

FEB 23 2021



AMENDED PURSUANT TO THE ORDER OF
MR. JUSTICE MAJAWA
PRONOUNCED ON SEPTEMBER 29, 2020

ORIGINAL FILED ON JULY 22, 2019

NO. S198183
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KELSI LYNN LARSEN

PLAINTIFF

AND:

ZF TRW AUTOMOTIVE HOLDINGS CORP.,
ZF ACTIVE AND SAFETY ELECTRONICS US LLC,
TRW CANADA LIMITED,
KIA CANADA INC.,
KIA MOTORS AMERICA, INC.,
KIA MOTORS MANUFACTURING GEORGIA, INC.,
HYUNDAI AUTO CANADA CORP.,
HYUNDAI MOTOR AMERICA, INC.,
HYUNDAI MOTOR MANUFACTURING ALABAMA LLC,
HONDA CANADA INC.,
HONDA OF AMERICA, MFG., INC.,
TOYOTA CANADA INC.,
TOYOTA ENGINEERING & MANUFACTURING NORTH
AMERICA, INC.,
FCA CANADA INC.,
FCA US LLC; and
~~mitsubishi CANADA LIMITED or its French form, MITSUBISHI~~
~~CANADA LIMITEE and~~
~~MITSUBISHI MOTORS NORTH AMERICA, INC.~~
MITSUBISHI MOTOR SALES OF CANADA, INC. VENTES
DE VEHICULES MITSUBISHI DU CANADA, INC.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

A. Introduction

1. Airbags are a critical safety component in virtually every motor vehicle sold in Canada and throughout the world. Drivers and passengers reasonably expect that airbags will properly deploy if their vehicles are involved in an accident. When functioning properly an airbag can

mean the difference between life and death.

2. The within proposed class proceeding concerns defective airbag control units ("ACU") manufactured and supplied by the Defendants, ZF TRW AUTOMOTIVE HOLDINGS CORP., ZF ACTIVE AND SAFETY ELECTRONICS US LLC and TRW CANADA LIMITED, which are part of airbag detection systems equipped in vehicles designed, manufactured, assembled, tested, marketed, distributed, supplied and/or sold by the Defendants, KIA CANADA INC., KIA MOTORS AMERICA, INC., KIA MOTORS MANUFACTURING GEORGIA, INC., HYUNDAI AUTO CANADA CORP., HYUNDAI MOTOR AMERICA, INC., HYUNDAI MOTOR MANUFACTURING ALABAMA LLC, HONDA CANADA INC., HONDA OF AMERICA, MFG., INC., TOYOTA CANADA INC., TOYOTA ENGINEERING & MANUFACTURING NORTH AMERICA, INC., FCA CANADA INC., FCA US LLC; and MITSUBISHI CANADA LIMITED, or its French form, MITSUBISHI CANADA LIMITEE and MITSUBISHI MOTORS NORTH AMERICA, INC., MITSUBISHI MOTOR SALES OF CANADA, INC. VENTES DE VEHICULES MITSUBISHI DU CANADA, INC. in Canada, including the Province of British Columbia.
3. ACU's are designed and manufactured to sense a vehicle crash, determine whether airbag deployment is necessary and deploy appropriate airbags and other supplemental restraints where needed. The ACU contains an electronic component—an application specific integrated circuit ("ASIC")—which monitors signals from other crash sensors located in the vehicle. If the ASIC fails, the ACU will not operate properly resulting in non-deployment of the airbag and/or seatbelt pretensioners during a collision.
4. As a result of a electrical overstress ("EOS") condition that causes the malfunction of the ASIC in the ACU's manufactured by the Defendants, ZF TRW AUTOMOTIVE HOLDINGS CORP., ZF ACTIVE AND SAFETY ELECTRONICS US LLC and TRW CANADA LIMITED, ("ACU Defect"), the airbags and/or seatbelt pretensioners equipped in the affected class vehicles (as defined below) fail to deploy during a crash. The EOS allows excess electrical signals produced during the crash to overload the ASIC and prevent the deployment of the airbag and/or seatbelt pretensioners. The ACU Defect exposes the Plaintiff and proposed class members to a safety risk that their vehicles' airbags and/or seatbelt pretensioners could fail to deploy during an accident resulting in serious injury or death.

5. Despite knowledge of the ACU Defect since at least 2011, the Defendants, ZF TRW AUTOMOTIVE HOLDINGS CORP., ZF ACTIVE AND SAFETY ELECTRONICS US LLC and TRW CANADA LIMITED, have continued to manufacture, assemble, distribute, supply and sell the defective ACU's, resulting in injuries and deaths. Further, the said vehicle manufacturers, as averred to in paragraph 2 herein, have continued to equip, sell and/or lease the affected class vehicles with airbag detection systems containing the ACU Defect without disclosing the ACU Defect and its safety risks to the Plaintiff and proposed class members.
6. As a result of this alleged misconduct, the Plaintiff and proposed class members were harmed and suffered actual damages. The Plaintiff and proposed class members did not receive the benefit of their bargain; rather, they purchased and/or leased vehicles that are of a lesser standard, grade and quality than represented, and they did not receive vehicles that met ordinary and reasonable consumer expectations regarding safe and reliable operation. Purchasers and/or lessees of the affected class vehicles paid more, either through a higher purchase price or higher lease payments, than they would have had the ACU Defect been disclosed. The Plaintiff and proposed class members were deprived of having a safe, defect-free airbag installed in their vehicles, and the said vehicle manufacturers, as averred to in paragraph 2 herein, have unjustly benefitted from their delay in recalling their defective vehicles, as they avoided incurring the costs associated with recalls and installing replacement parts for the airbag detection system for years.
7. The Plaintiff and proposed class members also suffered damages in the form of out-of-pocket and loss-of-use expenses and costs.
8. "Affected Class Vehicles" refers to the following model year vehicles designed, manufactured, assembled, tested, marketed, distributed, supplied and/or sold by the Defendants, KIA CANADA INC., KIA MOTORS AMERICA, INC., KIA MOTORS MANUFACTURING GEORGIA, INC., HYUNDAI AUTO CANADA CORP., HYUNDAI MOTOR AMERICA, INC., HYUNDAI MOTOR MANUFACTURING ALABAMA LLC, HONDA CANADA INC., HONDA OF AMERICA, MFG., INC., TOYOTA CANADA INC., TOYOTA ENGINEERING & MANUFACTURING NORTH AMERICA, INC., FCA CANADA INC., FCA US LLC; and ~~and MITSUBISHI CANADA LIMITED, or its French form, MITSUBISHI CANADA~~

~~LIMITEE and MITSUBISHI MOTORS NORTH AMERICA, INC., MITSUBISHI MOTOR~~
SALES OF CANADA, INC. VENTES DE VEHICULES MITSUBISHI DU CANADA, INC.,
 equipped with airbag detection systems containing the ACU Defect in Canada, including
 the Province of British Columbia:

<u>Defendant Vehicle Manufacturer</u>	<u>Model</u>	<u>Model Year(s)</u>
Kia	Forte	2010 - 2013
Kia	Forte KOUP	2010 - 2013
Kia	Optima	2011 - 2013
Kia	Optima Hybrid	2012 - 2016
Kia	Sedona	2010 - 2012
Hyundai	Sonata	2011 - 2013
Hyundai	Sonata Hybrid	2013 - 2019
Honda	Acura RLX	2014 - 2019
Honda	Acura RLX Hybrid	2014 - 2019
Honda	Acura TL	2012 - 2014
Honda	Acura TLX	2015 - 2017
Honda	Acura TSX	2012 - 2014
Honda	Acura TSX Sport Wagon	2014
Honda	Acura TSX Sportswagon	2012 - 2013
Honda	Accord	2013 - 2015
Honda	Accord Hybrid	2014 - 2015
Honda	Civic	2012 - 2015
Honda	Civic GX	2012 - 2015
Honda	Civic Hybrid	2012 - 2015
Honda	Civic SI	2012 - 2015

Honda	CR-V	2012 - 2016
Honda	Fit	2012 - 2017
Honda	Fit EV	2013 - 2014
Honda	Ridgeline	2012 - 2014
Toyota	Avalon	2012 - 2018
Toyota	Avalon Hybrid	2013 - 2018
Toyota	Corolla	2011 - 2019
Toyota	Corolla IM	2017 - 2018
Toyota	Corolla Matrix	2011 - 2013 <u>2014</u>
Toyota	Sequoia	2012 - 2017
Toyota	Tacoma	2012 - 2019
Toyota	Tundra	2012 - 2017
FCA	Dodge Nitro	2010 - 2011
FCA	Dodge Ram 1500	2009 - 2012
FCA	Dodge Ram 2500	2010 - 2012
FCA	Dodge Ram 3500	2010 - 2012
FCA	Dodge Ram 4500	2011 - 2012
FCA	Dodge Ram 5500	2011 - 2012
FCA	Dodge Chrysler 200	2010 - 2014
FCA	Dodge Sebring	2010 - 2014
FCA	Dodge Caliber	2012 - 2014
FCA	Dodge Avenger J	2010 - 2014
FCA	Fiat 500	2012 - 2019
FCA	Jeep Compass	2015 - 2017
FCA	Jeep Liberty	2010 - 2012
FCA	Jeep Patriot	2015 - 2017

FCA	Jeep Wrangler	2010 - 2018
Mitsubishi	Lancer	2013 - 2017
Mitsubishi	Lancer Evolution	2013 - 2015
Mitsubishi	Lancer Ralliart	2014 - 2015
Mitsubishi	Lancer Sportback	2013 - 2016
Mitsubishi	Outlander	2013

9. The Plaintiff seeks relief for all other owners and/or lessees of the Affected Class Vehicles equipped with the ACU Defect including, *inter alia*, recovery of damages and/or repair under various provincial consumer protection legislation, breach of implied warranty of merchantability and reimbursement of all expenses associated with the recall and/or repair of the airbag detection system in the Affected Class Vehicles.

B. The Parties

The Representative Plaintiff

10. The Plaintiff, KELSI LYNN LARSEN, is a resident of Chilliwack, British Columbia, V2P 3V3, Canada.
11. On or about February 27, 2017 the Plaintiff purchased a 2016 Jeep Patriot from Willowbrook Motors Ltd., located at 19611 Langley Bypass, Langley, British Columbia, Canada, for \$28,990.00 plus taxes and administrative documentation fees. The Plaintiff also purchased an extended vehicle warranty for \$2,195.00 from the dealership for her 2016 Jeep Patriot.
12. The Plaintiff's 2016 Jeep Patriot is equipped with an airbag detection system containing the ACU Defect.
13. To the Plaintiff's knowledge the airbags or airbag detection system in her 2016 Jeep Patriot

have not been repaired or replaced.

14. At the time of sale, had the Plaintiff known about the ACU Defect she would not have purchased her 2016 Jeep Patriot or would not have paid as much as she did for it given the associated safety risk. The value of the Plaintiff's 2016 Jeep Patriot has been diminished as a result of the ACU Defect and associated safety risk.

The ACU Manufacturer Defendants

15. The Defendant, ZF TRW AUTOMOTIVE HOLDINGS CORP., is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, Corporation Service Company, at 251 Little Falls Drive, Wilmington, Delaware, 19808, United States of America.
16. The Defendant, ZF ACTIVE AND SAFETY ELECTRONICS US LLC, is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, Corporation Service Company, at 251 Little Falls Drive, Wilmington, Delaware, 19808, United States of America.
17. The Defendant, TRW CANADA LIMITED, is a company duly incorporated pursuant to the laws of Canada, with its head office located at 16643 Highway 12, Midland, Ontario L4R 4L5.
18. At all material times to the cause of action herein, ZF TRW AUTOMOTIVE HOLDINGS CORP., is an American supplier of automotive systems, modules and components, including, *inter alia*, airbags and airbag detection systems, to global vehicle manufacturers and related after markets, and is a subsidiary of the German multinational company, ZF Friedrichshafen AG.
19. At all material times to the cause of action herein, the Defendant, ZF ACTIVE AND SAFETY ELECTRONICS US LLC, formerly TRW Automotive U.S. LLC, is an American company that, *inter alia*, designs, manufactures, tests, assembles, markets, distributes, supplies and/or sells vehicle airbags and airbag detection systems, and is a subsidiary of the

Defendant, ZF TRW AUTOMOTIVE HOLDINGS CORP.

