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COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTER	EDMONTON
PLAINTIFF	
DEFENDANTS	NISSAN MOTOR CO. LTD., NISSAN NORTH AMERICA INC. and NISSAN CANADA INC.
DOCUMENT	STATEMENT OF CLAIM
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THE DOCUMENT	DUSEVIC & GARCHA 210-4603 Kingsway Burnaby, British Columbia V5H 4M4 Telephone: (604) 436-3315 Facsimile: (604) 436-3302 Email: ksgarcha@dusevicgarchalaw.com Attention: K.S. Garcha

Brought under the *Class Proceedings Act*, S.A. 2003, C-16.5

#### NOTICE TO DEFENDANTS

You are being sued. You are the defendants.

Go to the end of this document to see what you can do and when you must do it.

**TO: NISSAN MOTOR CO., LTD.**

1-1, Takashima 1-chome  
Nishi-ku, Yokohama-shi  
Kanagawa 220-8686, Japan

**TO: NISSAN NORTH AMERICA INC.**

Corporation Service Company  
2908 Poston Avenue  
Nashville, Tennessee, 37203-1312  
United States of America

**TO: NISSAN CANADA INC.**

Gowling WLG (Canada) LLP  
1600, 421 7th Avenue SW  
Calgary, Alberta T2P 4K9

Statement of facts relied on:

**A. The Parties**

1. The Plaintiff, [REDACTED]

[REDACTED] has an address of service c/o 210-4603 Kingsway, Burnaby, British Columbia, V5H 4M4.

2. The Defendant, Nissan Motor Co., Ltd. ("**Nissan Japan**") is a company duly incorporated pursuant to the laws of Japan and has an address for service at 1-1, Takashima 1-chome, Nishi-ku, Yokohama-shi, Kanagawa 220-8686, Japan.

3. The Defendant, Nissan North America, Inc. ("**Nissan NA**"), is a company duly incorporated pursuant to the laws of the State of Tennessee, one of the United States of America, and has a registered agent, Corporation Service Company, at 2908 Poston Avenue, Nashville, Tennessee 37203-1312, United States of America.

4. The Defendant, Nissan Canada Inc. ("**Nissan Canada**"), is a company duly incorporated pursuant to the laws of Canada, with its head office in Mississauga, Ontario, registered within Alberta, and has an agent for service, Gowling WLG (Canada) LLP, at 1600, 421 – 7th Avenue SW, Calgary, Alberta T2P 4K9.

5. At all material times to the causes of action, the Defendants, Nissan Japan, Nissan NA and Nissan Canada, carried on business in the Province of Alberta, and throughout Canada. The Defendants, Nissan Japan, Nissan NA and Nissan Canada, engineered, designed, developed, manufactured, assembled, tested, marketed, distributed, supplied, leased and/or sold vehicles under the brand names "Nissan" and "Infiniti", including the Affected Class Vehicles, defined below in paragraph 16, in Canada, including the Province of Alberta.

6. The Defendant, Nissan Japan, is a multinational automobile manufacturing conglomerate engaged in the design, development, manufacture, production, and distribution of motor vehicles worldwide.

7. At all material times to the causes of action herein, and continuing to the present, the Defendant, Nissan Japan, engineered, designed, developed, manufactured, assembled, marketed, advertised, distributed, supplied, leased and/or sold vehicles under the brand names Nissan and

Infiniti, including the Affected Class Vehicles defined below in paragraph 16, through its related subsidiaries, affiliates, agents, operating and/or organizational units, including the Defendants, Nissan NA and Nissan Canada, independent retail dealers and authorized dealerships in North America, including the Province of Alberta.

8. At all material times to the causes of action herein, the Defendant, Nissan NA, was, and remains, a wholly owned North American subsidiary of the Defendant, Nissan Japan, and engineers, designs, develops, manufactures, assembles, markets, advertises, distributes, supplies, leases and/or sells vehicles under the brand names Nissan and Infiniti, including the Affected Class Vehicles defined below in paragraph 16, for distribution and/or sale in the United States of America and Canada, including the Province of Alberta.

9. At all material times to the causes of action herein, the Defendant, Nissan Canada, was, and remains, a wholly owned subsidiary of the Defendant, Nissan NA, and markets, advertises, distributes, supplies, leases and/or sells vehicles under the brand names Nissan and Infiniti, including the Affected Class Vehicles defined below in paragraph 16, for distribution and/or sale in Canada, including the Province of Alberta.

10. At all material times to the causes of action herein, the Defendants, Nissan Japan and Nissan NA, designed, developed, manufactured, assembled and/or tested Nissan and Infiniti-branded vehicles at automobile plants located, *inter alia*, in the United States of America and Mexico.

11. At all material times to the causes of action herein, and continuing to the present, the Defendant, Nissan Japan, exercised direct and/or indirect control and ownership over the Defendants, Nissan NA and Nissan Canada, including, *inter alia*, management policies, information governance policies, pricing, repair and/or warranty terms.

12. At all material times to the causes of action herein, and continuing to the present, the Defendants, Nissan Japan, Nissan NA and Canada, shared the common purpose of, *inter alia*, engineering, designing, developing, manufacturing, assembling, marketing, distributing, supplying, leasing and/or selling vehicles under the brand names Nissan and Infiniti, including the Affected Class Vehicles defined below in paragraph 16, in Canada, including the Province of Alberta. Further, the business and interests of the Defendants, Nissan Japan, Nissan NA and Nissan

Canada, are inextricably interwoven with that of the other such that each is the agent or alter ego of the other.

13. Hereinafter, the Defendants, Nissan Japan, Nissan NA and Nissan Canada, are collectively, and/or interchangeably, referred to as the “**Defendant, Nissan**” or “**Defendants**”, unless otherwise referred to individually.

#### **B. The Class**

14. This action is brought on behalf of members of a class consisting of the Plaintiff, and all other persons resident in Canada, who own, owned, lease and/or leased any one or more of Affected Class Vehicles (“**Class**” or “**Class Members**”), excluding employees, officers, directors, agents of the Defendants and their family members, class counsel, presiding judges and any person who has commenced an individual proceeding against or delivered a release to the Defendants concerning the subject of this proceeding, or such other class definition or class period as the Court may ultimately decide on the application for certification.

#### **C. Factual Background**

##### **Paint Defect and Affected Class of Vehicles**

15. There exists a latent defect in the exterior factory-applied paint coatings of the Affected Class Vehicles that causes the coatings to prematurely and inevitably fail, which manifests in the form of peeling, delaminating, degrading, bubbling, and/or flaking, within the reasonably expected life of the vehicles (the “**Paint Defect**”). In particular, the Paint Defect results from: (i) a latent defect in the primer, base coat and/or clear coat used; (ii) a defect in the factory application process used to apply the coatings to the exterior body of the Affected Class Vehicles; and/or (iii) a defect in the Defendant’s, Nissan’s, painting/coating-line system.

16. “**Affected Class Vehicles**” include, but are not limited to, Nissan Kicks, Frontier, Murano, Rogue, Altima, and/or Sentra vehicles, model years 2010 to the present, and Infiniti Q30, Q50, QX56, and/or QX80 vehicles, model years 2010 to the present, with the Paint Defect.

17. The Plaintiff reserves the right to amend the scope of the definition of the Affected Class Vehicles, and the Paint Defect as further facts and evidence are obtained through the discovery and evidentiary process.

### **Introduction**

18. The Plaintiff brings this proposed auto defect multi-jurisdictional class proceeding on behalf of herself and Class Members against the Defendant, Nissan, seeking relief for all losses, damages and/or expenses suffered as a result of the Paint Defect.

19. The Paint Defect existed in latent form when the Defendant, Nissan, manufactured the Affected Class Vehicles and when the Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles. The Paint Defect has manifested, and will invariably manifest, during the reasonably expected life of the Affected Class Vehicles, causing premature or early paint failure in the form of peeling, delamination, degradation, bubbling, and/or flaking.

20. The true nature, scope and particulars of the Paint Defect cannot be fully determined by the Plaintiff at this time without the benefit of discovery evidence. Evidence obtained through discovery will show that the Paint Defect is latent in nature, widespread and affects multiple models and model years of the Affected Class Vehicles, all of which were finished with substantially similar factory-applied paint coatings, subjected to substantially similar painting processes and/or painting and coating-line systems used by the Defendant, Nissan.

21. Automobile manufacturers paint vehicles for two essential purposes: (i) to enhance aesthetics (i.e., color, gloss, and appearance); and (ii) to provide necessary functionality (i.e., chemical and corrosion-resistance to protect the body of the vehicle). If any of these two purposes are compromised, then the value of a vehicle is greatly diminished and an integral component of the vehicle will likely fail, causing further damage in the form of rust and/or corrosion.

22. The condition of the paint on the body of a vehicle is widely recognized in the automotive industry as a factor affecting the value of and a potential consumer's appeal to the vehicle. This is because the appearance (color, gloss, and texture) of the surface of the vehicle significantly affects a consumer's perception of product quality. Additionally, consumer expectations for the aesthetic and functional attributes given to the exterior of vehicles by paint coatings continue to increase as automobile manufacturers compete to provide surfaces that offer enhanced surface characteristics.

