Ontario law. Subaru has and will continue to benefit from its unlawful conduct. It will continue to sell more vehicles, at a higher price, and will continue to avoid its warranty obligations. This will inevitably harm consumers at both the point of sale and as the batteries in their vehicles begin to fail.
26. Had Plaintiff and other Class Members known about the latent Electrical Defect at the time of purchase or lease, they would not have bought or leased the Class Vehicles or would have paid substantially less for them.
27. To remedy Subaru's unlawful conduct, the Plaintiff, on behalf of himself and all Class Members, seek damages and restitution from Subaru, including but not limited to reimbursement for all expenses already incurred because of the Defect, including free battery replacements, repairs, diagnostics, and incidental costs (such as towing charges, vehicle rentals, etc.), as well as notification to Class members about the latent Electrical Defect.

THE VEHICLES AND THE DEFECTS

The Class Vehicles

28. The Defendants are responsible for the design, production, manufacture, distribution, marketing, sale, and service of Subaru vehicles, including the Class Vehicles, all around the world, including in Canada.
29. The Class Vehicles suffer from an Electrical Defect which subjects the vehicle batteries and their electrical systems (including charging) to a continuous parasitic drain. The batteries equipped within the Class Vehicles are too small to power the Class Vehicles for the time and mileage that consumers reasonably expect. This predisposes the Class Vehicles to sudden and unexpected battery failure and premature battery replacement.
30. Below is a chart showing the capacities of the original equipment manufacturer (“OEM”) batteries Subaru equipped within the Class Vehicles:

Battery Type	Battery Capacity	MY & Model
75D23L	12V-62AH	2019 MY Ascent 2018 MY Forester 2018-19 MY WRX
75D23R	12V-52AH	2018-19 MY Outback 2018 MY Outback 2015-16 MY Outback (3.6L models) 2017 MY Legacy (3.6L models) 2018-19 MY Legacy 2015-16 MY Legacy (3.6L models)
55D23R	12V-48AH	2015-17 MY Outback (2.5L models) 2016 MY Outback (2.5L models) 2015 MY Outback (2.5L models) 2015-17 MY Legacy (2.5L models) 2016 MY Legacy (2.5L models) 2015 MY Legacy (2.5L models)
55D23L	12V-48AH	2015-17 MY Forester 2015-17 MY WRX
Q85	12V-40AH	2019 MY Forester

31. The Amp Hour (“AH”) specification provided under the “Battery Capacity” column provides a measurement of the charge that can be delivered by the battery. The standard Amp rating is taken over a period of 20 hours. For example, a 100 AH rated battery will provide approximately 5 Amps per hour of charge for a period of 20 hours. Importantly, the total time of discharge and the load applied is not a linear relationship; when the load on the battery increases, its realized capacity will then decrease.
32. The Class Vehicles contain batteries with Amp hour ratings between 40 and 62 AH. Therefore, using the standard 20 hour rating as described above, a 40 AH rated battery would be able to deliver 2 Amps per hour of charge for 20 hours, while the 62 AH rated battery would be able to deliver 3.2 Amps of power for 20 hours.

The Battery Drain

33. As stated above, the Class Vehicles are subjected to a continuous parasitic drain on their batteries, including when the Class Vehicles are turned off and parked. When the engines are not running, the batteries are not being replenished by the charging system. Therefore, any drain on the batteries at this time is being powered solely by the stored charge contained within the batteries.
34. Based on information and belief, the Class Vehicles have a continuous parasitic drain of approximately 3 to 4 Amps. As such, a 40 AH rated battery has the capacity to deliver 3.5 Amps per hour of charge for only 11.4 hours, while the 62 AH rated battery will have the capacity to deliver 3.5 Amps of power for only 17.7 hours. Consequently, if the vehicles were not started and batteries charged within these time periods (11.4 to 17.7 hours) then the batteries would completely drain, thus potentially leaving Class members stranded.