20. At all material times to the cause of action herein, the Defendant, TRW CANADA LIMITED, designs, manufactures, tests, assembles, markets, distributes, supplies and/or sells vehicle airbags and airbag detection systems, and is a subsidiary of the Defendants, ZF TRW AUTOMOTIVE HOLDINGS CORP. and/or ZF ACTIVE AND SAFETY ELECTRONICS US LLC.
21. At all material times to the cause of action herein, the Defendants, ZF TRW AUTOMOTIVE HOLDINGS CORP., ZF ACTIVE AND SAFETY ELECTRONICS US LLC and TRW CANADA LIMITED, shared the common purpose of, *inter alia*, designing, manufacturing, testing, assembling, marketing, distributing, supplying and/or selling airbags and airbag detection systems to vehicle manufacturers including those of the Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendants, ZF TRW AUTOMOTIVE HOLDINGS CORP., ZF ACTIVE AND SAFETY ELECTRONICS US LLC and TRW CANADA LIMITED, are interwoven with that of the other as to the ACU Defect in certain Affected Class Vehicles as averred to in paragraph 8 herein.
22. Hereinafter, the Defendants, ZF TRW AUTOMOTIVE HOLDINGS CORP., ZF ACTIVE AND SAFETY ELECTRONICS US LLC and TRW CANADA LIMITED, are collectively referred to as the Defendant, "ZF-TRW".

The Vehicle Manufacturer Defendants

23. The Defendant, KIA CANADA INC., is a company duly incorporated pursuant to the laws of Canada, registered within the Province of British Columbia under number A0085732, and has a registered agent, FMD Service (B.C.) Inc., at 2900 - 550 Burrard Street, Vancouver, British Columbia, V6C 0A3, Canada.
24. The Defendant, KIA MOTORS AMERICA, INC., is a company duly incorporated pursuant to the laws of the State of California, one of the United States of America, and has a registered agent, C T Corporation System, at 111 Peters Canyon Road, Irvine, California,

92606, United States of America.

25. The Defendant, KIA MOTORS MANUFACTURING GEORGIA, INC. is a company duly incorporated pursuant to the laws of the State of Georgia, one of the United States of America, and has a registered agent, C T Corporation System, at 289 S Culver Street, Lawrenceville, Georgia, 30046-4805, United States of America.
26. At all material times to the cause of action herein, the Defendant, KIA CANADA INC., was, and is, a wholly owned North American subsidiary of Kia Motor Company, a South Korean multinational company which, *inter alia*, markets, advertises, distributes and/or sells Kia vehicles, including certain Affected Class Vehicles, as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada and within the Province of British Columbia.
27. At all material times to the cause of action herein, Kia Motor Company designs, manufacturers, tests, assembles, markets, distributes, supplies and/or sells Kia vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, through its related subsidiaries and/or operating units including the Defendants, KIA CANADA INC., KIA MOTORS AMERICA, INC. and/or KIA MOTORS MANUFACTURING GEORGIA, INC., independent retailers and authorized dealerships in the United States of America and Canada.
28. At all material times to the cause of action herein, the Defendant, KIA MOTOR AMERICA, INC., was, and is, a wholly owned North American subsidiary of Kia Motor Company which, *inter alia*, markets, advertises, distributes and/or sells Kia vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, in the United States of America and/or Canada, including the Province of British Columbia.
29. At all material times to the cause of action herein, the Defendant, KIA MOTORS MANUFACTURING GEORGIA, INC., was, and is, a wholly owned North American subsidiary of Kia Motor Company which, *inter alia*, designs, manufactures, tests and/or assembles Kia vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, at an automobile plant located in the State of Georgia, United States of America, for distribution and/or sale in the United States

of America and/or Canada, including the Province of British Columbia.

30. At all material times to the cause of action herein, the Defendants, KIA CANADA INC., KIA MOTORS AMERICA, INC. and/or KIA MOTORS MANUFACTURING GEORGIA, INC., shared the common purpose of, *inter alia*, designing, manufacturing, testing, assembling, marketing, distributing, supplying and/or selling Kia vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada and within the Province of British Columbia. Further, the business and interests of the Defendants, KIA CANADA INC., KIA MOTORS AMERICA, INC. and/or KIA MOTORS MANUFACTURING GEORGIA, INC., are interwoven with that of the other as to the ACU Defect in certain Affected Class Vehicles as averred to in paragraph 8 herein.
31. Hereinafter, the Defendants, KIA CANADA INC., KIA MOTORS AMERICA, INC. and/or KIA MOTORS MANUFACTURING GEORGIA, INC., are collectively referred to as the Defendant, "KIA".
32. The Defendant, HYUNDAI AUTO CANADA CORP, is a company duly incorporated pursuant to the laws of Canada, registered within the Province of British Columbia under number A0069704, and has a registered agent, BHT Management Inc., at Suite 1800-510 West Georgia Street, Vancouver, British Columbia, V6B 0M3, Canada.
33. The Defendant, HYUNDAI MOTOR AMERICA, INC., is a company duly incorporated pursuant to the laws of the State of California, one of the United States of America, and has a registered agent, National Registered Agents, Inc., at 10550 Talbert, Avenue, Fountain Valley, California, 92708, United States of America.
34. The Defendant, HYUNDAI MOTOR MANUFACTURING ALABAMA LLC, is a company duly incorporated pursuant to the laws of the State of Alabama, one of the United States of America, and has a registered agent, Richard E. Neal, at 700 Hyundai Boulevard, Montgomery, Alabama, 36105, United States of America.
35. At all material times to the cause of action herein, the Defendant, HYUNDAI AUTO CANADA CORP, was, and is, a wholly owned North American subsidiary of Hyundai Motor

Company, a South Korean multinational company which, *inter alia*, markets, advertises, distributes and/or sells Hyundai vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada and within the Province of British Columbia.

36. At all material times to the cause of action herein, Hyundai Motor Company designs, manufacturers, tests, assembles, markets, distributes, supplies and/or sells Hyundai vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, through its related subsidiaries and/or operating units, including the Defendants, HYUNDAI AUTO CANADA CORP., HYUNDAI MOTOR AMERICA, INC. and/or HYUNDAI MOTOR MANUFACTURING ALABAMA LLC, independent retailers and authorized dealerships in the United States of America and Canada.
37. At all material times to the cause of action herein, the Defendant, HYUNDAI MOTOR AMERICA, INC., was, and is, a wholly owned North American subsidiary of Hyundai Motor Company which, *inter alia*, markets, advertises, distributes and/or sells Hyundai vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, in the United States of America and/or Canada, including the Province of British Columbia.
38. At all material times to the cause of action herein, the Defendant, HYUNDAI MOTOR MANUFACTURING ALABAMA LLC, was, and is, a wholly owned North American subsidiary of Hyundai Motor Company which, *inter alia*, designs, manufactures, tests and/or assembles Hyundai vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, at an automobile plant located in the State of Alabama, United States of America, for distribution and/or sale in the United States of America and/or Canada, including the Province of British Columbia.
39. At all material times to the cause of action herein, the Defendants, HYUNDAI AUTO CANADA CORP., HYUNDAI MOTOR AMERICA, INC. and HYUNDAI MOTOR MANUFACTURING ALABAMA LLC, shared the common purpose of, *inter alia*, developing, manufacturing, testing, assembling, marketing, distributing, supplying and/or selling Hyundai

vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada and within the Province of British Columbia. Further, the business and interests of the Defendants, HYUNDAI AUTO CANADA CORP., HYUNDAI MOTOR AMERICA, INC. and HYUNDAI MOTOR MANUFACTURING ALABAMA LLC, are interwoven with that of the other as to the ACU Defect in certain Affected Class Vehicles as averred to in paragraph 8 herein.

40. Hereinafter, the Defendants, HYUNDAI AUTO CANADA CORP., HYUNDAI MOTOR AMERICA, INC. and HYUNDAI MOTOR MANUFACTURING ALABAMA LLC, are collectively referred to as the Defendant, "HYUNDAI".
41. The Defendant, HONDA CANADA INC., is a company duly incorporated pursuant to the laws of Canada, registered within the Province of British Columbia under number A0055194, and has an attorney, Donald M. Dalik, at #2900 - 550 Burrard Street, Vancouver, British Columbia, V6C 0A3, Canada.
42. The Defendant, HONDA OF AMERICA, MFG., INC, is a company duly incorporated pursuant to the laws of the State of Ohio, one of the United States of America, and has a registered agent, Statutory Agent Corporation, at 52 East Gay Street, Columbus, Ohio, 43215, United States of America.
43. At all material times to the cause of action herein, the Defendant, HONDA CANADA INC., was, and is, a wholly owned North American subsidiary of Honda Motor Company, a Japanese multinational company which, *inter alia*, designs, manufacturers, tests, assembles, markets, distributes, supplies and/or sells Honda vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada and within the Province of British Columbia.
44. At all material times to the cause of action herein, Honda Motor Company designs, manufacturers, tests, assembles, markets, distributes, supplies and/or sells Honda vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, through its related subsidiaries and/or operating units including the Defendants, HONDA CANADA INC. and/or HONDA OF AMERICA, MFG,

INC., independent retailers and authorized dealerships in the United States of America and Canada.

45. At all material times to the cause of action herein, the Defendant, HONDA CANADA INC., was, and is, a wholly owned North American subsidiary of Honda Motor Company that, *inter alia*, designs, manufactures, tests and/or assembles Honda vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada at an automobile plant located in the Province of Ontario for distribution and/or sale in Canada and/or the United States of America. Further, the Defendant, HONDA CANADA INC., in conjunction with Honda Motor Company conducts the sale, marketing and/or operational activities for Honda vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, in Canada and within the Province of British Columbia.
46. At all material times to the cause of action herein, the Defendant, HONDA OF AMERICA, MFG., INC., was, and is, a wholly owned North American subsidiary of Honda Motor Company which, *inter alia*, designs, manufactures, tests and/or assembles Honda vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, at automobile plants located, *inter alia*, in the State of Ohio, United States of America, for distribution and/or sale in the United States of America and Canada, including the Province of British Columbia.
47. At all material times to the cause of action herein, the Defendants, HONDA CANADA INC. and HONDA OF AMERICA MFG., INC., shared the common purpose of *inter alia*, developing, manufacturing, testing, assembling, marketing, distributing, supplying, selling and/or distributing the Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada and within the Province of British Columbia. Further, the business and interests of the Defendants, HONDA CANADA INC. and HONDA OF AMERICA MFG., INC., are interwoven with that of the other as to the ACU Defect in certain Affected Class Vehicles as averred to in paragraph 8 herein.
48. Hereinafter, the Defendants, HONDA CANADA INC. and HONDA OF AMERICA MFG., INC., are collectively referred to as the Defendant, "HONDA".

49. The Defendant, TOYOTA CANADA INC., is a company duly incorporated pursuant to the laws of Canada, registered within the Province of British Columbia under number A0020649, and has an attorney, FMD Service (B.C.) Inc., at #2900 - 550 Burrard Street, Vancouver, British Columbia, V6C 0A3, Canada.
50. The Defendant, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., is a company duly incorporated pursuant to the laws of the State of Kentucky, one of the United States of America, and has a registered agent, CT Corporation System, at 306 West Main Street, Suite 512, Frankfort, Kentucky, 40601, United States of America.
51. At all material times to the cause of action herein, the Defendant, TOYOTA CANADA INC., was, and is, a wholly owned North American subsidiary of Toyota Motor Corporation, a Japanese multinational company which, *inter alia*, designs, manufacturers, tests, assembles, markets, distributes, supplies and/or sells Toyota vehicles including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada and within the Province of British Columbia.
52. At all material times to the cause of action herein, Toyota Motor Corporation designs, manufacturers, tests, assembles, markets, distributes, supplies and/or sells Toyota vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, through its related subsidiaries and/or operating units, including the Defendants, TOYOTA CANADA INC. and/or TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., independent retailers and authorized dealerships in the United States of America and Canada.
53. At all material times to the cause of action herein, the Defendant, TOYOTA CANADA INC., was, and is, a wholly owned North American subsidiary of Toyota Motor Corporation that, *inter alia*, designs, manufactures, tests and/or assembles Toyota vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada at automobile plants located in the Province of Ontario for distribution and/or sale in Canada and/or the United States of America. Further, the Defendant, TOYOTA CANADA INC., in conjunction with Toyota Motor Company, conducts the sale, marketing and/or

operational activities for Toyota vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, in Canada and within the Province of British Columbia.