23. The Paint Defect diminishes the visual and aesthetic appeal, and functionality of the exterior paint coatings of the Affected Class Vehicles, thus decreasing their value, forcing owners

and/or lessees of the Affected Class Vehicles to either live with the manifestations of the Paint Defect or incur significant costs to have the Affected Class Vehicles repainted and/or repaired. Repainting an affected exterior body panel does not cure the Paint Defect, as the remaining panels of the Affected Class Vehicles continue to contain the latent defect that will inevitably manifest. Further, repainting creates a cosmetic mismatch that permanently reduces the vehicle's value.

24. As averred to below, at all relevant times, the Defendant, Nissan, was aware of the Paint Defect based on, *inter alia*, internal paint testing, post-production monitoring, the manifestation of the Paint Defect in numerous Nissan and Infiniti-branded vehicles across North America, countless consumer complaints dating back as early as the 2010s, warranty claims, service bulletins and/or similar class proceedings brought against the Defendant, Nissan, in the United States of America for the Paint Defect in Nissan and Infiniti-branded vehicles. Further, at all relevant times, the Defendant, Nissan, was fully aware of the importance consumers place on the exterior appearance of their vehicles.

25. The Defendant, Nissan, has exclusive knowledge of, and has been in exclusive possession of facts and/or information pertaining to the Paint Defect, which were, and are, material to the Plaintiff and Class Members, who could not have reasonably known of the Paint Defect. Under the circumstances, the Defendant, Nissan, had an affirmative duty to disclose the latent Paint Defect at the point of sale and/or lease of the Affected Class Vehicles to the Plaintiff and Class Members.

26. Despite that knowledge and duty, the Defendant, Nissan, has repeatedly failed to disclose and has actively concealed the Paint Defect from the Plaintiff and Class Members, and continued to market and represent the Affected Class Vehicles as stylish, luxurious, high-quality, high-value and value-retaining vehicles which, as a result of the Paint Defect, they are not.

27. As a direct and proximate result of the Defendant's, Nissan's, deceit regarding, and failure to disclose, the Paint Defect, the Plaintiff and Class Members: (i) overpaid for the Affected Class Vehicles, either through a higher purchase price and/or lease payments; (ii) overpaid for the Affected Class Vehicles as the Paint Defect significantly diminishes the value of the Affected Class Vehicles; (iii) have Affected Class Vehicles that suffer from premature unsightly and aesthetically displeasing paint failures that have the added effect of compromising the effectiveness and functionality of the paint coatings; (iv) have Affected Class Vehicles that have significantly

reduced re-sale value; and (v) must expend significant money to have their Affected Class Vehicles repainted and/or repaired.

28. The Plaintiff and Class Members have purchased and/or leased Affected Class Vehicles that they would not have otherwise purchased and/or leased, or would have paid less for, had they known of the Paint Defect at the point of sale and/or lease. The Plaintiff and Class Members have consequently suffered ascertainable losses and actual damages as a result of the Defendant's, Nissan's, unlawful conduct.

29. Further, in engineering, designing, developing, manufacturing, assembling, testing, marketing, distributing, supplying, leasing and/or selling the Affected Class Vehicles, the Defendant, Nissan, has engaged in unfair, deceptive, and/or misleading consumer practices, and further have breached its express warranties.

30. The Plaintiff and Class Members expected that the Defendant, Nissan, would disclose, and not actively conceal, material facts about the existence of any defect that will result in expensive and non-ordinary repairs. The Defendant, Nissan, failed to do so.

31. The Defendant, Nissan, has failed to recall and/or repair the Affected Class Vehicles with the Paint Defect.

32. The Plaintiff seeks relief, as averred to herein, for all other current and/or former owners and/or lessees of the Affected Class Vehicles with the Paint Defect, including, *inter alia*, recovery of damages, repair under provincial consumer protection legislation, breach of express warranty, and/or reimbursement of all expenses associated with the repairs of the Paint Defect in the Affected Class Vehicles.

### **Plaintiff's Experience**

33. On July 27, 2024, the Plaintiff purchased a 2018 Nissan Kicks, painted with the Fresh Powder white exterior paint (the "**Nissan Kicks**") from a third-party used car dealership, Go Auto Outlet, located in Edmonton, Alberta, for the purchase price of \$26,331.75 including applicable taxes, financing fees, and extended third-party warranty coverage.

34. The Plaintiff is a person of modest means, and the purchase of the Nissan Kicks represented a significant financial investment for her. She reasonably expected the vehicle to be safe, reliable, and durable.

35. At the time of purchase, the Nissan Kicks had approximately 75,000 kilometers (km), and it currently has approximately 113,000 km. At all relevant times, the Plaintiff drove and maintained the vehicle in a manner consistent with reasonable expectations of vehicle ownership.

36. The Plaintiff has taken her Nissan Kicks to L.A. Nissan, an authorized Nissan dealership in Leduc, Alberta, for repairs. For regular maintenance, including oil changes and tire rotations, the Plaintiff has taken the vehicle to certified mechanical shops in Edmonton, Alberta, such as Midas, for convenience.

37. At the time of purchase, the Plaintiff did not think that the Nissan Kicks suffered from any latent defects.

38. On or around January 29, 2024, the Plaintiff took her Nissan Kicks to a self-service car wash for routine cleaning. Upon applying water to the roof, a considerable amount of paint flaked off the Nissan Kicks, exposing the underlying primer and sheet metal.

39. Concerned about corrosion, the Plaintiff contacted the Defendant, Nissan Canada, to seek a remedy for the Paint Defect. The Defendant, Nissan Canada, instructed her to bring the vehicle to a local authorized dealership for inspection.

40. On or around February 20, 2024, the Plaintiff took the vehicle to L.A. Nissan, and advised service personnel of the Paint Defect. The dealership advised that a claim, along with pictures of the affected panels, would be submitted to the Defendant, Nissan Canada, to determine whether the paint repair costs would be covered.

41. On or around February 25, 2024, L.A. Nissan advised the Plaintiff that her Nissan Kicks was no longer under warranty and that the Defendant, Nissan Canada, would not cover the cost of any paint repairs.

42. The Plaintiff subsequently obtained a quote from an auto body shop, which estimated the cost of repainting the roof of her Nissan Kicks at over \$1,000.

43. In an effort to mitigate further damage, the Plaintiff arranged to have a vinyl wrap applied to the roof of her Nissan Kicks, at a cost of \$400. In order to do so, the Plaintiff had to remove the remaining loose paint on the roof by reattending the automated carwash.

44. Despite these efforts, the Plaintiff has since observed progressive paint degradation on additional panels, including the hood and trunk lid of the Nissan Kicks.



45. As a result of the ongoing Paint Defect, the Plaintiff is no longer able to use automated car washes, and even gentle hand washing, so as to risk further deterioration of the vehicle's exterior paint.

46. Prior to purchasing the Nissan Kicks, the Plaintiff reviewed marketing materials issued by the Defendant, Nissan, which emphasized the quality, durability, value, and aesthetic appeal of its vehicles, including the Nissan Kicks.

47. At the time of purchase, the Plaintiff inspected the Nissan Kicks' exterior, which appeared to be in excellent condition. There were no visible signs of paint failure or indications of any latent defects.

48. Despite diligent maintenance, the Nissan Kicks' exterior paint coatings have begun to deteriorate significantly within the reasonably expected life of the vehicle. Accordingly, the paint degradation observed cannot be attributed to misuse or neglect and is instead the result of the Paint Defect.

49. Critically, well before the Plaintiff reported the Paint Defect to L.A. Nissan, the Defendant, Nissan, and its authorized dealers already knew—based on, *inter alia*, internal paint testing records, post-production monitoring, prior consumer complaints and warranty claims, and similar class proceedings brought against the Defendant, Nissan, in the United States of America—that a latent defect existed in the exterior paint coatings of certain Nissan and Infiniti-branded vehicles. Despite this knowledge, the Defendant, Nissan, failed to disclose the Paint Defect to the Plaintiff.

50. As a result, the Plaintiff purchased the Nissan Kicks under the reasonable, but mistaken, belief that the vehicle would be durable and retain its value. Had she known of the Paint Defect and its propensity to cause premature paint failure, she would not have purchased the vehicle or would not have paid as much for it.

51. The Plaintiff made multiple good faith attempts to obtain assistance and a remedy from the Defendant, Nissan, but was denied support, leaving her with no meaningful recourse.

52. As a direct and proximate result of the Defendant's, Nissan's, misconduct, the Plaintiff has suffered a concrete and ascertainable loss. She overpaid for her vehicle, the value of the vehicle has been diminished due to the Paint Defect, and she has incurred—and will continue to incur—

out-of-pocket expenses to address a defect the Defendant, Nissan, knew existed at the time of manufacture and sale.

#### **D. Factual Allegations**

##### **The Defendant's, Nissan's, paint process and the Paint Defect**

53. The Defendant, Nissan, is a pioneer in automotive manufacturing, and engages in extensive research and development aimed at improving its manufacturing processes and the materials used to make the overall process more efficient and environmentally friendly.

54. As part of these efforts, the Defendant, Nissan, has implemented upgrades to its painting processes intended to reduce environmental impact by adopting environmentally friendly painting materials and streamlining its paint application systems.

55. While the basic steps in the automotive painting process generally align with industry standards, automobile manufacturers, including the Defendant, Nissan, employ a variety of proprietary materials, processes, and equipment to achieve specific exterior paint finishes and to save on costs. These paint materials and methods are often internal and/or confidential.