Lead-Acid Battery Degradation

35. The batteries contained in the Class Vehicles are a lead-acid storage design which convert chemical energy into electrical energy. When the battery is placed under a load, the device will convert stored chemicals into electricity, and the current flows through the wires to its destination.
36. The lead-acid battery consists of cells, with each cell containing electrolytes and plates. An electrolyte is an ionized bath — typically, sulfuric acid (H₂SO₄) diluted with water — that generates an electrical current when needed. Each cell also contains plates (grids of active material), which are both positive and negative. Typically, the positive plates contain lead dioxide (PbO₂), while the negative plates are composed of straight lead (Pb).
37. Over time, the battery capacity will degrade due to sulfation of the battery and shedding of active material.
38. Importantly, the degradation of battery capacity strongly depends on the interrelationship between the charging/discharging regime the battery is subjected to. As such, a constant low or dead battery caused by the parasitic drain in the Class Vehicles will dramatically shorten battery life. This can also result in a decreased AH, and therefore, can further decrease the time period within which the batteries will become completely drained.

The Electrical Defect Imposes Safety Risks

39. The Electrical Defect imposes excessive safety risks on the Plaintiff and Class members.

The Defect tends to manifest after consumers have turned off the Class Vehicles and therefore stranding vehicle operators and their passengers. This makes them more vulnerable to potential

crime, to accidents if they are stranded on the roadside, and to other risks such as small children and pets remaining trapped within locked vehicles that cannot be opened after the Defect manifests.

Subaru's Knowledge of the Electrical Defect

Internal Data

40. Subaru is experienced in the design and manufacture of consumer vehicles, and therefore knew, or ought to have known, that the Class Vehicles would suffer from the Electrical Defect prior introducing the vehicles to the market.
41. Subaru utilizes an internal "Product Quality Management" in order to assure quality in the design and development of the Class Vehicles.
42. Each of Subaru's Product Quality Management stages are marketed as involving significant consideration in preventing quality defects, implementing stringent quality inspection and testing, and collecting after-sales information on quality defects and requests sent to dealerships and Subaru Customer center. Subaru then takes the quality defect data and implements in successive design and development stages.
43. Further, Subaru conducts extensive pre-release testing on batches of components, including batteries, engine control modules ("ECMs"), electronic control units ("ECUs"), and other electrical system components, to verify that parts are free from defects and comply with Subaru's specifications.

44. Even if the Subaru's Product Quality Management system did not detect the Electrical Defect, it is implausible that its preproduction testing of vehicle components would not have alerted it of the Defect.
45. Subaru also receives data on how its vehicles are performing after they are sold. This information is collected from the drivers and dealerships through complaints, warranty claims, repair and replacement parts data, and other sources. Subaru has exclusive access to this information.
46. Further, Subaru collects data through its Quality Assurance Group in order to identify widespread vehicle issues and to assist in the diagnosis of these issues, as well as through its National Warranty Department, which reviews and analyzes warranty data submitted by its dealerships and authorized technicians to identify defect trends in its vehicles, including vehicle batteries.
47. Subaru was thus aware of the significant number of replacement batteries ordered because of the Electrical Defect, even before the Class Vehicles were leased or sold. Subaru has detailed, accurate and real-time data regarding the number and frequency of replacement part orders, which includes the Class Vehicle batteries, and thus should have been alerted to the scope and severity of the Electrical Defect when faced with a sudden increase in replacement battery orders.

Technical Service Bulletins

48. Subaru has been aware of the Electrical Defect in the Class Vehicles. Technical Service Bulletins ("TSBs") are bulletins that vehicle manufacturers issue to alert authorized

service technicians to pervasive issues affecting particular models and model years of vehicles, as well as recommended procedures for repair.

49. Subaru has issued nine TSBs relating to the Electrical Defect. It is likely that Subaru learned of the Defect well before it began selling and leasing the Class Vehicles.
50. On February 10, 2015, Subaru issued TSB #07-89-15R, which covered the MY 2015 Legacy and Outback models. The TSB sought to address reports that the vehicles would not start, or that electrical components would abruptly lose power. These are both symptoms of the Electrical Defect. Service technicians were instructed to replace all 5 relays in the vehicles' interior and main fuse boxes in order to resolve the issue.
51. On January 4, 2016, Subaru revised TBS #07-89-15R to include the MY 2016 Legacy and Outback vehicles, addressing that the vehicles would not start, or that their electrical components would abruptly lose power.
52. On February 8, 2016, Subaru issued TSB #07-106-16, instructing service technicians to replace the battery sensor in the MY 2015-16 Legacy and Outback vehicles, after the initial TSBs had failed.
53. The first three TSBs failed because the Electrical Defect does not reside within the vehicle relays, nor the battery sensors. The issue necessitated repairs to the Class Vehicles' electrical systems, such as replacing the OEM batteries with batteries with larger capacities.
54. Subaru then issued further TSBs instructing technicians to perform software updates in the hopes that it would resolve the issues through a potentially inexpensive fix.