54. At all material times to the cause of action herein, the Defendant, TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., was, and is, a wholly owned North American subsidiary of Toyota Motor Company which, *inter alia*, designs, manufactures, tests and/or assembles Toyota vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, at automobile plants located, *inter alia*, in the States of Alabama, Indiana, Kentucky, Mississippi, Texas and West Virginia, for distribution and/or sale in the United States of America and Canada, including the Province of British Columbia.
55. At all material times to the cause of action herein, the Defendants, TOYOTA CANADA INC. and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., shared the common purpose of *inter alia*, developing, manufacturing, testing, assembling, marketing, distributing, supplying, selling and/or distributing the Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada and within the Province of British Columbia. Further, the business and interests of the Defendants, TOYOTA CANADA INC. and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., are interwoven with that of the other as to the ACU Defect in certain Affected Class Vehicles as averred to in paragraph 8 herein.
56. Hereinafter, the Defendants, TOYOTA CANADA INC. and TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA, INC., are collectively referred to as the Defendant, "TOYOTA".
57. The Defendant, FCA CANADA INC., is a company duly incorporated pursuant to the laws of Canada, registered within the Province of British Columbia under number A0004330, and has an attorney, Donald M. Dalik, at #2900 - 550 Burrard Street, Vancouver, British Columbia, V6C 0A3, Canada.
58. The Defendant, FCA US LLC, is a company duly incorporated pursuant to the laws of the

State of Delaware, one of the United States of America, and has a registered agent, the Corporation Trust Company, at Corporation Trust Center, Wilmington, Delaware, 19801, United States of America.

59. At all material times to the cause of action herein, the Defendant, FCA CANADA INC., was, and is, a wholly owned subsidiary of the Defendant, FCA US LLC, which, *inter alia*, designs, manufacturers, tests, assembles, markets, distributes, supplies and/or sells Dodge, Fiat and Jeep vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped the ACU Defect in Canada and within the Province of British Columbia.
60. At all material times to the cause of action herein, the Defendant, FCA CANADA INC., designs, manufactures, tests and/or assembles Dodge, Fiat and Jeep vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada at an automobile plant located in the Province of Ontario for distribution and/or sale in Canada and/or the United States of America.
61. At all material times to the cause of action herein, the Defendant, FCA US LLC, is an American multinational company which, *inter alia*, designs, manufactures, tests and/or assembles Dodge, Fiat and Jeep vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, at automobile plants located, *inter alia*, in the States of Michigan and Ohio, for distribution and/or sale in the United States of America and Canada, including the Province of British Columbia.
62. At all material times to the cause of action herein, the Defendants, FCA CANADA INC. and FCA US LLC, shared the common purpose of *inter alia*, developing, manufacturing, testing, assembling, marketing, distributing, supplying, selling and/or distributing the Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada and within the Province of British Columbia. Further, the business and interests of the Defendants, FCA CANADA INC. and FCA US LLC., are interwoven with that of the other as to the ACU Defect in certain Affected Class Vehicles as averred to in paragraph 8 herein.
63. Hereinafter, the Defendants, FCA CANADA INC. and FCA US LLC., are collectively referred to as the Defendant, "FCA".

64. ~~The Defendant, MITSUBISHI CANADA LIMITED, or its French form, MITSUBISHI CANADA LIMITEE, is a company duly incorporated pursuant to the laws of the Province of British Columbia under number BC0066562 and has a registered office at 2800 Park Place, 666 Burrard Street, Vancouver, British Columbia, V6G 2Z7, Canada.~~
64. The Defendant, MITSUBISHI MOTOR SALES OF CANADA, INC. VENTES DE VEHICULES MITSUBISHI DU CANADA, INC., is a company duly incorporated pursuant to the laws of Canada, registered within the Province of British Columbia under number A0057725, and has an registered attorney, LML&S Services Inc., at 1500 1055 West Georgia Street, PO Box 11117, Vancouver, British Columbia, V6E 4N7, Canada.
65. ~~The Defendant, MITSUBISHI MOTORS NORTH AMERICA, INC., is a company duly incorporated pursuant to the laws of the State of California, one of the United States of America, and has a registered agent, GT Corporation System, at 818 West 7th Street, Suite 930, Los Angeles, California, 90017, United States of America.~~
- 66 65. At all material times to the cause of action herein, the Defendant, ~~MITSUBISHI CANADA LIMITED, or its French form, MITSUBISHI CANADA LIMITEE,~~ MITSUBISHI MOTOR SALES OF CANADA, INC. VENTES DE VEHICULES MITSUBISHI DU CANADA, INC., was, and is, a wholly owned North American subsidiary of Mitsubishi Motor Corp., a Japanese multinational company, which, *inter alia*, markets, advertises, distributes and/or sells Mitsubishi vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada and within the Province of British Columbia.
- 67 66. At all material times to the cause of action herein, Mitsubishi Motor Corp. designs, manufacturers, tests, assembles, markets, distributes, supplies and/or sells Mitsubishi vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, through its related subsidiaries and/or operating units, including the ~~Defendants, MITSUBISHI CANADA LIMITED, or its French form, MITSUBISHI CANADA LIMITEE, and MITSUBISHI MOTORS NORTH AMERICA, INC.,~~ Defendant, MITSUBISHI MOTOR SALES OF CANADA, INC. VENTES DE VEHICULES MITSUBISHI DU CANADA, INC., independent retailers and authorized dealerships in the United States

of America and Canada.

68. ~~At all material times to the cause of action herein, the Defendant, MITSUBISHI MOTORS NORTH AMERICA, INC., was, and is, a wholly owned North American subsidiary of Mitsubishi Motor Corp. which, *inter alia*, markets, advertises, distributes and/or sells Mitsubishi vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect, in the United States of America and/or Canada, including the Province of British Columbia:~~
- 69 67. At all material times to the cause of action herein, the ~~Defendants, MITSUBISHI CANADA LIMITED, or its French form, MITSUBISHI CANADA LIMITEE, and MITSUBISHI MOTORS NORTH AMERICA, INC.,~~ Defendant, MITSUBISHI MOTOR SALES OF CANADA, INC. VENTES DE VEHICULES MITSUBISHI DU CANADA, INC., and Mitsubishi Motor Corp. shared the common purpose of, *inter alia*, designing, manufacturing, testing, assembling, marketing, distributing, supplying and/or selling Mitsubishi vehicles, including certain Affected Class Vehicles as averred to in paragraph 8 herein, equipped with the ACU Defect in Canada and within the Province of British Columbia. Further, the business and interests of the ~~Defendants, MITSUBISHI CANADA LIMITED and MITSUBISHI MOTORS NORTH AMERICA, INC.,~~ Defendant, MITSUBISHI MOTOR SALES OF CANADA, INC. VENTES DE VEHICULES MITSUBISHI DU CANADA, INC., and Mitsubishi Motor Corp. are interwoven with that of the other as to the ACU Defect in certain Affected Class Vehicles as averred to in paragraph 8 herein
- 70 68. Hereinafter, the ~~Defendants, MITSUBISHI CANADA LIMITED, or its French form, MITSUBISHI CANADA LIMITEE, and MITSUBISHI MOTORS NORTH AMERICA, INC.,~~ are collectively Defendant, MITSUBISHI MOTOR SALES OF CANADA, INC. VENTES DE VEHICULES MITSUBISHI DU CANADA, INC., is referred to as the Defendant, "MITSUBISHI".
- 74 69. Hereinafter, the Defendants, KIA, HYUNDAI, HONDA, TOYOTA, FCA and MITSUBISHI, are collectively referred to as the Defendant, "Vehicle Manufacturers", unless referred to individually.

C. The Class

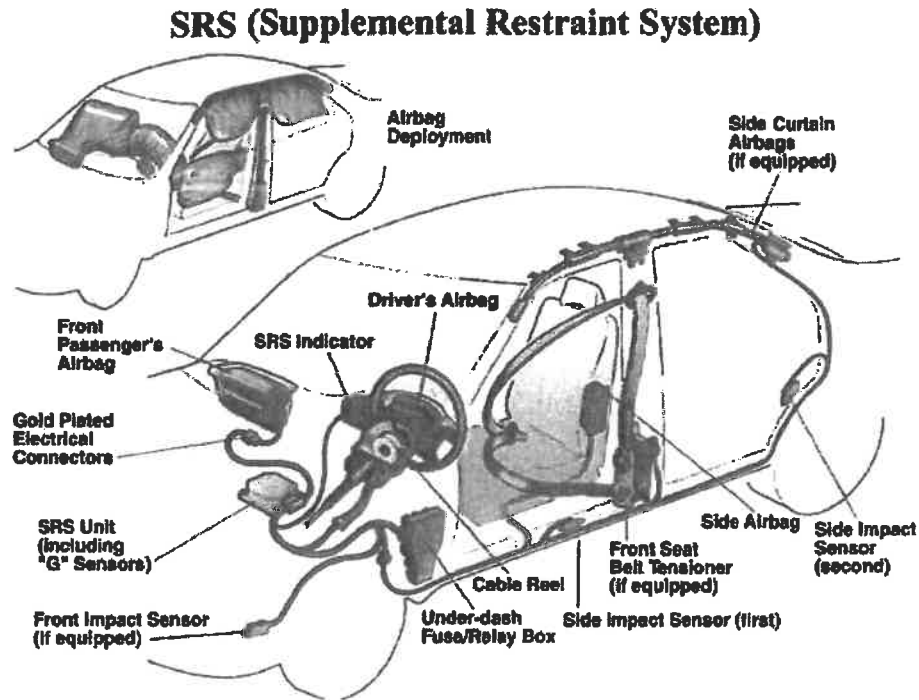
~~72~~ 70. This action is brought on behalf of members of a class consisting of the Plaintiff, all British Columbia residents, and all other persons resident in Canada, excluding the Province of Quebec, who ~~own or owned, purchased and/or leased~~ own, owned, lease and/or leased an Affected Class Vehicle designed, manufactured, tested, assembled, marketed, distributed, supplied and/or sold by the Defendant, Vehicle Manufacturers, equipped with a defective ACU airbag control unit designed, assembled, tested and manufactured by the Defendant, ZF-TRW ("Class Members"), and who claim to have suffered damages as a result of the failure, or potential failure, of the airbags and/or seatbelt pretensioners equipped in the Affected Class Vehicles to deploy during an accident, or such other class definition or class period as the Court may ultimately decide on the application for certification.

D. Factual Allegations

The ACU Defect

~~73~~ 71. The airbag systems in the Affected Class Vehicles contain ACU's which sense vehicle crashes and evaluate whether airbag deployment is necessary in the event of an impact. The ACU is located in the Affected Class Vehicles' passenger compartments and is electrically connected to crash sensors located at the front of the Affected Class Vehicles. Based on the results of the sensor, the ACU will deploy the appropriate airbag and other safety restraints to protect drivers and passengers from an accident or impact.

74. 72. For illustrative purposes, below is a schematic representation of an airbag system:



75 73. The ASIC electronic component monitors signals from other crash sensors located in the Affected Class Vehicles. If the ASIC fails, the ACU will not operate properly and airbags and other supplemental restraints, such as the seatbelt pretensioners, will not deploy in a collision.

76 74. The ASIC in the Affected Class Vehicles is defective as it is susceptible to EOS, which allows excess electrical signals produced during the crash to overload the ASIC and prevent deployment of the airbag and/or seatbelt pretensioners.

77 75. The ACU is intended to have electrical wiring and circuitry that prevents the transmission of harmful signals that may damage the ASIC. However, the ACU's in the Affected Class Vehicles do not contain sufficient ASIC protection to avoid electrical overstress, which results in failure of the airbags and/or seatbelt pretensioners to deploy when needed.

~~78~~ 76. The defect within the ACU and ASIC exposes proposed Class Members to the serious and life threatening safety risk that their Affected Class Vehicle airbags could fail to deploy in an accident resulting in injury or death.

~~79~~ 77. It is estimated that in the United States of America as many as 12 million vehicles may have defective airbags that will not deploy in a crash and resulting in at least six injuries and four fatalities.