56. In particular, the Defendant, Nissan, utilizes its own proprietary composition of various paint coatings—typically consisting of an electro-deposited primer (e-coat), an intermediate primer coat, and a topcoat composed of a colored base coat and a finishing layer in the form of a clear coat. These coatings are applied using unique painting processes and specialized equipment, all of which contribute to variations in the final finish of the exterior paint coatings on the Affected Class Vehicles.

57. Notwithstanding differences among automobile manufacturers' painting systems, exterior factory-applied paint coatings in modern vehicles—including the Affected Class Vehicles—are not consumable or wear-and-tear components such as tires, batteries, or engine oil. Rather, they are expected to endure the reasonably expected life of the vehicle. Absent collision damage or exceptional conditions, properly applied exterior paint coatings should last at least 10 to 15 years.

58. However, unique deficiencies, and intentional non-industry standard cost cutting measures, in the factory application of the Defendant's, Nissan's, exterior paint coatings have resulted in latent defects that inevitably and prematurely cause those coatings to fail. These failures

manifest in the form of peeling, delaminating, bubbling, flaking, and/or other forms of degradation, all within the reasonably expected life of the vehicle. The Paint Defect is a direct result of such failures.

59. As averred to above, the Paint Defect arises from: (i) a latent defect in the primer, base coat and/or clear coat used; (ii) a defect in the factory application process used to apply the coatings to the exterior body of the Affected Class Vehicles; and/or (iii) a defect in the Defendant's, Nissan's, painting/coating-line system.

60. The Paint Defect is found in the Affected Class Vehicles in every province, regardless of geographical or other environmental factors (such as proximity to cities and pollution exposure).

61. Further, the Paint Defect is latent in nature, widespread and affects multiple models and model years of the Affected Class Vehicles, all of which were finished with substantially similar factory-applied paint coatings, subjected to substantially similar painting processes and/or painting and coating-line systems used by the Defendant, Nissan.

62. Key factors contributing to the premature or early failing, peeling, delaminating, degrading, bubbling and/or flaking of exterior paint coatings include, *inter alia*, the following:

- (a) Inconsistent Application: The application process requires meticulous precision. Any variation in the application, or insufficient curing, of any of the layers of the topcoat (base, or clear coat), can lead to adhesion problems; and
- (b) Complexity: Certain types of paints, such as metallic and/or pearlescent paints, increase application difficulty making minor defects more likely, especially if the surface preparation is inadequate. Minor defects during production can result in long-term durability issues.

63. In addition, primer is an essential element in the quality of the adhesion between the e-coat and the basecoat. Primers must be tested for their ability to withstand chemical reactivity to ultraviolet ("UV") light and extreme weather conditions because disintegration of any agents within the primer will likely cause a drastic loss of adhesion and delamination of the topcoat. The durability of the paint, and the prevention of corrosion, is dependent upon the adhesion of all the layers of a vehicle's paint coating, including the e-coat, primer, and the topcoat layers.

64. Further, intercoat adhesion of all the layers of a vehicle's paint coating—e-coat, primer, topcoat (base coat and clear coat) layers—is a critical determinant of the quality of the paint on any surface or item (including the ability to withstand UV light), not just vehicles. Achieving excellent performance and application properties of any paint requires a holistic approach to ensure compatibility, not only within a paint formulation across all ingredients, but also between the paint formulation and the painting/coating-line system used for the application of the paint, so that all paint layers can properly work together and bring out those properties. An inadequate layer or poor adhesion between layers (i.e. poor intercoat adhesion) is the weakest link of a paint system and greatly increases the probability of a vehicle's paint coating failure.

65. Given the purpose of automotive coatings and the value added by a quality paint job, automobile manufacturers spend millions of dollars conducting a myriad of long-term and short-term tests to ensure automotive paint provides excellent aesthetics and performance properties.

66. Degradation of the primer layers in a vehicle's paint coating can be caused by the defective nature of the materials and paint layers used, or the improper manner in which they are applied during the painting process, resulting in accelerated degradation at the interface between the primer and the top coat. This degradation causes a loss of adhesion and will manifest as peeling, delaminating, bubbling and/or flaking, which eventually leads to corrosion damage to the vehicle's exterior body,

#### **The Defendant's, Nissan's, knowledge and concealment of the Paint Defect**

67. The Defendant, Nissan, knew, or ought to have known, about the Paint Defect before it sold and/or leased the Affected Class Vehicles to Class Members, based on, *inter alia*: (i) internal paint testing; (ii) post-production monitoring of countless consumer complaints dating back as early as the 2010s, and warranty claims relating to the Paint Defect; (iii) the manifestation of the Paint Defect in numerous Nissan and Infiniti-branded vehicles across North America; (iv) similar class proceedings brought against the Defendant, Nissan NA, in the United States of America for the Paint Defect in Nissan and Infiniti-branded vehicles.

#### **Internal Testing**

68. Prior to a new paint and/or paint coating being used on a vehicle, automobile manufacturers, such as the Defendant, Nissan, are known to employ multiple standards and test

protocols to ensure long life and film integrity of the paint coating as well as the underlying substrate or layer. In addition to extensive exterior and accelerated weathering evaluation of clearcoats, there is additional aggressive testing prior to the qualification of an automotive coating system to ensure the paint coating will provide long lasting protection when exposed to environmental elements. These tests often run over the course of two-to-five years before a vehicle using the paint coating is brought to market.

69. Additionally, automobile manufacturers typically require their suppliers to test the paint, and its application, to see how it performed in simulated real-world conditions to determine the quality and durability of the paint, whether the paint adhered to the surface of the vehicle, whether it corroded or delaminated, how it performed when subjected to heat, cold, light, moisture, and rain, whether the color or gloss faded, changed, or was retained, among other performance metrics.

70. The development of the paint and the paint manufacturing process, including the testing performed in connection therewith, revealed, ought to have revealed, the Paint Defect to the Defendant, Nissan. However, the details regarding the testing performed by the Defendant, Nissan, and the results of that testing are in exclusive custody and control of the Defendant, Nissan.

71. Moreover, prior to distribution and/or sale of the Affected Class Vehicles, the Defendant, Nissan, would have conducted factory audits and quality control checks that would have identified irregularities in paint thickness, adherence, which would have made the Defendant, Nissan, aware of a substantially heightened risk of future paint peeling, delamination and/or degradation.

**Post-production monitoring, customer complaints, and warranty claims as to the Paint Defect**

72. The Defendant, Nissan, also knew, or ought to have known, about the Paint Defect as numerous consumer complaints regarding the Paint Defect were made directly to the Defendant, Nissan, or on online sources monitored by the Defendant, Nissan.

73. Dating back to the early 2010s, the Defendant, Nissan, has received an avalanche of complaints and reports from owners and/or lessees of the Affected Class Vehicles, consistently alleging that the Paint Defect is widespread and that its manifestation is inevitable.

74. Class Member reports relating to the Paint Defect bear striking similarities to one another, including, *inter alia*, the following:

- (a) premature paint failure, such as peeling, delaminating, degrading, bubbling, and/or flaking during the reasonably expected life of Affected Class Vehicles;
- (b) the Defendant's, Nissan's, auto paint technicians, and auto body repair shops being well-aware of the Paint Defect;
- (c) the Defendant's, Nissan's, or its agents', arbitrary and improper refusal to repair the Paint Defect; and
- (d) high estimates and high costs to repair the Paint Defect, inadequate repairs, and risk of further paint failure (stemming, for instance, from the repainting of only one exterior body panel as opposed to the whole vehicle).

75. The large number of customer complaints, and the consistency of their descriptions of the Paint Defect alerted, or ought to have alerted, the Defendant, Nissan, of the Paint Defect in the Affected Class Vehicles.

76. Additionally, many of these customer complaints accompanied warranty claims requiring the Defendant's, Nissan's, authorized dealerships to rectify or remedy the Paint Defect, which they have failed and/or refused to do so.

**Manifestations of the Paint Defect in Affected Class Vehicles across North America and similar class proceedings**

77. The Paint Defect is widespread and prevalent in the Affected Class Vehicles across North America. The Defendant, Nissan, has been on clear notice of the Paint Defect, including through at least three substantially similar class proceedings filed against it in the United States of America, each alleging the same or materially identical failures in the factory-applied paint coatings.

78. In each of these actions, the Defendant, Nissan, settled the matter offering extending warranties for certain but not all of the Affected Class Vehicles.

79. The Defendant, Nissan, has failed and/or refused to offer similar remedies to Class Members.

**The Defendant's, Nissan's, representations regarding the value, value-retention, aesthetic, durability and/or paint attributes of the Affected Class Vehicles**

80. The Nissan Kicks is a subcompact crossover sport utility vehicle manufactured by the Defendant, Nissan, since 2016. Nissan Kicks' for the North American market are manufactured by the Defendant, Nissan, at its automobile plant located in Aguascalientes, Mexico.

81. Throughout the years, and at all relevant times, the Defendant, Nissan, consistently and widely marketed the Nissan Kicks as high-value, value-retaining, stylish, and durable vehicles. The Defendant's, Nissan's, marketing of the Nissan Kicks has enabled it to charge the Plaintiff and Class Members a premium, which they would not have paid had they known about the Paint Defect.

82. The Defendant, Nissan, directly markets the Affected Class Vehicles, including the Nissan Kicks, to consumers *via* extensive nationwide, multimedia advertising campaigns on television, the internet, billboards, print publications, mailings, and through other mass media.