55. On June 15, 2017, Subaru issued TSB #11-174-17R, covering MY 2015-2017 WRX, Outback and Legacy vehicles. It instructed technicians to reprogram the ECM following normal FlashWrite procedure in order to resolve potential battery discharge (dead battery) after repeated periods of short-trip driving.
56. On June 20, 2017, Subaru issued TSB #11-175-17, applying instructions similar to TSB #11-174-17R to the MY 2017 Forester vehicles.
57. Subaru then revised TSB #11-174-17R on three separate occasions in 2017 – June 23, August 8, and October 31 – identifying an expanding list of vehicles suffering from the Electrical Defect. As of October 31, 2017, the TSB applied to MY 2015-17 Legacy, Outback and WRX vehicles, and MY 2017-18 Forester vehicles.
58. On November 16, 2017, Subaru then issued TSB #11-176-17, covering the MY 2015-2016 Legacy and Outback models, and announced that reprogramming files were available in order to optimize the ECM for the control and enhancement of battery charging functions.
59. Despite acknowledgments of the Electrical Defect in multiple internal TSBs, its own records of customer complaints, dealership repair records, and complaints to Canadian and American governmental bodies, Subaru continues to deny the existence of the Electrical Defect to Class Members.
60. More than three years later, consumers continue to complain of premature and unexpected battery failure.

61. Not only have Subaru's multiple attempts to resolve the Electrical Defect failed, it is clear that Subaru either knew, or ought to have known the existence of the Defect prior to introducing the Class Vehicles to the consumer market.
62. However, despite this knowledge, Subaru failed to disclose the Electrical Defect to the Class Vehicle owners, lessees, or potential customers. Further, Subaru has never instructed its dealerships to disclose the Electrical Defect to Subaru customers.
63. Subaru's failure to disclose the Electrical Defect to consumers resulted in consumers being unaware they were purchasing or leasing defective vehicles, and owners and lessees would only discover the Defect once they have been forced to personally finance the replacement of the OEM batteries.
64. Subaru knew, or ought to have known, that a reasonable person would consider the Electrical Defect as material and central to their purchasing decision. Batteries are an integral component to vehicle functionality. A vehicle cannot turn on, nor can it operate for the expected time and distances if it is not equipped with a non-defective electrical system capable of providing safe and reliable transportation.
65. Had the Electrical Defect been disclosed in advance, consumers would not purchase or lease a vehicle with said Defect, or they would have paid substantially less for the vehicle.
66. To this date, Subaru has failed to disclose the Electrical Defect to consumers and the public.

Subaru's Warranty Practices

67. Class Vehicles were sold with a written express warranty, the New Vehicle Limited Warranty (“NVLW”). The NVLW covers the Class Vehicles for three years or up to 60,000 kilometers, whichever comes first, and it covers most vehicle components, such as the vehicle batteries.
68. The NVLW expressly warrants that each component part of the vehicle shall be free from defects in material or workmanship.
69. Subaru also offers a “Major Component 60 Month/100,000 KM Warranty”, covering the replacement of major components, including the electronic control unit (“ECU”) for five years, or 100,000 kilometers, as well as a “Parts and Accessories Limited Warranty”, covering the repair or replacement of Genuine Subaru Parts for 12 months or 20,000 kilometers, whichever comes first.
70. Subaru provides these warranties to buyers and lessees once they have purchased/leased their Class Vehicle; buyers and lessees have no pre-sale/lease knowledge or ability to bargain as to the terms of the warranties.
71. Subaru will often evade its warranty obligations, even when vehicles are tendered for repairs within the applicable warranty period.
72. First, Subaru will often inform owners or lessees who bring in their Class Vehicle for repairs that their batteries are performing as expected. Subaru may recharge the battery, but will instruct vehicle owners to avoid driving Class Vehicles for short distances in order to prevent the Electrical Defect from manifesting. In other words, Subaru is

instructing Class members to not use Class Vehicles for their ordinary and intended purpose.