Vehicle Airbag Recalls and Investigations

2016 United States National Highway Traffic Safety Administration ("NHTSA") Defendant, FCA, Recall

~~80~~ 78. On September 13, 2016 NHTSA issued Recall Number 16V-668 which applied to approximately 1,425,627 Defendant, FCA, vehicles and described the airbag defect in the following manner:

Defect description:

2010–2014 MY Chrysler 200, Chrysler Sebring and Dodge Avenger ("JS"), 2010–2014 MY Jeep Compass and Jeep Patriot ("MK") and 2010–2012 MY Dodge Caliber ("PM") vehicles may experience loss of airbag and seatbelt pretensioner deployment capability in certain crash events due to a shorting condition resulting in a negative voltage transient that travels to the Occupant Restraint Controller ("ORC") via the front impact sensor wires damaging an Application Specific Integrated Circuit ("ASIC") in the ORC. The root cause of the failure was determined to be a combination of the relative susceptibility of the subject ORC ASIC to negative transients and the front acceleration sensor signal cross-car wire routing in certain crash events.

Description of the Safety Risk:

The potential loss of airbag and seatbelt pretensioner deployment capability in such crash events may increase the risk of injury in a crash.

2016 Transport Canada Defendant, FCA, Recall

81 79. On September 14, 2016 Transport Canada issued Recall #2016448 with respect to 139,513 Defendant, FCA, model year vehicles, 2011- 2014 Chrysler 200, 201 Sebring, 2010 - 2014 Avenger, 2010 -2012 Caliber, 2010 - 2014 Jeep Compass and 2010 -2104 Jeep Patriot, and described the airbag defect in the following manner:

Recall Details: On certain vehicles in certain types of crashes, airbag and seatbelt pretensioner deployment capability may be lost due to a short in the front impact sensor wiring affecting Occupant Restraint Controller function. Failure of airbags and seatbelt pretensioners to deploy in a crash (when warranted) could increase the risk of injury.

2018 NHTSA Defendant, HYUNDAI, Recall

82 80. On February 27, 2018 NHTSA issued Recall Number 18V-137 which applied to approximately 154,753 Defendant, HYUNDAI, vehicles and described the airbag defect as follows:

Defect Description:

The subject vehicles are equipped with an Airbag Control Unit ("ACU") which detects a crash signal and commands deployment of the airbags and seatbelt pretensioner. In some airbag deployment allegations, electrical overstress ("EOS") was observed on an Application Specific Integrated Circuit ("ASIC") inside the ACU.

Description of the Safety Risk:

If the ACU circuitry is damaged, the airbags and seatbelt pretensioner may not deploy in some crashes where deployment is necessary, increasing the risk of injury.

~~83~~ 81. On March 16, 2018 the Office of Defects Investigation ("ODI") of NHTSA opened a preliminary investigation ("PE") into the ACU Defect as it related to 2012-2013 Kia Forte and 2011 Hyundai Sonata vehicles. At the time, there had been six crashes with significant collision related damage events involving Hyundai and Kia vehicles where airbags failed to deploy in frontal crashes. The crashes resulted in four fatalities and six injuries.

~~84~~ 82. While the PE investigation focused on certain Hyundai and Kia vehicles containing the ACU Defect, the ODI identified the Defendant, ZF-TRW, as the supplier of the defective ACU's, putting vehicle manufacturers on notice of the ACU defect. ODI described the ACU defect as follows:

"[f]ailure of the air bag control unit may prevent the frontal air bags from deploying in the event of a crash."

2018 Transport Canada Defendant, HYUNDAI, Recall

~~85~~ 83. On May 15, 2018 Transport Canada issued Recall #2018261 with respect to 41,067 Defendant, HYUNDAI, model year vehicle, 2011 - 2013 Sonata, and described the airbag defect as follows:

Recall Details: On certain gasoline and hybrid engine vehicles, the circuits within the airbag control unit may become damaged. This could cause the airbags and seatbelt pretensioners to not deploy in certain collisions where deployment is warranted, which could increase the risk of injury to vehicle occupants.

2018 NHTSA Defendant, KIA, Recall

86 84. On June 1, 2018 NHTSA issued Recall Number 18V-363 which applied to approximately 507,587 Defendant, KIA, vehicles and described the airbag defect as follows:

Defect Description

The Airbag Control Unit (ACU) detects crash severity and commands deployment of the advanced airbags and seatbelt pretensioners when necessary. The recalled vehicles are equipped with an ACU which contain a certain application-specific integrated circuit ("ASIC") that may be susceptible to electrical overstress ("EOS") during certain frontal crash events.

Description of the Safety Risk

If the ASIC becomes damaged, the front airbags and seatbelt pretensioners may not deploy in certain frontal crashes where deployment may be necessary, thereby increasing the risk of injury.

Description of the Cause

The ASIC component within the subject ACU's may be susceptible to EOS due to inadequate circuit protection.

2018 Transport Canada Defendant, KIA, Recall

87 85. On June 8, 2018 Transport Canada issued Recall #2018301 with respect to 65,548 Defendant, KIA, model year vehicles, 2010 - 2013 Forte, 2010 -2013 Forte Koup, 2011 - 2013 Optima and 2010 - 2012 Sedona, and described the airbag defect as follows:

Recall Details: On certain gasoline and hybrid engine vehicles, the circuits within the airbag control unit may became damaged. This

could cause the airbags and seatbelt pretensioners to not deploy in certain collisions where deployment is warranted, which could increase the risk of injury to vehicle occupants.

~~88~~ 86. On April 19, 2019 the ODI upgraded the airbag probe from a PE to an engineering analysis, which is a step closer toward seeking recalls and expanded the scope of the investigation to include the tier-one supplier and any vehicle manufacturer who installed the ACU in production vehicles. According to NHTSA, the Defendant, ZF-TRW, supplied the defective ACU's to the Defendant, Vehicle Manufacturers.

~~89~~ 87. Recently, the ODI "identified two substantial frontal crash events (one fatal) involving Toyota products where EOS is suspected as the likely cause of the non-deployments." As explained by the ODI, "[t]he crashes involved a MY 2018 and a MY 2019 Corolla equipped with the subject ACU that incorporated higher levels of ASIC protection" where "both ACU's were found to be non-communicative (meaning the ACU could not be read with an Event Data Recorder) after the crash, a condition found in other cases where EOS occurred with other OEMs."

2020 NHTSA Defendant, TOYOTA, Recall

88. On January 17, 2020 NHTSA issued Recall Number 20V-024 which applied to approximately 2,891,976 Defendant, TOYOTA, model year vehicles, 2011-2019 Corolla, 2011-2013 Corolla Matrix, 2012-2018 Avalon and 2013-2018 Avalon HV, and described the airbag defect as follows:

Defect Description

The subject vehicles may be equipped with an airbag control module for the supplemental restraint system (SRS ECU) manufactured by ZF-TRW. The ECU receives signals from crash sensors and deploys the air bags and seat belt pretensioners in accordance with design specifications. This ECU contains a model DS84 application-specific integrated circuit (ASIC) which controls the communication of the

crash sensor signals, firing commands (i.e., when to deploy the airbag(s) and/or pretensioners), and fault information (e.g., diagnostic trouble codes).

This ASIC does not have sufficient protection against negative electrical transients that can be generated in certain severe crashes, such as an underride frontal crash where there is a large engine compartment intrusion before significant deceleration. In these cases, the crash sensor and other powered wiring can be damaged and shorted so as to create a negative electrical transient of sufficient strength and duration to damage the ASIC before the deployment signal is received in the SRS ECU.

Description of the Safety Risk

In these crashes, the crash sensor and other powered wiring can be damaged and shorted so as to create a negative electrical transient of sufficient strength and duration to damage the ASIC before the deployment signal is received in the SRS ECU. This can lead to incomplete or nondeployment of the air bags and/or pretensioners.

2020 Transport Canada Defendant TOYOTA, Recall

89. Similarly, on January 17, 2020 Transport Canada issued Recall #2020013 with respect to 407,318 Defendant, TOYOTA, model year vehicles, 2012-2018 Avalon, 2011-2019 Corolla and 2011-2014 Matrix, and described the airbag defect as follows:

Recall Details

Issue: On certain vehicles, the circuits within the airbag control module could be damaged in a crash. This could cause the airbags and seat belt pretensioners to not deploy in certain crashes. Safety Risk: Airbags or seat belts that do not work properly in a crash could

create an increased risk of injury.

90. The defective airbag detection system was designed, engineered, manufactured and/or assembled by the Defendant, ZF-TRW, with design and/or manufacturing flaws that cause the ACU Defect which results in the airbags, and other supplemental restraints, to not deploy in a crash. By designing, manufacturing, testing, assembling, inspecting, distributing, supplying and/or selling defective ACU's and Affected Class Vehicles equipped with airbag detection systems with the ACU Defect, the Defendants, ZF-TRW and/or Vehicle Manufacturers, rendered the Affected Class Vehicles unsafe for their intended use and purpose.
91. As alleged herein, the Plaintiff and proposed Class Members unknowingly purchased and/or leased Affected Class Vehicles equipped with the ACU Defect and suffered diminished market value, did not receive the benefit of their bargain and suffered other damages related to their purchase and/or lease of the Affected Class Vehicles as a direct result of Defendant, Vehicle Manufacturers', misrepresentations and/or omissions regarding the standard, quality or grade of the Affected Class Vehicles and/or the existence of the ACU Defect and its associated safety risks. The fact that the Affected Class Vehicles suffer from the ACU Defect is material to the Plaintiff and proposed Class Members because it diminishes the value of the Affected Class Vehicles and exposes drivers and passengers of the Affected Class Vehicles to unreasonable safety risks.
92. As a result of Defendants, ZF-TRW's and/or Vehicle Manufacturers', material omissions, including their failure to disclose the presence of the ACU Defect in the Affected Class Vehicles, the Defendants, ZF-TRW and/or Vehicle Manufacturers, have caused the Plaintiff and proposed Class Members to suffer actual damages, including but not limited to out-of-pocket expenses and the diminished value of their vehicles.

Defendants' Knowledge of the ACU Defect and Associated Safety Risk

93. The Defendants, ZF-TRW and/or Vehicle Manufacturers, fraudulently and/or intentionally concealed from Plaintiff and proposed Class Members the ACU Defect even though the Defendants, ZF-TRW and/or Vehicle Manufacturers, knew, or should have known, that

defects in design, manufacturing, assembly, materials and/or workmanship were causing the ACU Defect had the Defendants, ZF-TRW and/or Vehicle Manufacturers, adequately tested the airbag detection system in the Affected Class Vehicles.

94. Knowledge and information regarding the ACU Defect were in the exclusive and superior possession of Defendants, ZF- TRW and/or Vehicle Manufacturers, and that information was not provided to the Plaintiff and proposed Class Members. Based on pre-production testing, pre-production design or failure mode analysis, production design or failure mode analysis, post-collision inspections, NHTSA investigations, wrongful death and personal injury lawsuits, and early consumer complaints, the Defendants, ZF-TRW and/or Vehicle Manufacturers, were aware, or ought to have been aware, of the ACU Defect in the Affected Class Vehicles and fraudulently concealed the ACU Defect and safety risks from the Plaintiff and proposed Class Members.

The Defendant, ZF-TRW's, Statements

95. At least once in 2013 and again in 2015, the Defendant ZF-TRW, warned vehicle manufacturers of the potential for electrical overstress causing airbag systems to malfunction. Further, since 2011, the Defendant, ZF-TRW, had assisted the Defendants, FCA, KIA and HYUNDAI, in investigating numerous crashes involving airbag detection system failures, frequently finding electrical overstress of the ACU. Also, since 2011, numerous complaints of crashes involving Affected Class Vehicles with airbag system failure had been reported to NHTSA.
96. In May 2013, the Defendant, ZF-TRW, reported a misconfiguration of the airbag detection system in certain Defendant, FCA, vehicles that may result in electrical overstress of the ACU. The Defendant, ZF-TRW, recommended countermeasures to prevent this damage.
97. In 2015, the Defendant, ZF-TRW, reported that NHTSA was investigating airbag non-deployment issues in a wide range of Kia models equipped with the Defendant, ZF-TRW's, ACU.

Defendant, HYUNDAI's and KIA's, Investigations

98. The Defendants, HYUNDAI and KIA, have known of the ACU Defect for years and have frequently enlisted the Defendant, ZF-TRW's, assistance in investigating airbag detection system failures in crashes involving their vehicles. For example:

August 2011 - The Defendant, ZF-TRW, analyzed the ACU in a Kia Forte involved in a crash with reported non-deployment of airbags. The Defendant, ZF-TRW, reported damage on the ACU consistent with electrical overstress. Despite the Defendant, ZF-TRW's, report, the Defendant, KIA, recorded the incident as a "commanded non-deployment," meaning that the airbag detection system was triggered by the crash, but the system concluded no airbag deployment was necessary.