83. For example, in a 2018 Nissan Kicks Press Kit, Dan Mohnke, the Senior Vice President of Sales, Marketing, and Operations, of the Defendant, Nissan NA, said regarding the vehicles exterior appeal:

From a pure visual standpoint on the street, Kicks is a true head turner, especially in the bold two-tone color combinations.

and

Kicks is clearly recognizable as part of the Nissan CUV family, but has a vibrancy and identity all its own.

84. In particular, the Defendant, Nissan NA, promoted the exterior customization options of the Nissan Kicks in a press release dated June 4, 2018, stating:

The Nissan Color Studio is all about style, color and personalization. The all-new 2018 Nissan Kicks, with its roots tracing back to Nissan's Rio de Janeiro design studio's Kicks Concept car, is also all about style, color and personalization. It's only natural that the two get together with the launch of the new Kicks Color Studio.

The Kicks Color Studio's lineup of 12 carefully curated accessories in a selection of five available colors takes personalization to a whole new dimension of bold - the perfect match with Kicks' range of seven exterior colors and five two-tone combinations.

The seven available Kicks exterior colors include Brilliant Silver, Gun Metallic, Super Black, Cayenne Red, Fresh Powder, Aspen White (premium color) and Deep Blue Pearl. The five available two-tone paint combinations are (roof color listed first): Super Black/Aspen White, Monarch Orange/Gun Metallic, Super Black/Monarch Orange, Super Black/Cayenne Red and Fresh Powder/Deep Blue Pearl.

Customers wanting to explore the Kicks Color Studio can go to a special configuration page that offers a full 360-degree of the Kicks with all colors and combinations of accessories.

The cost of Kicks Color Studio accessories is not included in the MSRP and can be added to the Kicks purchase or lease costs and rolled into the payment of the vehicle. Dealer labor charges apply if installation is done at the dealership.

85. The Defendant, Nissan, made substantially similar representations regarding value, the ability to retain value, style, luxury, and durability in product brochures and other marketing for all Affected Class Vehicles.

86. The Defendant, Nissan, deliberately marketed and advertised the exterior paint of the Affected Class Vehicles as a central and integral attribute, essential to the vehicles' value, resale value, style, luxury, and durability. The Defendant, Nissan, intended that these representations would influence purchasing decisions and instill consumer confidence in the longevity and quality of the exterior paint. For example, in a press release dated May 21, 2018, the Defendant's, Nissan's, luxury division, Infiniti, promoted its receipt of two awards from the 2018 Automotive Marketing Consultants Incorporated ("AMCI") Trusted Automotive Brand Study: *Most Trusted Luxury* and *Most Improved Luxury*. The press release quoted AMCI Inside's president, Dave White, as stating:

"INFINITI is the only brand in the luxury segment to be both a Most Trusted and a Most Improved brand," and "It is also one of the rare



brands where customers trust the dealers as much as they trust the OEM. That fact was critical in their achievement.”

87. As a result of the Defendant’s, Nissan’s, marketing, the Plaintiff and Class Members formed a reasonable belief and expectation that the paint used on the Affected Class Vehicles was of high quality, would endure, and would not adversely impact the long-term value of the Affected Class Vehicles.

88. Likewise, based on the marketed durability and longevity of the Affected Class Vehicles, the Plaintiff and Class Members formed a reasonable belief and expectation that the Affected Class Vehicles’ paint would last a time commensurate with the useful life and longevity of the Affected Class Vehicles, that is, a time frame well-exceeding over 10 years. Statistics from Automotive Industries Association of Canada as of 2020, which tracks vehicle registration data nationwide, indicates that the average Canadian currently keeps his or her vehicle for a record 9.7 years.

89. Class Members confirm that the Affected Class Vehicles are mechanically durable, and a substantial portion of Affected Class Vehicles remain on the road more than 10 years after the Defendant, Nissan, sold and/or leased them. As such, the Plaintiff and Class Members reasonably expected that the Affected Class Vehicles’ paint would remain intact for that same duration.

90. Moreover, consumers like the Plaintiff and the Class Members reasonably expected that the Affected Class Vehicles’ paint would not fail, peel, delaminate, degrade, bubble, and/or flake under normal conditions during the reasonably expected life of the Affected Class Vehicles and/or cause other problems that would adversely impact the value of the Affected Class Vehicles.

91. The Plaintiff and Class Members were exposed to and relied on the Defendant’s, Nissan’s, pervasive, long-term, national, multimedia marketing campaign touting the supposed value, style, luxury, and durability of the Affected Class Vehicles, including the quality and durability of the exterior paint (and the exterior paint’s ability to complement the aesthetics and style of the Affected Class Vehicles). The Plaintiff and Class Members justifiably made their decisions to purchase and/or lease the Affected Class Vehicles based on the Defendant’s, Nissan’s, misleading marketing.

92. As averred to herein, rather than producing Affected Class Vehicles with durable, high-quality paint complementing the Affected Class Vehicles' "vibrancy" that lasted the Affected Class Vehicles' reasonably expected useful life, the Defendant, Nissan, knowingly manufactured and sold the Affected Class Vehicles with the Paint Defect that causes premature paint failure, in the form of peeling, delaminating, degradation, bubbling and/or flaking during the reasonably expected life of the Affected Class Vehicles, thereby greatly reducing their value and consumer desirability, and resulting in costly repairs.

93. Consumers contemplating the purchase and/or lease of an Affected Class Vehicle developed a reasonable and material expectation regarding the quality and longevity of the paint used on the Affected Class Vehicles based on the Defendant's, Nissan's, nationwide public advertisements, statements, and representations regarding the high-value and durability of its vehicles and their paint coatings.

94. Contrary to these reasonable and material expectations, as well as the Defendant Nissan's advertisements, statements, and representations, the factory-applied paint coatings on the Affected Class Vehicles have failed due to the Paint Defect.

**The Defendant's, Nissan's, warranties**

95. The Defendant, Nissan, sold the Nissan-branded Affected Class Vehicles with a New Vehicle Limited Warranty ("NVLW") providing coverage for 36 months or 60,000 km, whichever occurred first. The Defendant, Nissan, sold Infiniti-branded Affected Class Vehicles with an NVLW providing coverage for 72 months or 110,000 km, whichever occurred first.

96. The Affected Class Vehicles' NVLW provides in substantially similar fashion for Nissan and Infiniti-branded vehicles, respectively:

This warranty covers any repairs needed to correct defects in material or workmanship of all original parts and components of each new Nissan vehicle supplied by Nissan except for the exclusions or items listed elsewhere under the caption "Limitations" and "What is Not Covered".

This warranty covers any repairs needed to correct defects in materials or workmanship of all original parts and components of each new INFINITI vehicle supplied by Nissan except for the exclusions or items listed elsewhere under the caption "Limitations" and "What is Not Covered".

This warranty is your guarantee that under normal use and maintenance, your new Nissan (including all power train components) will be free from any defects in material and workmanship.

97. The NVLW for the Nissan-branded Affected Class Vehicles also provides:

#### CORROSION WARRANTY

##### Surface Corrosion

Surface corrosion of any body sheet metal is covered by the 36 months/ 60,000 kilometers Basic Warranty, except for those items listed elsewhere under the caption "Limitations" and "What is Not Covered". Surface corrosion means corrosion affecting any readily visible surface area of any component of the vehicle body, but not including the vehicle underbody.

##### Perforation from Corrosion

Original equipment vehicle body sheet metal components are warranted to be free of "Perforation from Corrosion", defined as rust through, from the inner surface to the outer surface, resulting in a hole. The duration of this warranty is 60 months from the warranty start date\*.

98. The NVLW for the Infiniti-branded Affected Class Vehicles also provides:

#### CORROSION WARRANTY

##### Surface Corrosion

Surface corrosion of any body sheet metal is covered by the 48 month/100,000 kms. Surface corrosion means corrosion affecting any readily visible surface area of any component of the vehicle body, but not including the vehicle underbody. This warranty covers any repairs needed to correct defects in materials or workmanship, except for the exclusions or items listed elsewhere under the caption "Limitations" and "What is Not Covered".

##### Perforation from Corrosion

Original equipment vehicle body sheet metal components are warranted to be free of "Perforation from Corrosion", defined as rust through, from the inner surface to the outer surface, resulting in a hole. The duration of this warranty is 84 months, from the warranty start date \*. This warranty covers any repairs needed to correct defects in materials or workmanship, except for the exclusions or

items listed elsewhere under the caption “Limitations” and “What is Not Covered”.

99. The Defendant’s, Nissan’s, warranties were unconscionable and/or misleading for, *inter alia*, the following reasons:

- (a) The Defendant, Nissan, leveraged its vastly unequal bargaining power to knowingly sell Affected Class Vehicles with the Paint Defect, which caused the Affected Class Vehicles’ paint to fail, and manifesting in the form of bubbling, peeling, delaminating, degrading and/or flaking. Despite its vastly superior position and its exclusive knowledge, the Defendant, Nissan, failed to inform the Plaintiff and Class Members of the Paint Defect and misrepresented the reliability, quality, performance, and aesthetic and/or paint attributes of the Affected Class Vehicles. Instead of informing the Plaintiff and the Class Members of the Paint Defect that made the Affected Class Vehicles prematurely and inevitably susceptible to paint failure, bubbling, peeling, delaminating, degradation, and/or flaking, the Defendant, Nissan, attempted to limit its warranty and other remedies. The warranties unreasonably favor the Defendant, Nissan, given its superior and exclusive knowledge regarding the Paint Defect, and contravene the reasonable expectations of the Plaintiff and Class Members concerning the reliability of the aesthetic and/or paint attributes of the Affected Class Vehicles;
- (b) The Defendant, Nissan, knowingly limited the NVLW warranties by duration to avoid addressing the vast bulk of the Paint Defect claims. Although the Paint Defect existed in its latent form during the NVLW’s period, the Defendant, Nissan, knew, or ought to have known, that in the majority of instances, the Paint Defect would not manifest until after the expiration of the NVLW warranty period;
- (c) The Defendant’s, Nissan’s, warranties include misrepresentations and improper exclusions covering the Paint Defect;

- (d) Repairs, even when provided pursuant to warranties, did not adequately address, remedy or fix the Paint Defect; and
- (e) Many Class Members have had their claims rejected improperly and arbitrarily by the Defendant's, Nissan's, NVLW, even where the Affected Class Vehicles qualified for coverage under the plain terms of the NVLW.