73. Secondly, when Subaru does agree to perform warranty repairs, it will do so by either reprogramming vehicle ECMs or ECUs, or replacing failed batteries by using similarly defective replacement parts. This only delays the Electrical Defect from manifesting into premature battery failure, which may occur after the applicable warranties have expired.
74. Subaru's failure to appropriately correct the Electrical Defect imposes significant out of pocket expenses on Class members. Failing to remedy the Electrical Defect by only providing temporary solutions results in Subaru effectively evading its warranty obligations and shifts the costs of the Electrical Defect onto consumers.
75. Subaru's warranties not only fail their essential purpose, but any efforts by Subaru attempting to limit coverage for the Electrical Defect by relying on durational or substantive limits within its express warranties are unconscionable and thus unenforceable.
76. The limitations on the warranties are also substantively unconscionable. Subaru knew, or ought to have known, that the Class Vehicles were defective and would continue to pose safety risks after the warranties have expired, and failed to disclose the Electrical Defect to the Plaintiff and Class members. The Plaintiff and Class members were not aware of the Electrical Defect at the time of purchase/lease, and would not discover the Defect until it had manifested. As such, Subaru's enforcement of the durational limitations on those warranties is unconscionable.

CAUSES OF ACTION

(a) Negligence in Design, Manufacture, and Testing of the Products

77. The Defendants were negligent as they know or ought to have known that their acts committed by way of design, manufacture, testing, production, marketing, lease, and sale of the Class Vehicles would result in harm to the Plaintiff and Class Members. The Defendants failed to adequately research, design, test, and/or manufacture of the electrical systems in the Class Vehicles before warranting, advertising, promoting, marketing, leasing, and selling the Class Vehicles as suitable and safe for use in an intended and/or reasonably foreseeable manner.
78. The Defendants are experienced in the design and manufacture of consumer vehicles. As experienced manufacturers, the Defendants conduct tests, including pre-sale durability testing, on incoming components, including the engines, to verify that the parts are free from defect and align with the Defendants' specifications.
79. The Defendants knew or should have known of the Electrical Defect through their comprehensive quality assurance activities and manufacturing controls.
80. At all material times, the Defendants owed a duty of care to the Plaintiff and Class Members to:
- (a) ensure that the Class Vehicles were fit for intended and/or reasonably foreseeable use;
 - (b) conduct appropriate testing;

- (c) monitor, investigate, evaluate, and follow up on report of Electrical Defects in the Class Vehicles;
- (d) properly, adequately, and fairly warn of the magnitude of safety risks;
- (e) ensure that consumers and the public were kept fully and completely informed of all safety risks associated with the Class Vehicles in a timely manner; and
- (f) properly inform Transport Canada and other regulatory agencies of all risks associated with the Class Vehicles.

81. The Defendants negligently breached their duty of care.

82. The Defendants were well aware of the Electrical Defect but failed to notify customers of the nature and extent of the problems with Class Vehicle engines or to provide any adequate remedy.

83. The Plaintiff states that his damages were caused by the negligence of the Defendants. Such negligence includes, but is not limited to, the following:

- (a) the Defendants failed to ensure that the Class Vehicles were safe;
- (b) the Defendants failed to adequately test the Class Vehicles in a manner that would fully disclose the magnitude of the risks associated with use of the Class Vehicles;
- (c) the Defendants failed to provide with Plaintiff and Class Members with proper, adequate, and/or fair and timely warning of the risks associated with use of the Class Vehicles;
- (d) the Defendants failed to design and establish a recall process to repair the Electrical Defect;

- (e) the Defendants failed to adequately monitor, establish, and act upon reports of safety issues resulting because of the Electrical Defect;
- (f) the Defendants failed to provide any or any adequate updates and/or information to the Plaintiff and Class Members respecting the risks of the Electrical Defect despite the information being known to the Defendants;
- (g) the Defendants have consistently underreported and withheld information about the Electrical Defect and the associated risks;
- (h) after becoming aware of the Electrical Defect, the Defendants failed to issue any warning, failed to issue a recall, and failed to otherwise act prudently in a timely manner to alert Class Members and/or the public of the inherent dangers of the Electrical Defect;
- (i) the Defendants represented that the Class Vehicles were safe and fit for intended purposes when the Defendants knew or ought to have known that these representations were false;
- (j) the representations regarding safety of fitness of the Class Vehicles were unreasonable given that the Electrical Defect was known or ought to have been known by the Defendants;
- (k) the Defendants failed to cease the production, manufacture, marketing, and/or distribution of the Class Vehicles when they knew or ought to have known of the Electrical Defect and the associated safety risks; and

- (l) in all of the circumstances of this case, the Defendants applied callous and reckless disregard for the health and safety of the Plaintiff and Class Members.