February 2012 - The Defendant, ZF-TRW, inspected the ACU of a 2011 Hyundai Sonata following a crash in which airbags failed to deploy and concluded there had been electrical overstress. The Defendant, HYUNDAI, nevertheless claimed the airbag non-deployment had resulted from aftermarket accessories installed in the vehicle.

March 2012 - The Defendant, ZF-TRW, analyzed a Kia Forte crash involving reported non-deployment of airbags. The Defendant, ZF-TRW, again found damage consistent with electrical overstress, but the Defendant, KIA, again reported the incident as a "commanded non-deployment."

May 2012 - The Defendant, ZF-TRW, communicated with the Defendants, HYUNDAI and KIA, regarding investigations of events involving electrical overstress of the ACU.

March 2014 - A driver filed a lawsuit against the Defendant, KIA, alleging non-deployment of the front airbags in a 2012 Kia Forte in a collision. The Defendant, ZF-TRW, assisted the Defendant, KIA, in analyzing the crash, but the Defendants, KIA and ZF-TRW, were unable to download data from the ACU. Despite being

unable to download the data from the ACU, the Defendant, KIA, attributed the airbag non-deployment to compromised front impact sensors.

February 2015 - The Defendant, ZF-TRW, analyzed the ACU of a Hyundai Sonata involved in a crash with non-deployment of airbags. The Defendant, ZF-TRW, found damage consistent with electrical overstress, but the Defendant, HYUNDAI, claimed the airbag non-deployment resulted from a "commanded non-deployment."

May 2015 - The Defendant, HYUNDAI, received notification of another collision in which the airbags in a 2011 Sonata failed to deploy. In October 2015, the Defendant, HYUNDAI, inspected the vehicle and found internal damage to the ACU potentially caused by electrical overstress. No later than this point, the Defendant, HYUNDAI, began monitoring for similar crashes with airbag non-deployments likely due to the same defect.

February 2016 to July 2016 - The Defendant, ZF-TRW, met with the Defendants, HYUNDAI and KIA, to discuss it's continued investigation of crashes involving airbag non-deployments.

July to November 2016 - The Defendant, HYUNDAI, received two more collision reports involving 2011 Sonatas in which airbags failed to deploy. Further inspection showed that the damage attributable to ACU electrical overstress in at least one of these vehicles.

99. Since mid 2016 the Defendants, HYUNDAI and KIA, along with the Defendant, ZF-TRW, have continued to investigate numerous reported crashes involving airbag detection system failure. Despite their ongoing knowledge of the defect in the airbag detection system, neither of the Defendants, HYUNDAI nor KIA, issued any recalls until 2018.

Defendant, FCA's, Investigations Involving the Defendant, ZF-TRW

100. Between April 2015 and September 2016, the Defendant, FCA, investigated 11 crashes involving 2011 to 2014 model year vehicles with ACU's made by the Defendant, ZF-TRW.

Airbags failed to deploy in 9 of the 11 crashes, and ACU electrical overstress was confirmed or suspected in 10 of the 11 crashes.

101. The Defendant, FCA, worked closely with the Defendant, ZF-TRW in investigating the airbag non-deployment in these 11 crashes. It conducted tests to identify what conditions would cause ACU electrical overstress. In June 2015, the Defendant, FCA, received results showing that it took less than 100 microseconds for electrical overstress to occur. The Defendant, ZF-TRW's, testing showed that a "microcontroller reset occur[ed] at the same instant a negative transient creates an [electrical overstress] event."
102. By December 2015, the Defendant, FCA, determined that based on the Defendant, ZF-TRW's, testing, airbag detection systems using the Defendant, ZF-TRW's, ACU could experience electrical overstress at negative voltage transients of only -1.2 volts, while airbag detection systems in vehicles outside the subject population could withstand negative voltage transients up to ten times as powerful—approximately 14 volts.
103. Even after this detailed investigation with the Defendant, ZF-TRW's, cooperation, the Defendant, FCA, failed to issue a recall until September 2016.

NHTSA Reports

104. At least since 2011, NHTSA has received numerous reports of Affected Class Vehicles' airbags failing to deploy in crashes when they should have. Vehicle manufacturers monitor complaints to NHTSA in the regular course of their business to evaluate potential defects and were thus aware of the potential problem with the ACU.
105. The Defendants, ZF-TRW and/or Vehicle Manufacturers, fraudulently or intentionally omitted and concealed from the Plaintiff and proposed Class Members the ACU Defect even though the Defendants, ZF-TRW and/or Vehicle Manufacturers, knew, or ought to have known, of design and/or manufacturing defects in the airbag detection system in the Affected Class Vehicles.
106. The Defendants, ZF-TRW and/or Vehicle Manufacturers, knew, or should have known, that

the ACU Defect and associated safety risks were material to purchasers, owners and/or lessees of the Affected Class Vehicles and were not known or reasonably discoverable by the Plaintiff and proposed Class Members before they purchased and/or leased Affected Class Vehicles, or before the warranties on their Affected Class Vehicles expired.

107. The Defendants, ZF-TRW and/or Vehicle Manufacturers, gained their knowledge of the ACU Defect through sources not available to Plaintiff and proposed Class Members. Notwithstanding the Defendant, ZF-TRW's and/or Vehicle Manufacturers', exclusive and superior knowledge of the ACU Defect, the Defendants, ZF-TRW and/or Vehicle Manufacturers, failed to disclose the defect to consumers at the time of purchase and/or lease of the Affected Class Vehicles or any time thereafter, and the Defendant, Vehicle Manufacturers, continued to sell and/or lease Affected Class Vehicles equipped with the ACU Defect.

Defendants' Concealment of the ACU Defect

108. All of the Defendants recognize the importance that the car-buying public places on safety features, including properly functioning airbag detection systems.
109. Despite knowing that the Affected Class Vehicles airbag detection system was dangerously defective, the Defendant, Vehicle Manufacturers, marketed their vehicles as safe and concealed the ACU Defect. The Defendants, Vehicle Manufacturers and/or ZF-TRW, did not warn prospective customers at the point of sale and/or lease about the ACU Defect. Except for the partial recalls by some of the Defendant, Vehicle Manufacturers, as described herein, the Defendants, ZF-TRW and/or Vehicle Manufacturers, have made no effort to alert drivers to the safety risk.
110. As the Defendants, ZF-TRW and/or Vehicle Manufacturers, know, the ACU defect is not reasonably discoverable by consumers. There are no indicator lights or other signals to alert drivers to the problem. Drivers only discover the ACU Defect when they experience it firsthand and suffer the attendant safety risks. As a result, drivers are unaware their vehicles are unsafe and consumers are deprived of their ability to make informed purchasing decisions. Despite having extensive knowledge of industry reports and NHTSA

investigations, Defendants, ZF-TRW and/or Vehicle Manufacturers, have continued to withhold information about the ACU defect.

111. Given the severity and the safety risks posed by the airbag detection system defect, the Defendant, Vehicle Manufacturers, either should not have sold and/or leased to the Plaintiff and proposed Class Members their vehicles, or they should have prominently disclosed that the Affected Class Vehicles' airbag detection system was defective and may fail to deploy in the event of a collision.

Part 2: RELIEF SOUGHT

1. The Plaintiff, on ~~his~~ her own behalf and on behalf of the proposed Class Members, claims against the Defendant, ZF-TRW, jointly and severally, with each of the Defendants, KIA, HYUNDAI, HONDA, TOYOTA, FCA and MITSUBISHI, jointly and severally, as to their respective Affected Class Vehicles, as follows:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the named representative;
 - (b) a declaration that the Affected Class Vehicles are equipped with a defective ACU, which was designed, manufactured, tested, assembled, distributed, supplied and/or sold by the Defendant, ZF-TRW;
 - (c) a declaration that the Defendant, Vehicle Manufacturers, were negligent in the design and/or manufacturing of their respective Affected Class Vehicles equipped with the ACU Defect causing the Plaintiff and proposed Class Members to suffer damages;
 - (d) a declaration that the Defendants, Vehicle Manufacturers and/or ZF-TRW, :
 - (i) breached their duty of care to the Plaintiff and proposed Class Members;
 - (ii) fraudulently concealed material information from the Plaintiff and proposed

Class Members regarding the ACU Defect and its safety risks;

- (iii) breached express and implied warranties as to the Affected Class Vehicles and are consequently liable to the Plaintiff and proposed Class Members for damages pursuant to the *Sale of Goods Act*, R.S.B.C. 1996, c.410 ("SGA");
 - (iv) breached the *Business Practices and Consumer Protection Act*, SBC 2004, c.2 ("BPCPA") and are consequently liable to the Plaintiff and proposed Class Members for damages;
 - (v) breached the *Competition Act*, R.S.C 1985, c. C-34 and are consequently liable to the Plaintiff and proposed Class Members for damages; and
 - (vi) were unjustly enriched at the expense of the Plaintiff and proposed Class Members.
-
- (e) an order enjoining the Defendants, ZF-TRW and Vehicle Manufacturers, from continuing the unlawful, unfair and fraudulent business practices as alleged herein;
 - (f) injunctive and/or declaratory relief requiring the Defendant, Vehicle Manufacturers, to recall, repair and replace the defective airbag detection system in the Affected Class Vehicles and/or buy back all Affected Class Vehicles and to fully reimburse and make whole all proposed Class Members for all costs and economic losses associated therewith;
 - (g) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("CPA") directing an aggregate assessment of damages;
 - (h) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the CPA;
 - (i) general damages, including actual, compensatory, incidental, statutory and consequential damages;

- (j) special damages;
- (k) punitive damages;
- (l) costs of investigation pursuant to section 36 of the *Competition Act*;
- (m) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (n) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

Jurisdiction

1. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and proposed Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c.28 (the "CJPTA") in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (e)(i), (e)(iii)(A)(B), (f), (g), (h) and (i) of the *CJPTA* because this proceeding:
 - (e)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia;
 - (e)(iii)(A)(B) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;
 - (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
 - (g) concerns a tort committed in British Columbia;

- (h) concerns a business carried on in British Columbia; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Causes of Action

Negligence

2. The Plaintiff and proposed Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
3. At all material times to the cause of action herein, the Plaintiff and proposed Class Members were using the Affected Class Vehicles for the purposes and manner for which they were intended.
4. The Plaintiff and proposed Class Members had no knowledge of the ACU Defect in the Affected Class Vehicles and had no reason to suspect the ACU Defect.
5. The Defendants, ZF-TRW and/or Vehicle Manufacturers, knew, or ought to have known, that the Affected Class Vehicles contained an airbag deployment defect which, in the absence of reasonable care in the design, manufacture and/or assembly of the ACU and Affected Class Vehicles, presented a serious safety hazard to drivers and passengers of the Affected Class Vehicles.
6. The defective condition of the Affected Class Vehicles consisted of a defect in the design and/or manufacture of the ACU which failed to properly or reliably deploy the Affected Class Vehicles' airbags, and/or seatbelt pretensioners, during a collision.
7. In the alternative, the Defendant, Vehicle Manufacturers, failed to meet the reasonable standard of care expected of an automobile manufacturer in the circumstances in that:
 - (a) they knew, or ought to have known, about the ACU Defect in the Affected Class

Vehicles and should have timely warned the Plaintiff and proposed Class Members;

- (b) they designed, developed, manufactured, tested, assembled, marketed, advertised, distributed, supplied and/or sold vehicles equipped with a defective ACU which failed to properly and/or reliably deploy the Affected Class Vehicles' airbags and/or seatbelt pretensioners during a collision;
 - (c) they failed to timely warn the Plaintiff, proposed Class Members and/or consumers about the ACU Defect in the Affected Class Vehicles, which presented a serious safety hazard to drivers and passengers;
 - (d) they failed to change the design, manufacture and/or assembly of the defective ACU in the Affected Class Vehicles in a reasonable and timely manner;
 - (e) they failed to properly inspect and test the ACU in the Affected Class Vehicles;
 - (f) they knew, or ought to have known, about the ACU Defect in the Affected Class Vehicles but failed to disclose it;
 - (g) they failed to timely issue and implement safety, repair and/or replacement recalls of the Affected Class Vehicles equipped with the ACU Defect;
 - (h) the ACU Defect presented a serious safety hazard to drivers and passengers as the Affected Class Vehicles' airbags, and/or seatbelt pretensioners failed to properly and/or reliably deploy during a collision; and
 - (i) they failed to exercise reasonable care and judgment in matters of design, manufacture, materials, workmanship and/or quality of product which would reasonably be expected of them as an automobile manufacturer.
8. As a result of the ACU Defect in the Affected Class Vehicles by reason of the Defendant, Vehicle Manufacturers' and ZF-TRW's, negligence and their failure to disclose and/or adequately warn of the ACU Defect, the Plaintiff and proposed Class Members have

suffered damages and will continue to suffer damages. The value of each of the Affected Class Vehicles is reduced. The Plaintiff and each proposed Class Member must expend the time to have his/her vehicle repaired and be without their vehicle. The Defendants, Vehicle Manufacturers and ZF-TRW, should compensate the Plaintiff and each proposed Class Member for their incurred out-of-pocket expenses for, *inter alia*, alternative transportation and vehicle payments as a result of the ACU Defect.