**Agency relationship between the Defendant, Nissan, and its authorized dealerships as to the Affected Class Vehicles**

100. Nissan and Infiniti-authorized dealerships are sales agents of the Defendant, Nissan, as the vehicle distributor, supplier and/or manufacturer. The dealerships have accepted that undertaking. The Defendant, Nissan, has the ability to control authorized Nissan and Infiniti dealers, and act as the principal in that relationship, as is shown, *inter alia*, by the following:

- (a) the Defendant, Nissan, can terminate the relationship with its dealers at will;
- (b) the relationships are indefinite;
- (c) the Defendant, Nissan, is in the business of selling vehicles as are its dealers;
- (d) the Defendant, Nissan, provides tools and resources for Nissan and Infiniti dealers to sell vehicles;
- (e) the Defendant, Nissan, supervises its dealers regularly;
- (f) without the Defendant, Nissan, the relevant Nissan and Infiniti dealers would not exist;
- (g) the Defendant, Nissan, requires the following of its dealers:
  - (i) reporting of sales;
  - (ii) computer network connection with the Defendant, Nissan;
  - (iii) training of dealers' sales and technical personnel;
  - (iv) use of the Defendant's, Nissan's, computer software system;

- (v) participation in the Defendant's, Nissan's, training programs;
  - (vi) establishment and maintenance of service departments in Nissan dealerships;
  - (vii) certify Nissan and Infiniti pre-owned vehicles;
  - (viii) reporting to the Defendant, Nissan, with respect to the vehicle delivery, including reporting customer names, addresses, preferred titles, primary and business phone numbers, e-mail addresses, vehicle identification numbers, delivery date, type of sale, lease/finance terms, factory incentive coding, if applicable, vehicles' odometer readings, extended service contract sale designations, if any, and names of delivering dealership employees; and
  - (ix) displaying the Defendant's, Nissan's, logos on signs, literature, products, and brochures within Nissan and Infiniti dealerships.
- (h) dealerships bind the Defendant, Nissan, with respect to:
- (i) warranty repairs on the vehicles the dealers sell; and
  - (ii) issuing service contracts administered by the Defendant, Nissan.
- (i) the Defendant, Nissan, further exercises control over its dealers with respect to:
- (i) financial incentives given to Nissan and Infiniti dealer employees;
  - (ii) locations of dealers;
  - (iii) testing and certification of dealership personnel to ensure compliance with the Defendant's, Nissan's, policies and procedures; and
  - (iv) customer satisfaction surveys, pursuant to which the Defendant, Nissan, allocates the number of Nissan and Infiniti cars to each dealer, thereby directly controlling dealership profits;

- (j) Nissan and Infiniti dealers sell Nissan and Infiniti vehicles on behalf of the Defendant, Nissan, pursuant to a “floor plan,” and the Defendant, Nissan, does not receive payment for its vehicles until the dealerships sell them;
- (k) dealerships bear the Defendant’s, Nissan’s, brand names, use its logos in advertising and on warranty repair orders, post Nissan and Infiniti-brand signs for the public to see, and enjoy a franchise to sell the Defendant’s, Nissan’s, products, including the Affected Class Vehicles;
- (l) the Defendant, Nissan, requires its dealers to follow its rules and policies in conducting all aspects of dealer business, including the delivery of its warranties described above, and the servicing of defective vehicles such as the Affected Class Vehicles;
- (m) the Defendant, Nissan, requires its dealers to post its brand names, logos, and signs at dealer locations, including dealer service departments, and to identify itself and to the public as authorized Nissan and Infiniti dealers and servicing outlets for the Defendant’s, Nissan’s, vehicles;
- (n) the Defendant, Nissan, requires its dealers to use service and repair forms containing its brand names and logos;
- (o) the Defendant, Nissan, requires Nissan and Infiniti dealers to perform its warranty diagnoses and repairs, and to do the diagnoses and repairs according to the procedures and policies set forth in writing by it;
- (p) the Defendant, Nissan, requires Nissan dealers to use parts and tools either provided by it, or approved by it, and to inform the Defendant, Nissan, when dealers discover that unauthorized parts have been installed on one of its vehicles;
- (q) the Defendant, Nissan, requires dealers’ service and repair employees to be trained by it in the methods of repair of Nissan and Infiniti-branded vehicles;
- (r) the Defendant, Nissan, audit Nissan and Infiniti dealerships’ sales and service departments and directly contacts the customers of said dealers to determine their

level of satisfaction with the sale and repair services provided by the dealers, who are then granted financial incentives or reprimanded depending on the level of satisfaction;

- (s) the Defendant, Nissan, requires its dealers to provide it with monthly statements and records pertaining, in part, to dealers' sales and servicing of its vehicles;
- (t) the Defendant, Nissan, provides service bulletins and messages to its dealers detailing chronic defects present in product lines, and repair procedures to be followed for chronic defects;
- (u) the Defendant, Nissan, provides its dealers with specially trained service and repair consultants with whom dealers are required by the Defendant, Nissan, to consult when dealers are unable to correct a vehicle defect on their own;
- (v) the Defendant, Nissan, requires Nissan and Infiniti vehicle owners and/or lessees to go to authorized Nissan and Infiniti dealers to obtain servicing under Nissan and Infiniti warranties; and
- (w) Nissan and Infiniti dealers are required to notify the Defendant, Nissan, whenever a Nissan or Infiniti vehicle is sold or put into warranty service.

#### **E. Class Proceeding is the Preferable Procedure**

101. The Defendant, Nissan, manufactured and sold thousands of vehicles with the Paint Defect during the relevant class period, and the Class is reasonably estimated to be in the thousands or tens of thousands such that joinder of all their members is impracticable. As such, it is reasonably foreseeable that there is an identifiable class of two or more persons. The precise number of members of the Class is unknown to the Plaintiff, but can be ascertained through Defendant's, Nissan's, records.

102. There are a number of issues common to all of the claims of the Plaintiff and Class Members, and which predominate any issues impacting individual Class Members, including, *inter alia*, the following:



- (a) Whether the Defendant, Nissan, engineered, designed, developed, manufactured, assembled, tested, marketed, distributed, sold and/or leased the Affected Class Vehicles with the Paint Defect;
- (b) Whether the Defendant, Nissan, knew, or ought to have known, about the Paint Defect;
- (c) Whether the Defendant, Nissan, engaged in unfair practices contrary to the *Consumer Protection Act*, R.S.A. 2000, c. C-26.3, and other applicable provincial consumer protection legislation;
- (d) Whether the Defendant, Nissan, failed to disclose the Paint Defect to the Plaintiff and Class Members, and actively concealed the Paint Defect;
- (e) Whether the Defendant, Nissan, continued to manufacture, market, distribute, supply, lease and/or sell Affected Class Vehicles with the Paint Defect even after becoming aware of the Paint Defect;
- (f) Whether the Defendant, Nissan, misrepresented the characteristics of the Affected Class Vehicles, either intentionally or negligently;
- (g) Whether the Defendant, Nissan, warranted that the Affected Class Vehicles would be free from the Paint Defect;
- (h) Whether Defendant, Nissan, breached any express warranties to the Plaintiff and Class Members by engineering, designing, developing, manufacturing, assembling, testing, marketing, distributing, leasing and/or selling the Affected Class Vehicles with the Paint Defect;
- (i) Whether the Defendant, Nissan, failed to remedy the Paint Defect;
- (j) Whether the Plaintiff and Class Members are entitled to monetary, restitutionary, and/or injunctive relief or other remedies, and if so, whether any of the relief or remedies can be determined on aggregate basis; and

- (k) Whether the conduct of the Defendant, Nissan, merits an award of punitive damages.

103. A determination of the common issues will substantially advance the proceedings even though some issues relating to individual assessment of damages may remain to be determined. The Plaintiff asserts that a class proceeding is the preferable procedure for the fair and efficient resolution of the common issues, and most efficient way to determine the liability of the Defendant, Nissan, for losses caused to the Affected Class Vehicles, and through this process, the most efficient claims determination process may be created.

104. The Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. The Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. The Plaintiff and retained counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and have the financial resources to do so. Neither the Plaintiff nor retained counsel has any interest adverse to those of the other members of the Class.

105. Class Members, as individuals, cannot match the resources of the Defendant, Nissan. The claims of many Class Members would not be economical to pursue individually. As such, Class Members would be denied access to justice in the absence of a class proceeding.