84. As a result of the Defendants breaching their duty of care owed to the Plaintiff and Class Members, the Plaintiff and Class Members suffered damages.

(b) Failure to Warn

85. The Defendants owed a duty of care to the Plaintiff and Class Members to warn the Plaintiff and Class Members regarding the Electrical Defect. The Defendants negligently breached their duty of care as they failed to warn the Plaintiff and Class Members of the Electrical Defect or the consequent injuries and damages caused by the battery Defect.

86. The Plaintiff states that his damages were caused by the negligence of the Defendants. Such negligence includes, but is not limited to, the following:

- (a) the Defendants failed to provide the Plaintiff and Class Members with proper, adequate, and/or fair and timely warning of the Electrical Defect;
- (b) the Defendants failed to provide the Plaintiff and Class Members with proper, adequate, and/or fair and timely warning of the magnitude of the Electrical Defect;
- (c) the Defendants failed to adequately monitor, evaluate, and act upon reports of the Electrical Defect; and
- (d) the Defendants have consistently underreported and withheld information about the propensity of the Electrical Defect to cause injuries and damages.

87. As a result of the Defendants breaching their duty of care owed to the Plaintiff and Class Members, the Plaintiff and Class Members suffered damages.

(c) Breach of Warranty & Contract

88. As part of their purchase agreements, the Plaintiff and Class Members entered into agreements with the Defendants that consisted of both implied and express terms and warranties, including the condition that the Class Vehicles were free of defects and fit for intended and/or reasonably foreseeable use.

89. The Defendants expressly warranted the Class Vehicles to be free from defects for a period of 60 months/100,000 km through their Basic New Vehicle Limited Warranty (“NVLW”). The warranty is applicable to the Electrical Defect, however, the Defendants have failed to correct the issues.

90. The Defendants breached both the express and implied terms of the warranty of these agreements by, *inter alia*:

- (a) supplying the Plaintiff and Class Members with Class Vehicles that contained the Electrical Defect; and
- (b) supplying the Plaintiff and Class Members with Class Vehicles that failed to perform to the standard, characteristics, and qualities that the Defendants warranted.

91. As a result of the Defendants’ breach of contract and warranty, the Plaintiff and Class Members sustained foreseeable damages.

(d) Unjust Enrichment

92. Through the Defendants' production, marketing, leasing, and sale of the Class Vehicles, the Defendants were unjustly enriched by profits received and retained from the Plaintiff and Class Members. The Plaintiff and Class Members were correspondingly deprived by paying for a vehicle that was defective. There is no established juristic reason for the enrichment of the Defendants.
93. Revenue generated from the production, marketing, leasing, and sale of the Class Vehicles was revenue received and retained by the Defendants at the expense of the Plaintiff and Class Members. The Defendants must be required to disgorge all of the revenues thereby received.

DAMAGES

94. The Plaintiff's and Class Members' damages were caused by the actions of the Defendants. As a result of the Defendants' negligence, failure to warn, and breach of contract and warranty, the Plaintiff and Class Members have suffered and will continue to suffer damages.
95. The Plaintiff claims damages for costs, time, and expenses incurred in the process of rectifying the damages caused by the Defendants. As a result of the Defendants' conduct, the Plaintiff and Class Members have suffered and continue to suffer expenses and damages of a nature and amount to be particularized prior to trial.
96. The Plaintiff claims punitive, aggravated, and exemplary damages for the reckless and unlawful conduct of the Defendants. The Defendants' acts, wrongdoings, and breaches of

duties constitute unlawful business practices, the effects of which were and are borne by the Plaintiff and Class Members.

PLACE OF TRIAL

97. The Plaintiff proposes that this action be tried in the City of London.

SERVICE OUTSIDE ONTARIO WITHOUT LEAVE

98. Pursuant to rule 17.02(g) and (p) of the Ontario *Rules of Civil Procedure*, this originating process may be served outside Ontario without a court order because the proceeding consists of a claim or claims (a) in respect of a tort committed in Ontario; and, (b) against a person ordinarily resident or carrying on business in Ontario.

June 8, 2021

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Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
LONDON

STATEMENT OF CLAIM

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Electronically issued / Délivré par voie électronique : 08-Jun-2021

Court File No./N° du dossier du greffe: CV-21-00001058-00CP