Fraud by Concealment

9. The Plaintiff and proposed Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
10. The Defendants, ZF-TRW and/or Vehicle Manufacturers, concealed and suppressed material facts regarding the ACU Defect, namely that the airbags and/or seat belt pretensioners could fail to properly and adequately deploy during a collision as a result of the ASIC's vulnerability to EOS.
11. The Defendants, ZF-TRW and/or Vehicle Manufacturers, still have not made full and adequate disclosure, continue to defraud proposed Class Members, and continue to conceal material information regarding the ACU Defect that exists in the Affected Class Vehicles.
12. The Defendants, ZF-TRW and/or Vehicle Manufacturers, had a duty to disclose the ACU Defect because they:
 - (a) had exclusive and/or far superior knowledge and access to the facts and knew the facts were not known to, or reasonably discoverable by, the Plaintiff and proposed Class Members;
 - (b) intentionally concealed the foregoing from the Plaintiff and proposed Class Members; and
 - (c) made incomplete representations about the safety and reliability of the airbag

detection system and, by extension, the Affected Class Vehicles, while purposefully withholding material facts from the Plaintiff and proposed Class Members that contradicted these representations.

13. These omitted and concealed facts were material because they would be relied on by a reasonable person purchasing and/or leasing a new or used vehicle and because they directly impact the value of the Affected Class Vehicles purchased and/or leased by the Plaintiff and proposed Class Members. Whether a manufacturer's products are safe and reliable and whether that manufacturer stands behind its products are material concerns to a consumer. Plaintiffs and proposed Class Members trusted the Defendant, Vehicle Manufacturers, not to sell and/or lease them vehicles that were defective or that violated government regulations as to vehicle safety.
14. The Defendant, Vehicle Manufacturers, concealed and suppressed these material facts to falsely assure purchasers and consumers that its airbags were capable of performing safely, as represented by them and reasonably expected by consumers.
15. The Defendant, Vehicle Manufacturers, also misrepresented the safety and reliability of their respective Affected Class Vehicles, because they either:
 - (a) knew but did not disclose the ACU Defect;
 - (b) knew that they did not know whether their safety and reliability representations were true or false; or
 - (c) should have known that their misrepresentations were false.
16. The Defendant, Vehicle Manufacturers, actively concealed and/or suppressed these material facts, in whole or in part, to protect their profits and to avoid recalls that would hurt each brand's image and cost the Defendant, Vehicle Manufacturers, money. The Defendant, Vehicle Manufacturers and/or ZF-TRW, concealed these facts at the expense of the Plaintiff and proposed Class Members.

17. The Plaintiff and proposed Class Members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed or suppressed facts.
18. Had they been aware of the ACU Defect in the Affected Class Vehicles the Plaintiff and proposed Class Members either would not have paid as much for their vehicles or would not have purchased or leased them at all given the associated safety risks.
19. The Plaintiff and proposed Class Members did not receive the benefit of their bargain as a result of the Defendant, ZF-TRW's and/or Vehicle Manufacturers', fraudulent conduct.
20. As a result of the Defendant, ZF-TRW's and/or Vehicle Manufacturers', concealment and/or suppression of material facts, the Plaintiff and proposed Class Members suffered damage as they own vehicles that have diminished in value due to the Defendant, ZF-TRW's and/or Vehicle Manufacturers', concealment of, failure to timely disclose and/or misrepresentations concerning the ACU Defect in the Affected Class Vehicles and the safety risk caused by the Defendant, ZF-TRW's and/or Vehicle Manufacturers', conduct.
21. The value of proposed Class Members' vehicles has diminished as a result of the Defendant, ZF-TRW's and/or Vehicle Manufacturers', fraudulent conduct in connection with the ACU Defect and made any reasonable consumer reluctant to purchase any of the Affected Class Vehicles, let alone pay what otherwise would have been fair market value for the vehicles.
22. The Plaintiff makes the following specific fraudulent concealment/omission-based allegations with as much specificity as possible absent access to the information necessarily available only to the Defendants, ZF-TRW and/or Vehicle Manufacturers:
 - (a) Who: The Defendant, Vehicle Manufacturers, actively concealed and omitted the ACU Defect from the Plaintiff and proposed Class Members while simultaneously touting the safety and dependability of the Affected Class Vehicles as alleged herein. The Plaintiff is unaware of and, therefore, unable to identify the true names and identities of those specific individuals at the Defendant, Vehicle Manufacturers,

responsible for such decisions:

- (b) What: The Defendants, ZF-TRW and/or Vehicle Manufacturers, knew or were reckless or negligent in not knowing that the Affected Class Vehicles contained the ACU Defect as alleged herein. The Defendant, Vehicle Manufacturers, concealed and omitted the ACU Defect while making representations about the safety, dependability and other attributes of the Affected Class Vehicles as alleged herein;
- (c) When: The Defendant, Vehicle Manufacturers, concealed and omitted material information regarding the ACU Defect at all times while making representations about the safety and dependability of the Affected Class Vehicles on an ongoing basis and continuing to this day as alleged herein. The Defendants, ZF-TRW and/or Vehicle Manufacturers, still have not disclosed the truth about the full scope of the ACU Defect in the Affected Class Vehicles. The Defendant, Vehicle Manufacturers, have never taken any action to inform consumers about the true nature of the ACU Defect in the Affected Class Vehicles. When consumers brought their vehicles to the Defendant, Vehicle Manufacturers, resellers, authorized dealers and/or distributors complaining of the failure of the airbags and/or seat belt pretensioners to deploy in a crash, the Defendant, Vehicle Manufacturers, denied any knowledge of or repair for the ACU Defect;
- (d) Where: The Defendant, Vehicle Manufacturers, concealed and omitted material information regarding the true nature of the ACU Defect in every communication they had with Plaintiff and proposed Class Members and made representations about the quality, safety, and dependability of the Affected Class Vehicles. The Plaintiff is aware of no document, communication or other place or thing in which Defendants, ZF-TRW and/or Vehicle Manufacturers, disclosed the truth about the full scope of the ACU Defect in the Affected Class Vehicles. Such information is not adequately disclosed in any sales documents, displays, advertisements, warranties, owner's manuals or on the Defendant, Vehicle Manufacturers, websites. There are channels through which Defendant, Vehicle Manufacturers, could have disclosed the ACU Defect including but not limited to;

- (i) point of sale communications;
 - (ii) the owner's manual; and/or
 - (iii) direct communication to proposed Class Members through means such as provincial vehicle registry lists or Transport Canada Recall Notices;
- (e) How: The Defendant, Vehicle Manufacturers, concealed and omitted the ACU Defect from Plaintiff and proposed Class Members and made representations about the quality, safety and dependability of their Affected Class Vehicles. The Defendant, ZF-TRW and/or Vehicle Manufacturers, actively concealed and omitted the truth about the existence, scope and nature of the ACU Defect from Plaintiff and proposed Class Members at all times even though they knew about the ACU Defect and knew that information about the ACU Defect would be important to a reasonable consumer, and the Defendant, Vehicle Manufacturers, promised in their marketing materials that Affected Class Vehicles have qualities that they do not have; and
- (f) Why: The Defendant, Vehicle Manufacturers, actively concealed and omitted material information about the ACU Defect in the Affected Class Vehicles for the purpose of inducing the Plaintiff and proposed Class Members to purchase and/or lease the Affected Class Vehicles, rather than purchasing or leasing competitors' vehicles, and made representations about the quality, safety and dependability of the Affected Class Vehicles. Had the Defendant, Vehicle Manufacturers, disclosed the truth for example, in their advertisements or other materials or communications, the Plaintiff and proposed Class Members would have been aware of it and would not have purchased and/or leased the Affected Class Vehicles or would not have paid as much to do so.

22 23. Accordingly, the Defendants, ZF-TRW and/or Vehicle Manufacturers, are liable to proposed Class Members for their damages in an amount to be proven at trial including, but not limited to, their lost benefit of the bargain or overpayment for the Affected Class Vehicles at the time of purchase, the diminished value of the Affected Class Vehicles and/or other incidental costs incurred.

23 24. The Defendant, ZF-TRW's and/or Vehicle Manufacturers', acts were done maliciously, oppressively, deliberately, with intent to defraud and in reckless disregard of the Plaintiff and proposed Class Members with the aim of enriching themselves. The Defendants, ZF-TRW's and/or Vehicle Manufacturers', conduct, which exhibits the highest degree of reprehensibility being intentional, continuous, placing others at risk of death and injury and affecting public safety, warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Breach of Express Warranty

24 25. The Plaintiff and proposed Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

25 26. As an express warrantor, manufacturer, merchant and/or seller, the Defendant, Vehicle Manufacturers, had certain obligations under the SGA, and to equivalent legislative provisions in the rest of Canada, as described in Schedule "A", to conform the Affected Class Vehicles to their express warranties.

26 27. The Defendant, Vehicle Manufacturers, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through independent retail dealers and/or authorized dealerships. Such representations formed the basis of the bargain in the Plaintiff's and proposed Class Members' decisions to purchase and/or lease the Affected Class Vehicles.

27 28. In connection with the purchase and/or lease of each of the Affected Class Vehicles, the Defendant, Vehicle Manufacturers, provided warranty coverage for the Affected Class Vehicles, which obliges them to repair or replace any part that is defective under normal use.

28 29. The warranties of the Defendant, Vehicle Manufacturers, formed a basis of the bargain that was reached when the Plaintiff and proposed Class Members purchased and/or leased the Affected Class Vehicles.

- ~~29~~ 30. The ACU Defect existed in the Affected Class Vehicles at the time of sale and/or lease and within the warranty periods but the Plaintiff and proposed Class Members had no knowledge of the existence of the ACU Defect, which was known and concealed by the Defendants, Vehicle Manufacturers and/or ZF-TRW. Despite the applicable warranties, the Defendants, Vehicle Manufacturers and/or ZF-TRW, failed to inform the Plaintiff and proposed Class Members that the Affected Class Vehicles contained the ACU Defect during the warranty periods in order to wrongfully transfer the costs of repair or replacement of the defective airbag detection system to the Plaintiff and proposed Class Members.
- ~~30~~ 31. As a result of the ACU Defect, the Affected Class Vehicles are not safe and reliable and owners and/or lessees of these vehicles have lost confidence in the ability of Affected Class Vehicles to perform the function of safe reliable transportation.
- ~~34~~ 32. The Plaintiff and proposed Class Members could not have reasonably discovered the ACU Defect in the Affected Class Vehicles.
- ~~32~~ 33. The Defendant, Vehicle Manufacturers, breached their express warranties promising to repair and correct a manufacturing defect or defects in materials or workmanship of any parts they supplied.
- ~~33~~ 34. The Defendant, Vehicle Manufacturers, further breached their express warranties by selling and/or leasing Affected Class Vehicles that were defective with respect to materials, workmanship and manufacture when they knew that the Affected Class Vehicles were equipped with the ACU Defect and had an associated safety risk. The Affected Class Vehicles were not of merchantable quality and were unfit for the ordinary purposes for which passenger vehicles are used because of materials, workmanship and manufacture defects which caused the airbags and/or seatbelt pretensioners not to properly and adequately deploy during a collision as warranted.
- ~~34~~ 35. In particular, the Defendant, Vehicle Manufacturers, breached their express warranties by:
- (a) knowingly providing the Plaintiff and proposed Class Members with the Affected Class Vehicles containing defects in material that were never disclosed to the

Plaintiff and proposed Class Members;

- (b) failing to repair or replace the Affected Class Vehicles equipped with the ACU Defect at no cost within the warranty period;
- (c) ignoring, delaying responses to and denying warranty claims in bad faith; and
- (d) supplying products and materials that failed to conform to the representations made by the Defendant, Vehicle Manufacturers.