106. It is unlikely that an individual member of the Class could or would seek prospective relief to deter future misconduct by the Defendant, Nissan. The Defendant, Nissan, is sufficiently large and well-resourced that an individual claim would be unlikely to have any significant impact on its manufacturing, sales, distribution policies, procedures and practices, to compel it to remedy the Paint Defect, or enact a change, or stop it from continuing its unfair and deceptive practices. This proposed class proceeding will impact the Defendant, Nissan, such that it will have to ensure that its policies, procedures and practices are sufficient to protect its customers.

## **F. Causes of Action**

### **Violation of Consumer Protection Act, R.S.A. 2000, c. C-26.3 ("CPA") and Parallel Provincial Consumer Protection Legislation**

107. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Statement of Claim.

108. The Defendant, Nissan, is in Alberta for the purposes of the *CPA*; *Business Practices and Consumer Protection Act*, S.B.C. 2004; *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, S.N.B. 2024, c 1; *Business Practices Act*, R.S.P.E.I. 1988, c B-7; *Consumer Protection and Business Practices Act*, S.N.L. 2009, c C-31.1; *Consumer Protection Act*, C.Q.L.R. c. P-40.1, (collectively, the “**Parallel Consumer Protection Legislation**,” unless otherwise referred to individually).

109. The Affected Class Vehicles are consumer “goods” within the meaning of section 1(1) of the *CPA*, and *Parallel Consumer Protection Legislation*.

110. Class Members in Alberta who purchased and/or leased the Affected Class Vehicles primarily for personal, family or household purposes, and not for resale or for the purposes of carrying on business, are “consumers” within the meaning of section 1(1) of the *CPA*, and in provinces with *Parallel Consumer Protection Legislation*.

111. The purchase and/or lease of the Affected Class Vehicles by Class Members in Alberta for personal, family or household purposes, and not for resale or for carrying on business constitutes a “consumer transaction” within the meaning of section 1(1) of the *CPA*, and in provinces with *Parallel Consumer Protection Legislation*.

112. The Defendant, Nissan, is a “supplier” within the meaning of section 1(1) of the *CPA*, and in provinces with *Parallel Consumer Protection Legislation*, as it carried on business in Alberta and who in the course of business participated in a consumer transaction by: (i) supplying goods to a consumer, or (ii) soliciting, offering, advertising or promoting with respect to a consumer transaction, whether or not privity of contract exists between that person and the consumer, and includes an assignee of, any rights or obligations of the supplier under the *CPA*. The Defendant, Nissan, is the manufacturer of the Affected Class Vehicles and distributes, markets and/or supplies such vehicles to consumers, including Class Members in Alberta. At all relevant times, the Defendant, Nissan, was a supplier and/or seller of the Affected Class Vehicles as its resellers, authorized dealers and/or distributors were acting as the agents of the Defendant, Nissan.

113. By failing to disclose and actively concealing the Paint Defect in the Affected Class Vehicles, the Defendant, Nissan, engaged in unfair and/or deceptive trade practices prohibited by

sections 5 and 6 of the *CPA*, and the relevant provisions of *Parallel Consumer Protection Legislation*. The Defendant, Nissan, knew, or ought to have known, that the Paint Defect causes the Affected Class Vehicles' factory-applied exterior coatings to prematurely and inevitably fail, which manifests in the form of peeling, delaminating, degrading, bubbling, and/or flaking. The Defendant, Nissan, made misleading statements or omissions regarding the Affected Class Vehicles' design, aesthetic, value, durability and/or paint attributes without disclosing that the Affected Class Vehicles will invariably experience the Paint Defect.

114. As alleged herein, the Defendant, Nissan, made representations that the Affected Class Vehicles' exterior paint is a central and integral attribute of the Affected Class Vehicles that was necessary to complement the Affected Class Vehicles' value, value-retention, style, luxury and/or durability.

115. In purchasing and/or leasing the Affected Class Vehicles, Class Members were deceived by the Defendant's, Nissan's, failure to disclose its knowledge of the Paint Defect and the associated damage to the design, aesthetics, value and/or durability attributes, including the paint used on, the Affected Class Vehicles.

116. In particular, the Defendant, Nissan, engaged in a pattern of unfair or deceptive acts or practices in failing to disclose to Class Members that the Affected Class Vehicles suffered from the Paint Defect which caused the Affected Class Vehicles' factory-applied exterior paint coatings to prematurely and inevitably fail, which manifests in the form of peeling, delaminating, degrading, bubbling, and/or flaking, as follows:

- (a) failing to disclose that the factory-applied exterior paint coatings of the Affected Class Vehicles were not of a particular standard, quality, or grade;
- (b) failing to disclose before, during and/or after the time of purchase, lease and/or repair, any and all known material defects or material nonconformity of the Affected Class Vehicles, including the Paint Defect;
- (c) failing to disclose at the time of purchase and/or lease that the Paint Defect was latent and was likely to prematurely and inevitably cause damage to the Affected Class Vehicles;

- (d) failing to give adequate or complete warnings and/or notices regarding the Paint Defect with respect to the Affected Class Vehicles to consumers who purchased and/or leased the Affected Class Vehicles, even though the Defendant, Nissan, possessed exclusive knowledge of the Paint Defect before and at the time of purchase and/or lease;
- (e) failing to disclose and/or by actively concealing the fact that the factory-applied exterior paint coatings of the Affected Class Vehicles suffered from a latent defect, even though the Defendant, Nissan, knew, or ought to have known, about the Paint Defect;
- (f) timing the manifestation of the Paint Defect so that it occurred just outside the expiration of the NVLW; and
- (g) representing that the Paint Defect in the Affected Class Vehicles would be covered under the NVLW.

117. In purchasing and/or leasing the Affected Class Vehicles, Class Members were deceived by the Defendant's, Nissan's, failure to disclose its exclusive knowledge that the Paint Defect caused the Affected Class Vehicles' factory-applied paint coatings to prematurely and inevitably fail, and thereby manifesting in the form of peeling, delaminating, degrading, bubbling, and/or flaking.

118. By failing to disclose and/or actively concealing the Paint Defect, the Defendant, Nissan, engaged in unfair or deceptive acts or practices prohibited by sections 5 and 6 of the *CPA*, and the relevant provisions of *Parallel Consumer Protection Legislation*.

119. Further, as alleged herein, the Defendant, Nissan, made misleading representations and/or omissions concerning the design, aesthetic, value, durability and/or paint attributes of the Affected Class Vehicles suffering from the Paint Defect, by:

- (a) making advertisements which uniformly omitted any information about the Paint Defect, and which misled consumers into believing that the factory-applied exterior paint coatings would survive the reasonably expected life of the Affected Class Vehicles; and

- (b) emphasizing and extolling in brochures and press releases that the Affected Class Vehicles suffering from the Paint Defect were of high-value, value-retaining, stylish, luxurious and/or durable.

120. The Defendant's, Nissan's, conduct as alleged herein was, and is, in violation of sections 5 and 6 of the *CPA*, and the relevant provisions of *Parallel Consumer Protection Legislation*, in particular, by:

- (a) representing that the Affected Class Vehicles were defect-free, which they were not;
- (b) representing that the Affected Class Vehicles were of a particular standard, quality or grade, when they were not;
- (c) advertising the Affected Class Vehicles with the intent not to sell them as advertised; and
- (d) representing that the Affected Class Vehicles have been supplied in accordance with a previous representation as to design, aesthetic, value, durability and/or paint attributes, when they were not.

121. In purchasing and/or leasing the Affected Class Vehicles, Class Members in Alberta were deceived by the Defendant's, Nissan's, failure to disclose its exclusive knowledge of the Paint Defect and/or its representations made as to design, aesthetic, value, and/or durability attributes of, including the paint used on, the Affected Class Vehicles in its sales brochure materials, manuals, press releases and/or websites.

122. The Defendant, Nissan, intentionally and knowingly misrepresented and omitted material facts regarding its Affected Class Vehicles, specifically regarding the Paint Defect, with an intent to mislead Class Members.

123. Class Members had no way of knowing of the Defendant's, Nissan's, representations were false, misleading and incomplete or knowing the true nature of the Paint Defect in the Affected Class Vehicles. As alleged herein, the Defendant, Nissan, engaged in a pattern of deception in the face of a latent defect in the factory-applied exterior paint coatings of the Affected

Class Vehicles. Class Members did not, and could not, unravel the Defendant's, Nissan's, deception on their own.

124. The Defendant, Nissan, knew, or should have known, that its conduct violated sections 5 and 6 of the *CPA*, and the relevant provisions of *Parallel Consumer Protection Legislation*.

125. The Defendant, Nissan, had a duty to disclose that the factory-applied exterior paint coatings of the Affected Class Vehicles were fundamentally flawed as described herein because the coatings suffered from a latent defect and Class Members relied on the Defendant's, Nissan's, material misrepresentations and omissions regarding the Affected Class Vehicles and the Paint Defect.

126. The facts concealed and omitted by the Defendant, Nissan, from 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 Class Members known about the defective nature of the factory-applied exterior paint coatings of 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.

127. As a result of the Defendant's, Nissan's, conduct as alleged herein, Class Members in Alberta are entitled to a declaration under section 159(2)(a) of the *CPA* that an act or practice engaged in by the Defendant, Nissan, in respect to the purchase and/or lease of the Affected Class Vehicles contravenes the *CPA*, an injunction under section 156 of the *CPA* to restrain such conduct and/or damages under section 159 of the *CPA*, and to such remedies under *Parallel Consumer Protection Legislation*.