35 36. The Plaintiff and proposed Class Members have given the Defendant, Vehicle Manufacturers, a reasonable opportunity to cure their breach of express warranties or, alternatively, were not required to do so because such an opportunity would be unnecessary and futile given that the repairs or replacements offered by the Defendant, Vehicle Manufacturers, can neither cure the ACU Defect in the Affected Class Vehicles nor resolve the incidental and consequential damages flowing therefrom.

36 37. The Defendant, Vehicle Manufacturers, were provided notice of the ACU Defect in the Affected Class Vehicles by numerous consumer complaints made to their authorized dealers, complaints to the NHTSA and through their own testing. Affording the Defendant, Vehicle Manufacturers, a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile because they have known of and concealed the ACU Defect and have refused to repair or replace the defective airbag system free of charge within or outside of the warranty periods despite the defect's existence at the time of sale and/or lease of the Affected Class Vehicles and within the applicable warranty periods.

37 38. Any attempt by the Defendant, Vehicle Manufacturers, to disclaim or limit recovery to the terms of the express warranties is unconscionable and unenforceable. Specifically, the Defendant, Vehicle Manufacturers, warranty limitation is unenforceable because they knowingly sold and/or leased a defective product without informing the Plaintiff, proposed Class Members and/or consumers about the ACU Defect in the Affected Class Vehicles. The time limits contained in the Defendant, Vehicle Manufacturers', warranty periods were also unconscionable and inadequate to protect the Plaintiff and proposed Class Members.

Among other things, the Plaintiff and proposed Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendant, Vehicle Manufacturers. A gross disparity in bargaining power existed between the Defendant, Vehicle Manufacturers, and proposed Class Members. The Defendant, Vehicle Manufacturers, knew that the Affected Class Vehicles were equipped with a defective ACU that failed to properly or adequately deploy the airbags and/or seatbelt pretensioners, during a collision

38 39. Further, the limited warranty promising to repair and/or correct a design and/or manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and proposed Class Members whole because the replacement ACU used by the Defendant, Vehicle Manufacturers, contains the same defect. Affording the Defendant, Vehicle Manufacturers, a reasonable opportunity to cure the breach of written warranties, therefore, would be unnecessary and futile.

39 40. The Plaintiff and proposed Class Members have been excused from performance of any warranty obligations as a result of the Defendant, Vehicle Manufacturers', conduct described herein.

40 41. As a direct and proximate result of the Defendant, Vehicle Manufacturers', breach of express warranties, the Plaintiff and proposed Class Members have been damaged in an amount to be determined at trial.

Breach of the Implied Warranty or Condition of Merchantability pursuant SGA

41 42. The Plaintiff and proposed Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

42 43. The Defendant, Vehicle Manufacturers, are "sellers" with respect to motor vehicles within the meaning of the SGA. and to equivalent legislative provisions in the rest of Canada, as described in Schedule "A".

43 44. A warranty that the Affected Class Vehicles were in merchantable condition was implied by

law pursuant to the SGA and to equivalent legislative provisions in the rest of Canada, as described in Schedule "A".

- ~~44~~ 45. The Defendant, Vehicle Manufacturers, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through independent retail dealers and/or authorized dealerships. Such representations formed the basis of the bargain in the Plaintiff's and proposed Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
- ~~45~~ 46. The Plaintiff and proposed Class Members purchased and/or leased the Affected Class Vehicles from the Defendant, Vehicle Manufacturers, through their subsidiaries, authorized agents for retail sales, through private sellers or were otherwise expected to be the eventual purchasers and/or lessees of the Affected Class Vehicles when bought and/or leased from a third party. At all relevant times, the Defendant, Vehicle Manufacturers, were the manufacturer, distributor, warrantor and/or seller of the Affected Class Vehicles. As such, there existed privity and/or vertical privity of contract between the Plaintiff and proposed Class Members and the Defendant, Vehicle Manufacturers, as to their respective Affected Class Vehicles. Alternatively, privity of contract need not be established nor is it required because the Plaintiff and proposed Class Members are intended third-party beneficiaries of contracts between the Defendant, Vehicle Manufacturers, and its resellers, authorized dealers and/or distributors and, specifically, of the Defendant, Vehicle Manufacturers, implied warranties.
- ~~47.~~ The Defendant, Vehicle Manufacturers', resellers, authorized dealers and/or distributors are intermediaries between the Defendant, Vehicle Manufacturers, and consumers. These intermediaries sell the Affected Class Vehicles to consumers and are not, themselves, consumers of the Affected Class Vehicles and, therefore, have no rights against the Defendant, Vehicle Manufacturers, with respect to the Plaintiff's and proposed Class Members' acquisition of the Affected Class Vehicles. The Defendant, Vehicle Manufacturer's, warranties were designed to influence consumers who purchased and/or leased the Affected Class Vehicles.
- ~~46~~ 48. The Defendant, Vehicle Manufacturers, knew or had reason to know of the specific use for

which the Affected Class Vehicles were purchased or leased.

- 47 49. As a result of the ACU Defect, the Affected Class Vehicles were not in merchantable condition when sold and are not fit for the ordinary purpose of providing safe and reliable transportation.
- 48 50. The Defendant, Vehicle Manufacturers, knew about the ACU Defect in the Affected Class Vehicles, allowing them to cure their breach of warranty if they chose.
51. At all times that the Defendant, Vehicle Manufacturers, warranted and sold their Affected Class Vehicles, they knew or should have known that their warranties were false and yet they did not disclose the truth or stop manufacturing or selling their Affected Class Vehicles and, instead, continued to issue false warranties and continued to insist the products were safe. The Affected Class Vehicles were defective when the Defendant, Vehicle Manufacturers, delivered them to their resellers, authorized dealers and/or distributors which sold the Affected Class Vehicles and the Affected Class Vehicles were, therefore, still defective when they reached Plaintiff and proposed Class Members.
- 49 52. The Defendant, Vehicle Manufacturers', attempt to disclaim or limit the implied warranty of merchantability vis-à-vis the Plaintiff, proposed Class Members and/or consumers is unconscionable and unenforceable. Specifically, the Defendant, Vehicle Manufacturers', warranty limitation is unenforceable because they knowingly sold and/or leased a defective product without informing the Plaintiff, proposed Class Members and/or consumers about the ACU Defect. The time limits contained in the Defendant, Vehicle Manufacturers', warranty periods were also unconscionable and inadequate to protect the Plaintiff and proposed Class Members. Among other things, the Plaintiff and proposed Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendant, Vehicle Manufacturers. A gross disparity in bargaining power existed between the Defendant, Vehicle Manufacturers, and the Plaintiff and proposed Class Members, and the Defendant, Vehicle Manufacturers, knew that the Affected Class Vehicles were equipped with a defective ACU that failed to properly or adequately deploy the airbags and/or seatbelt pretensioners, during a collision.

50 53. The Plaintiff and proposed Class Members have complied with all obligations under the warranty or otherwise have been excused from performance of said obligations as a result of the Defendant, Vehicle Manufacturers', conduct alleged herein. Affording the Defendant, Vehicle Manufacturers, a reasonable opportunity to cure their breach of written warranties, therefore, would be unnecessary and futile.

Violation of the *BPCPA*

54 54. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

52 55. The Affected Class Vehicles are consumer "goods" within the meaning of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B"

53 56. The Plaintiff and proposed Class Members are "consumers" within the meaning of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".

54 57. The Defendant, Vehicle Manufacturers, are a "supplier" within the meaning of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B". At all relevant times, the Defendant, Vehicle Manufacturers, were suppliers and/or sellers of the Affected Class Vehicles as their resellers, authorized dealers and/or distributors were acting as the agents of the Defendant, Vehicle Manufacturers. As such, there existed privity and/or vertical privity of contract between the Plaintiff and proposed Class Members and the Defendant, Vehicle Manufacturers, as to their Affected Class Vehicles.

55 58. The purchase and/or lease of the Affected Class Vehicles by the Plaintiff and proposed Class Members constitutes a "consumer transaction" within the meaning of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".

- 56 59. By failing to disclose and actively concealing the ACU Defect, the Defendant, Vehicle Manufacturers, engaged in unfair and deceptive trade practices prohibited by the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".
- 57 60. As alleged herein, the Defendant, Vehicle Manufacturers, made misleading representations and omissions concerning the benefits, performance and safety of the Affected Class Vehicles.
- 58 61. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and proposed Class Members were deceived by the Defendant, Vehicle Manufacturers', failure to disclose their knowledge of the ACU Defect and associated safety risk.
- 59 62. The Defendant, Vehicle Manufacturers', conduct as alleged herein was, and is, in violation of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B", in particular, by:
- (a) representing that goods have sponsorship, approval, characteristics, uses, benefits or quantities that they do not have;
 - (b) representing that goods are of a particular standard, quality or grade if they are of another;
 - (c) advertising goods with intent not to sell them as advertised; and
 - (d) representing that goods have been supplied in accordance with a previous representation when they have not.
- 60 63. The Defendant, Vehicle Manufacturers, intentionally and knowingly misrepresented and omitted material facts regarding their respective Affected Class Vehicles, specifically regarding the ACU Defect, with an intent to mislead the Plaintiff and proposed Class Members.

- 64 64. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and proposed Class Members were deceived by the Defendant, Vehicle Manufacturers, failure to disclose their knowledge of the ACU Defect and associated safety risk.
- 62 65. The Plaintiff and Class Members had no way of knowing of the Defendant, Vehicle Manufacturers', representations were false, misleading and incomplete or knowing the true nature of the ACU Defect in the Affected Class Vehicles. As alleged herein, the Defendant, Vehicle Manufacturers, engaged in a pattern of deception in the face of a known airbag deployment defect in the Affected Class Vehicles. The Plaintiff and proposed Class Members did not, and could not, unravel the Defendant, Vehicle Manufacturers', deception on their own.
- 63 66. The Defendant, Vehicle Manufacturers, knew, or should have known, that their conduct violated the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".
- 64 67. The Defendant, Vehicle Manufacturers, owed the Plaintiff and proposed Class Members a duty to disclose the truth about the ACU Defect in the Affected Class Vehicles as it created a serious safety hazard and the Defendant, Vehicle Manufacturers:
- (a) possessed exclusive knowledge of the ACU Defect in the Affected Class Vehicles;
 - (b) intentionally concealed the foregoing from the Plaintiff and proposed Class Members; and/or
 - (c) failed to warn consumers or to publicly admit that the Affected Class Vehicles had a airbag deployment defect.
- 65 68. The Defendant, Vehicle Manufacturers, had a duty to disclose the ACU in the Affected Class Vehicles was fundamentally flawed as described herein because it created a serious safety hazard and the Plaintiff and proposed Class Members relied on the Defendant, Vehicle Manufacturers', material misrepresentations and omissions regarding the Affected Class Vehicles and the ACU Defect.

66 69. The Defendant, Vehicle Manufacturers', conduct proximately caused injuries to the Plaintiff and proposed Class Members that purchased and/or leased the Affected Class Vehicles and suffered harm as alleged herein.

67 70. The Plaintiff and proposed Class Members were injured and suffered ascertainable loss, injury-in-fact and/or actual damage as a proximate result of the Defendant, Vehicle Manufacturers', conduct in that Plaintiff and proposed Class Members incurred costs related the ACU Defect including repair, service and/or replacement costs, rental car costs and overpaid for their Affected Class Vehicles that have suffered a diminution in value.

68 71. The Defendant, Vehicle Manufacturers', violations cause continuing injuries to the Plaintiff and Class Members. The Defendant, Vehicle Manufacturers', unlawful acts and practices complained of herein affect the public interest.

69 72. The Defendant, Vehicle Manufacturers, knew of the defective airbag design and/or manufacture defect and that the Affected Class Vehicles were materially compromised by the ACU Defect.