128. Class Members in Alberta are entitled to, to the extent necessary, a waiver of any notice requirements under *CPA*, and *Parallel Consumer Protection Legislation*, as a result of the Defendant's, Nissan's, failure to disclose and/or actively conceal the Paint Defect from Class Members in Alberta and its misrepresentations as to design, aesthetic, value, durability and/or paint attributes of the Affected Class Vehicles.

#### **Breach of Express Warranty**

129. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Statement of Claim.

130. As an express warrantor, manufacturer, supplier and/or merchant, the Defendant, Nissan, had certain obligations to conform the Affected Class Vehicles with the Paint Defect to its express warranties.

131. The Defendant, Nissan, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of Alberta, as having certain design, aesthetic, value, and durability attributes, including its factory-applied exterior paint coatings, through authorized dealerships and/or independent retail dealers. Such representations formed the basis of the bargain in the Plaintiff and Class Members' decisions to purchase and/or lease the Affected Class Vehicles.

132. When the Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles with the Paint Defect (either as new vehicles or as used vehicles with remaining warranty coverage), the Defendant, Nissan, expressly warranted under its warranty that it would cover all parts and labor needed to repair any item on the vehicle when it left the manufacturing plant that is defective in material, workmanship or factory preparation. The Defendant, Nissan, provided a NVLW, which provided coverage for 36 months or 60,000 km on the Nissan-branded, or 72 months or 110,000 km on the Infiniti-branded Affected Class Vehicles it manufactured.

133. The warranties of the Defendant, Nissan, formed a basis of the bargain that was reached when the Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles.

134. The Paint Defect at issue in this litigation was present either in its latent form, at the time, or had manifested shortly after, the Affected Class Vehicles were sold and/or leased to Plaintiff and Class Members.

135. The Defendant, Nissan, breached its express warranties (and continues to breach these express warranties) because it did not and has not remedied or corrected the Paint Defect in the Affected Class Vehicles.

136. Pursuant to its express warranties, the Defendant, Nissan, was obligated to correct any damage relating to the Paint Defect in the Affected Class Vehicles owned and/or leased by the Plaintiff and Class Members.

137. The Defendant, Nissan, has failed and/or refused to conform the Affected Class Vehicles with the Paint Defect to its express warranties. The Defendant's, Nissan's, conduct, as averred to herein, has voided any attempt on its part to disclaim liability for its actions.



138. In particular, the Defendant, Nissan, breached its express warranties by:

- (a) knowingly providing the Plaintiff and Class Members with Affected Class Vehicles containing defects that were never disclosed to the Plaintiff and Class Members;
- (b) failing to remedy or fix the Paint Defect in the Affected Class Vehicle at no cost within the NVLW periods;
- (c) ignoring, delaying responses to, and denying warranty claims in bad faith or arbitrarily; and
- (d) supplying products and materials that failed to conform to its representations.

139. The Plaintiff and Class Members have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of the Defendant, Nissan, or by operation of law in light of the Defendant's, Nissan's, conduct as described herein.

140. The Plaintiff and Class Members have given the Defendant, Nissan, a reasonable opportunity to cure its breach of express warranties or they were not required to do so because such an opportunity would be unnecessary and futile given that the remedies, repairs and/or fixes offered by the Defendant, Nissan, can either not cure the Paint Defect, were inadequate in doing so, or did not resolve the incidental and consequential damages flowing therefrom.

141. The Defendant, Nissan, received timely notice regarding the Paint Defect from the Plaintiff and Class Members when they brought their vehicles to their dealerships after experiencing visible paint damage associated with the Paint Defect. Notwithstanding such notice, the Defendant, Nissan, has failed and/or refused to offer a remedy or fix.

142. In its capacity as a manufacturer, supplier and/or warrantor, and by the conduct described herein, any attempt by the Defendant, Nissan, to limit its express warranties in a manner that would enforce the warranty period limit would be unconscionable. The Defendant's, Nissan's, warranties were adhesive, and did not permit negotiation, or the inclusion of Paint Defect. The Defendant, Nissan, possessed superior knowledge of the Paint Defect in the Affected Class Vehicles prior to offering them for sale. The Defendant, Nissan, concealed and did not disclose or

remedy the Paint Defect prior to sale (or afterward). Any effort to otherwise limit liability for the Paint Defect is null and void.

143. Further, because the Defendant, Nissan, has failed to remedy the Paint Defect, the limitation on remedies included in the warranty fails its essential purpose and is null and void.

144. The Plaintiff and Class Members have suffered damages caused by the Defendant's, Nissan's, breach of its express warranties and are entitled to recover damages, including but not limited to, diminution of value.

### **Fraudulent Concealment**

145. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Statement of Claim.

146. The Plaintiff's and Class Members' claims arise out of the Defendant's, Nissan's fraudulent concealment of the Paint Defect, the peeling, delaminating, degrading, flaking, and/or bubbling of the Affected Class Vehicles' paint it causes, and its representations as to design, aesthetic, value and/or durability attributes of the Affected Class Vehicles, including the paint used on the Affected Class Vehicles

147. The Defendant, Nissan, fraudulently concealed and/or suppressed material facts concerning the quality of the Affected Class Vehicles and the paint used thereon, as well as the existence of the Paint Defect.

148. Despite advertising the Affected Class Vehicles as durable, reliable, and being of high quality and high value, the Defendant, Nissan, knew, or ought to have known, when it manufactured, marketed, and sold and/or leased the Affected Class Vehicles that the exterior paint coatings used thereon suffered from a design and/or manufacturing defect that reduced the Affected Class Vehicles' value and subjected Affected Class Vehicles' exterior paint coatings to inevitably and prematurely fail, thereby manifesting in the form of peeling, delamination, degrading and flaking paint.

149. The Defendant, Nissan, failed to disclose these facts to consumers at the time it manufactured, marketed, and sold and/or leased the Affected Class Vehicles and the Defendant, Nissan, knowingly and intentionally engaged in this concealment in order to boost sales and

revenue, maintain its competitive edge in the automobile market, and obtain windfall profit. Through its active concealment and/or suppression of these material facts, the Defendant, Nissan, sought to increase consumer confidence in the Affected Class Vehicles, and to falsely assure purchasers and/or lessors that the Affected Class Vehicles were of sound quality and high value and that the Defendant, Nissan, is a reputable manufacturer that stands behind the vehicles it manufactures. The Defendant, Nissan, engaged in this behavior to protect its profits, avoid warranty replacements, and avoid recalls that would impair the brand's image, cost it money, and undermine its competitiveness in the automobile industry.

150. The Plaintiff and Class Members were unaware, and could not reasonably discover on their own, that the Defendant's, Nissan's, representations were false and misleading, or that it had omitted material facts relating to the Affected Class Vehicles.

151. The Defendant, Nissan, had a duty to disclose, rather than to conceal and suppress, the full scope and extent of the Paint Defect because it:

- (a) had exclusive, or far superior, knowledge of the Paint Defect and concealment thereof. The facts regarding the Paint Defect and concealment thereof were known and/or accessible only to the Defendant, Nissan;
- (b) knew that the Plaintiff and Class Members did not know about, or could not reasonably discover on their own, the Paint Defect and concealment thereof; and
- (c) made representations and assurances about the qualities of the Affected Class Vehicles, including statements about their quality, durability, value, high resale value and/or paint attributes that were misleading, deceptive, and incomplete without the disclosure of the fact that paint used on the Affected Class Vehicles suffered from a systemic design and/or manufacturing defect.

152. These omitted and concealed facts were material because a reasonable consumer would rely on them in deciding to purchase and/or lease the Affected Class Vehicles, and because they substantially reduced the value of the Affected Class Vehicles purchased and/or leased by the Plaintiff and Class Members. Whether the Affected Class Vehicles were defective, of sound quality, value and durable, and whether the Defendant, Nissan, would warrant to repair any impending, latent and/or existent defects, would have been an important factor in the Plaintiff and

Class Members' decisions to purchase and/or lease the Affected Class Vehicles. The Plaintiff and Class Members trusted the Defendant, Nissan, not to sell them vehicles that were defective and significantly overpriced.

153. The Defendant, Nissan, intentionally and actively concealed and suppressed these material facts to falsely assure the Plaintiff and Class Members that the Affected Class Vehicles were free from known defects, as represented by the Defendant, Nissan, and reasonably expected by the Plaintiff and Class Members.

154. The Plaintiff and Class Members were unaware of these omitted material facts and would have paid less for the Affected Class Vehicles or would not have purchased and/or leased them at all, had they known of the concealed and suppressed facts. The Plaintiff and Class members did not receive the benefit of their bargain due to the Defendant's, Nissan's, fraudulent concealment. The Plaintiff's and Class Members' actions in purchasing the Affected Class Vehicles were justified. The Defendant, Nissan, was in exclusive control of the material facts, and such facts were not known or reasonably knowable to the public, the Plaintiff, or Class Members.

155. The Plaintiffs and Class Members relied to their detriment upon the Defendant's, Nissan's, reputation, fraudulent misrepresentations, and material omissions regarding the quality, durability, value, high resale value and/or paint attributes of the Affected Class Vehicles.

156. As a direct and proximate result of the Defendant's, Nissan's, deceit and fraudulent concealment, including its intentional concealment and suppression of true facts, the Plaintiff and Class Members suffered loss, expense or damage. They purchased and/or leased Affected Class Vehicles that had a diminished or diminishing value by reason of the Defendant's, Nissan's, concealment and suppression of, and failure to disclose, the Paint Defect, among other damages.

157. Accordingly, the Defendant, Nissan, is liable to the Plaintiff and Class Members for their damages in an amount to be proven at trial.

158. The Defendant, Nissan, has still not made full and adequate disclosure and continues to defraud the Plaintiff and Class Members. The Defendant, Nissan, also continues to conceal material information regarding the Paint Defect.

159. The Defendant's, Nissan's, acts were done deliberately, with intent to defraud, and in reckless disregard of the Plaintiff's and Class Members' rights. The Defendant's, Nissan's, conduct

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 the *Competition Act*, R.S.C. 1985, c C-34 (the “*Competition Act*”)**

160. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Statement of Claim.

161. By making representations to the public as to design, aesthetic, value, durability and/or paint attributes of the Affected Class Vehicles, the Defendant, Nissan, breached sections 36 and/or 52 of the *Competition Act*, in that its representations:

- (a) were made to the public in the form of advertising brochures, manuals, statements and/or other standardized statements as to design, aesthetic, value, durability and/or paint attributes of the Affected Class Vehicles;
- (b) were made to promote the supply or use of a product or for the purpose of promoting its business interests; and
- (c) were false and misleading in a material respect.

162. At all relevant times, the Defendant, Nissan, was the seller and/or supplier of the Affected Class Vehicles. As such, there existed contractual privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendant, Nissan, as to the Affected Class Vehicles as its resellers, authorized dealers and/or distributors at all material times were acting as the agents of the Defendant, Nissan.

163. The Defendant, Nissan, engaged in unfair competition and unfair or unlawful business practices through the conduct, statements and omissions described herein and by knowingly and intentionally concealing the Paint Defect in the Affected Class Vehicles from the Plaintiff and Class Members. The Defendant, Nissan, should have disclosed this information because it was in a superior position to know the true facts related to the Paint Defect and the Plaintiff and Class Members could not reasonably be expected to learn or discover the true facts related to the Paint Defect.

164. These acts and practices have deceived the Plaintiff and Class Members. In failing to disclose the Paint Defect and concealing and suppressing other material facts from the Plaintiff and Class Members, the Defendant, Nissan, breached its duty to disclose these facts, violated the *Competition Act* and caused damage to the Plaintiff and Class Members. The Defendant's, Nissan's, omissions and concealment pertained to information that was material to the Plaintiff and Class Members, as it would have been to all reasonable consumers.

165. Further, the Plaintiff and Class Members relied upon the Defendant's, Nissan's, misrepresentations as to design, aesthetic, value, durability and/or paint attributes 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 Class Members.

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

**Tolling of the *Limitations Act*, R.S.A. 2000, c. L-12 ("*Limitation Act*") and Parallel Provincial Limitation Period Legislation**

167. The Plaintiff and Class Members had no way of knowing about the Paint Defect. The Defendant, Nissan, concealed its knowledge of the Paint Defect while continuing to market, supply, distribute and/or sell the Affected Class Vehicles.

168. Within the time limits prescribed in the *Limitation Act*, and the *Limitation Act*, S.B.C. 2012, c. 13; *The Limitation of Actions Act*, C.C.S.M. c. L150; *Limitation of Actions Act*, S.N.B. 2009, c. L-8.5; *Limitations Act*, S.N.L. 1995, c. L-16.1; *Limitation of Actions Act*, R.S.N.W.T. 1988, c. L-8; *Limitation of Actions Act*, S.N.S. 2014, c. 35; *Limitation of Actions Act*, R.S.N.W.T. (Nu) 1988, c. L-8; *Limitations Act*, 2002, S.O. 2002, c. 24, Sch. B; *Statute of Limitations*, R.S.P.E.I. 1988, c. S-7; *The Limitations Act*, S.S. 2004, c. L-16.1; *Civil Code of Québec*, C.Q.L.R., c. C-1991, arts. 2925-2930; *The Limitations Act*, S.S. 2004, c. L-16.1; and *Limitation of Actions Act*, R.S.Y. 2002, c. 139 (collectively, the "***Provincial Limitation Period Legislation***"), the Plaintiff and Class Members could not have discovered through the exercise of reasonable diligence that the Defendant, Nissan, was concealing the conduct complained of herein and misrepresenting the true qualities of the Affected Class Vehicles, in particular the Paint Defect.

169. The Plaintiff and Class Members did not know facts that would have caused a reasonable person to suspect or appreciate that there was a latent defect in the factory-applied exterior paint coatings of the Affected Class Vehicles.

170. For these reasons, the *Limitation Act* and *Provincial Limitation Period Legislation* have been tolled by operation of the discovery rule with respect to the claims in this proposed class proceeding.

171. Further, due to Defendant's, Nissan's, knowledge and active concealment of the Paint Defect throughout the time period relevant to this proposed class proceeding, the *Limitation Act* and the *Provincial Limitation Period Legislation* have been tolled.

172. Instead of publicly disclosing the Paint Defect, the Defendant, Nissan, kept the Plaintiff and Class Members in the dark as to the Paint Defect.

173. The Defendant, Nissan, was under a continuous duty to disclose to the Plaintiff and Class Members the existence of the Paint Defect.

174. The Defendant, Nissan, knowingly, affirmatively and actively concealed or recklessly disregarded the true nature, quality, value, durability and paint attributes of the Affected Class Vehicles.

175. As such, the Defendant, Nissan, is estopped from relying on the *Limitation Act* and the *Provincial Limitation Period Legislation* in defense of this proposed class proceeding.

#### **G. Prayer for Relief**

176. The Plaintiff, on its own behalf and on behalf of Class Members, claims against the Defendants, jointly and severally, 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 Defendants:
  - (i) engaged in unfair practices contrary to sections 5 and 6 of the *CPA*; sections 4 and 5 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004; sections 6 and 7 of *The Consumer Protection and Business*

*Practices Act*, S.S., 2013, c C-30.2; sections 2 and 3 of *The Business Practices Act*, C.C.S.M. c B120; sections 14(1) and (2) of the *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; section 10 of the *Consumer Protection Act*, S.N.B. 2024, c 1; section 2 of *Business Practices Act*, R.S.P.E.I. 1988, c B-7; section 7 of *Consumer Protection and Business Practices Act*, S.N.L. 2009, c C-31.1; articles 215, 219, and 228 of the *Consumer Protection Act*, C.Q.L.R. c. P-40.1, and are consequently liable to the Plaintiff and Class Members for damages; and

- (ii) breached express warranties as to the Affected Class Vehicles, and are consequently liable to the Plaintiff and Class Members for damages;
- (c) a declaration that it is not in the interests of justice to require that notice be given, where applicable, under the *CPA*; *Business Practices and Consumer Protection Act*, S.B.C. 2004; *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, S.N.B. 2024, c 1; *Business Practices Act*, R.S.P.E.I. 1988, c B-7; *Consumer Protection and Business Practices Act*, S.N.L. 2009, c C-31.1; and *Consumer Protection Act*, C.Q.L.R. c. P-40.1, and waiving any such applicable notice provisions;
- (d) an Order for the statutory remedies available under the *CPA*; *Business Practices and Consumer Protection Act*, S.B.C. 2004; *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, S.N.B. 2024, c 1; *Business Practices Act*, R.S.P.E.I. 1988, c B-7; and *Consumer Protection and Business Practices Act*, S.N.L. 2009, c C-31.1; and *Consumer Protection Act*, C.Q.L.R. c. P-40.1, including damages, cancellation and/or rescission of the purchase and/or lease of the Affected Class Vehicles



- (e) an Order directing the Defendants to advertise any adverse findings against it pursuant to section 19 of the *CPA*; section 172(3)(c) of the *Business Practices and Consumer Protection Act*, S.B.C. 2004; section 93(1)(f) of *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; section 23(2)(f) of *The Business Practices Act*, C.C.S.M. c B120; section 18(11) of the *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; section 15 of the *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, SNB 2024, c 1; *Business Practices Act*, R.S.P.E.I. 1988, c B-7; section 7 of *Consumer Protection and Business Practices Act*, S.N.L. 2009, c C-31.1; and *Consumer Protection Act*, C.Q.L.R. c. P-40.1;
- (f) a declaration that the Defendants, breached sections 36 and/or 52 of the *Competition Act*, and are consequently liable to the Plaintiff and Class Members for damages;
- (g) an Order enjoining the Defendants from continuing their unlawful and unfair business practices as alleged herein;
- (h) a declaration that the Defendants fraudulently concealed the Paint Defect in the Affected Class Vehicles from the Plaintiff and Class Members;
- (i) injunctive and/or declaratory relief requiring, *inter alia*, the Defendants to recall and repair the Affected Class Vehicles and to fully reimburse and make whole all Class Members for all costs and economic losses associated therewith;
- (j) an Order pursuant to section 30 of the *Class Proceedings Act*, S.A. 2003, c. C-16.5 directing an aggregate assessment of damages;
- (k) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 25 of the *Class Proceedings Act*, S.A. 2003, c. C-16.5;
- (l) damages, including actual, compensatory, incidental, statutory and consequential damages;

- (m) special damages;
- (n) punitive damages;
- (o) costs of investigation pursuant to section 36 of the *Competition Act*;
- (p) pre-judgment and post-judgment interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c.J-1; and
- (q) such further and other relief as to this Honorable Court may seem just.

**NOTICE TO DEFENDANT(S)**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of King's Bench at Edmonton, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

**WARNING**

If you do not file and serve a statement of defence or a demand for notice within the time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff against you.