70 73. The facts concealed and omitted by the Defendant, Vehicle Manufacturers, from the Plaintiff and proposed Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase an Affected Class Vehicle or pay a lower price. Had the Plaintiff and proposed Class Members known about the defective nature of the airbags in the Affected Class Vehicles, they would not have purchased and/or leased the Affected Class Vehicles or would not have paid the prices they paid.

74 74. The Plaintiff's and proposed Class Members' injuries were directly or proximately caused by the Defendant, Vehicle Manufacturers', unlawful and deceptive business practices.

Breach of the *Competition Act*

72 75. The Plaintiff and proposed Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

~~73~~ 76. By making representations to the public as to the quality, character, reliability, durability and safety of the Affected Class Vehicles, the Defendant, Vehicle Manufacturers, breached sections 36 and/or 52 of the *Competition Act*, in that their representations:

- (a) were made to the public in the form of advertising brochures, statements and/or other standardized statements claiming the reliability, durability and/or safety of the Affected Class Vehicles;
- (b) were made to promote the supply or use of a product or for the purpose of promoting their business interests;
- (c) stated safety of the Affected Class Vehicles; and
- (d) were false and misleading in a material respect.

77. At all relevant times, the Defendant, Vehicle Manufacturers, were the sellers and/or suppliers of the Affected Class Vehicles. As such, there existed contractual privity and/or vertical privity of contract between the Plaintiff and proposed Class Members and the Defendant, Vehicle Manufacturers, as to the Affected Class Vehicles as their resellers, authorized dealers and/or distributors at all material times were acting as the agents of the Defendant, Vehicle Manufacturers.

~~74~~ 78. The Defendant, Vehicle Manufacturers, engaged in unfair competition and unfair, unlawful or fraudulent business practices through the conduct, statements and omissions described herein and by knowingly and intentionally concealing the ACU Defect in the Affected Class Vehicles from Plaintiff and Class Members, along with concealing the safety risks, costs, and monetary damage resulting from the ACU Defect. The Defendant, Vehicle Manufacturers, should have disclosed this information because they were in a superior position to know the true facts related to the ACU Defect and Plaintiff and proposed Class Members could not reasonably be expected to learn or discover the true facts related to the ACU Defect.

~~75~~ 79. The ACU Defect causing the failure of the airbags to properly or adequately deploy in the

Affected Class Vehicles during a collision constitutes a safety issue that triggered Defendant, Vehicle Manufacturers', duty to disclose the safety issue to consumers.

76 80. These acts and practices have deceived the Plaintiff and proposed Class Members. In failing to disclose the ACU Defect and suppressing other material facts from the Plaintiff and proposed Class Members, the Defendant, Vehicle Manufacturers, breached their duties to disclose these facts, violated the *Competition Act* and caused injuries to the Plaintiff and proposed Class Members. The Defendant, Vehicle Manufacturers', omissions and concealment pertained to information that was material to the Plaintiff and proposed Class Members, as it would have been to all reasonable consumers.

81. Further, the Plaintiff and proposed Class Members relied upon the Defendant, Vehicle Manufacturers, misrepresentations as to the safety and dependability of the Affected Class Vehicles to their detriment in purchasing and/or leasing the Affected Class Vehicles so as to cause loss and/or damage to the Plaintiff and proposed Class Members.

77 82. The Plaintiff and other proposed Class Members have, therefore, suffered damages and are entitled to recover damages pursuant to section 36(1) and/or 52 of the *Competition Act*.

Unjust Enrichment

78 83. The Plaintiff and proposed Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

79 84. The Defendants, ZF-TRW and/or Vehicle Manufacturers, have unjustly profited from the ACU Defect in the Affected Class Vehicles whose value was inflated by their active concealment and the Plaintiff and proposed Class Members have overpaid for the Affected Class Vehicles.

80 85. The Defendants, ZF-TRW and/or Vehicle Manufacturers, have received and retained unjust benefits from the Plaintiff and proposed Class Members and an inequity has resulted. It is inequitable and unconscionable for the Defendants, ZF-TRW and/or Vehicle Manufacturers, to retain these benefits.

84 86. As a result of the Defendant, ZF-TRW's and/or Vehicle Manufacturers', fraud and/or deception, the Plaintiff and proposed Class Members were not aware of the true facts concerning the ACU Defect in the Affected Class Vehicles and did not benefit from the Defendant, ZF-TRW's and/or Vehicle Manufacturers', misconduct.

82 87. The Defendants, ZF-TRW and/or Vehicle Manufacturers, knowingly accepted the unjust benefits of their fraudulent conduct. There is no juristic reason why the amount of their unjust enrichment should not be disgorged and returned to the Plaintiff and proposed Class Members, in an amount to be proven at Trial.

83 88. Further, the purchase of both new and/or used Affected Class Vehicles from authorized or affiliated dealerships of the Defendant, Vehicle Manufacturers, or third party sellers conferred a benefit on the Defendants, ZF-TRW and/or Vehicle Manufacturers, as such vehicles required use of the Defendant, ZF-TRW's, parts as called for in the Defendant, Vehicle Manufacturers', recall and repair of the ACU Defect in the Affected Class Vehicles.

Tolling of the *Limitation Act*, S.B.C. 2012, c. 13

84 89. The Plaintiff and proposed Class Members had no way of knowing about the ACU Defect in the Affected Class Vehicles. The Defendant, Vehicle Manufacturers, concealed their knowledge of the ACU Defect while continuing to market, sell and/or lease, the Affected Class Vehicles.

85 90. Within the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada as described in Schedule "C", the Plaintiff and proposed Class Members could not have discovered through the exercise of reasonable diligence that the Defendants, ZF-TRW and/or Vehicle Manufacturers, were concealing the conduct complained of herein and misrepresenting the true qualities of the Affected Class Vehicles.

86 91. The Plaintiff and proposed Class Members did not know facts that would have caused a reasonable person to suspect or appreciate that there was a defect in the airbag detection system of the Affected Class Vehicles.

- ~~87~~ 92. For these reasons, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada, as described in Schedule "C", has been tolled by operation of the discovery rule with respect to the claims in this proposed class proceeding.
- ~~88~~ 93. Further, due to Defendants, ZF-TRW's and Vehicle Manufacturers', knowing and active concealment throughout the time period relevant to this proposed class proceeding, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada as described in Schedule "C", has been tolled.
- ~~89~~ 94. Instead of publicly disclosing the ACU Defect in the Affected Class Vehicles, the Defendants, ZF-TRW and/or Vehicle Manufacturers, kept the Plaintiff and proposed Class Members in the dark as to the ACU Defect and the serious safety hazard it presented.
- ~~90~~ 95. The Defendants, ZF-TRW and/or Vehicle Manufacturers, were under a continuous duty to disclose to the Plaintiff and proposed Class Members the existence of the ACU Defect in the Affected Class Vehicles.
- ~~94~~ 96. The Defendants, ZF-TRW and/or Vehicle Manufacturers, knowingly, affirmatively and actively concealed or recklessly disregarded the true nature, quality and character of the Affected Class Vehicles.
- ~~92~~ 97. As such, the Defendants, ZF-TRW and/or Vehicle Manufacturers, are estopped from relying on the *Limitation Act*, and equivalent legislative provisions in the rest of Canada as described in Schedule "C", in defense of this proposed class proceeding.

Plaintiff's(s') address for service:

Garcha & Company
Barristers & Solicitors
#405 - 4603 Kingsway
Burnaby, BC V5H 4M4
Canada

Fax number address for service (if any):

604-435-4944

E-mail address for service (if any):

none

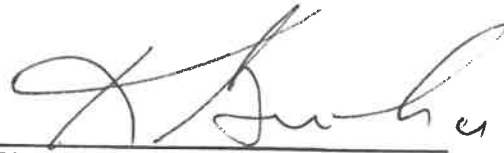
Place of trial:

Vancouver, BC, Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: July 21, 2019

A handwritten signature in black ink, appearing to read 'K. Garcha', written over a horizontal line.

Signature of K.S. Garcha
lawyer for plaintiff(s)

Schedule "A"
Sale of Goods Legislation Across Canada

Province or Territory	Legislation
Alberta	<i>Sale of Goods Act</i> , RSA 2000, c. S-2
Saskatchewan	<i>Sale of Goods Act</i> , RSS 1978, c. S-1
Manitoba	<i>The Sale of Goods Act</i> , CCSM 2000, c. S10
Ontario	<i>Sale of Goods Act</i> , RSO 1990, c. S.1
Newfoundland and Labrador	<i>Sale of Goods Act</i> , RSNL 1990, c. S-6
Nova Scotia	<i>Sale of Goods Act</i> , RSNS 1989, c. 408
New Brunswick	<i>Sale of Goods Act</i> , RSNB 2016, c. 110
Prince Edward Island	<i>Sale of Goods Act</i> , RSPEI 1988, c. S-1
Yukon	<i>Sale of Goods Act</i> , RSY 2002, c. 198
Northwest Territories	<i>Sale of Goods Act</i> , RSNWT 1988, c. S-2
Nunavut	<i>Sale of Goods Act</i> , RSNWT (Nu) 1988, c. S-2

Schedule "B"
Consumer Protection Legislation Across Canada

Province or Territory	Legislation
Alberta	<i>Consumer Protection Act</i> , RSA 2000, c. C-26.3
Saskatchewan	<i>The Consumer Protection and Business Practices Act</i> , SS 2014, c. C-30.2
Manitoba	<i>Consumer Protection Act</i> , CCSM c. C200
Ontario	<i>Consumer Protection Act</i> , 2002, SO 2002, c. 30, Sch. A
Newfoundland and Labrador	<i>Consumer Protection and Business Practices Act</i> , SNL 2009, c. C-31.1
Nova Scotia	<i>Consumer Protection Act</i> , RSNS 1989, c. 92
New Brunswick	<i>Consumer Product Warranty and Liability Act</i> , SNB 1978, c. C-18.1
Prince Edward Island	<i>Consumer Protection Act</i> , RSPEI 1988, c. C-19
Yukon	<i>Consumers Protection Act</i> , RSY 2002, c. 40
Northwest Territories	<i>Consumer Protection Act</i> , RSNWT 1988, c. C-17
Nunavut	<i>Consumer Protection Act</i> , RSNWT (Nu) 1988, c. C-17

Schedule "C"
Limitation Act Legislation Across Canada

Province or Territory	Legislation
Alberta	<i>Limitations Act</i> , RSA 2000, c. L-12
Saskatchewan	<i>The Limitations Act</i> , SS 2004, c. L-16.1
Manitoba	<i>The Limitation of Actions Act</i> , CCSM c. L150
Ontario	<i>Limitations Act</i> , 2002, SO 2002, c. 24, Sch. B
Newfoundland and Labrador	<i>Limitations Act</i> , SNL 1995, c. L-16.1
Nova Scotia	<i>Limitation of Actions Act</i> , SNS 2014, c. 35
New Brunswick	<i>Limitation of Actions Act</i> , SNB 2009, c. L-8.5
Prince Edward Island	<i>Statute of Limitations</i> , RSPEI 1988, c. S-7
Yukon	<i>Limitation of Actions Act</i> , RSY 2002, c. 139
Northwest Territories	<i>Limitation of Actions Act</i> , RSNWT 1988, c. L-8
Nunavut	<i>Limitation of Actions Act</i> , RSNWT (Nu) 1988, c. L-8

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE
BRITISH COLUMBIA**

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28 (the "CJPTA") in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10(e)(i), (iii)(a) & (b), (f), (g), (h) and (i) of the CJPTA because this proceeding:

- (E)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia;
- (e) (iii)(a) & (b) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;
- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia;
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The within proposed class proceeding arises out of the Defendants ZF-TRW's and/or Vehicle Manufacturers', failure to disclose or remedy defects of design and/or manufacturing relating to the airbag detection system of the Affected Class Vehicles resulting in the failure of airbags ,and/or seatbelt pretensioners, to deploy during a collision so as to create a serious safety hazard.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

Part 4:

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50
2. *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003 c. 28
3. *Business Practices and Consumer Protection Act*, S.B.C. 2004;
4. *Sale of Goods Act*, R.S.B.C 1996, c. 410
5. *Motor Vehicle Safety Act* , R.S.C. 1993, c.16
6. *Court Order Interest Act*, R.S.B.C., c. 79
7. *Competition Act*, R.S.C 1985, c. C-34
8. *Limitation Act*, S.B.C. 2012, c.13