



Court File No. **VLC-S-S-261928**

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:



PLAINTIFF

AND:

TOYOTA MOTOR CORPORATION,
TOYOTA CANADA INC.,
SUBARU CORPORATION, and
SUBARU CANADA, INC.

DEFENDANTS

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

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. Nature of Claim

1. The within proposed automotive defect multi-jurisdictional class proceeding involves certain model-year Toyota-, Lexus-, and Subaru-brand vehicles, as defined below (the “**Affected Class Vehicles**”), engineered, designed, developed, manufactured, assembled, tested, marketed, distributed, supplied, leased, and/or sold in Canada, including the Province of British Columbia, by the Defendants, Toyota Motor Corporation (“**TMC**”), Toyota Canada Inc. (“**TCI**”), Subaru Corporation (“**SC**”), and/or Subaru Canada, Inc. (“**SCI**”), which are equipped with a defective auxiliary battery charging system that fails to properly and adequately recharge the vehicles’ 12-volt (low-voltage) battery, resulting in repeated loss of charge, damage to the 12-volt battery, and premature battery failure requiring replacement (the “**Charging Defect**”).

2. In particular, the Charging Defect, which is latent and occurs without adequate warning or indication to drivers, renders the Affected Class Vehicles unable to start or operate, and/or loss of motive power during operation, thereby posing a real, substantial, and imminent risk of harm, injury, and/or death to vehicle occupants.

3. “**Affected Class Vehicles**” include, but are not limited to, the following model year

Toyota-, Lexus- and Subaru-brand vehicles designed, manufactured and/or assembled by the Defendants, TC and/or SC, and marketed, advertised, distributed, sold and/or leased by the Defendants, TCI and/or SCI, in Canada, including the Province of British Columbia:

MODEL	MODEL YEAR
Toyota bZ4X	2023-2025
Lexus RZ	2023-2025
Subaru Solterra	2023-2025

4. The Plaintiff reserves the right to add additional vehicles to the definition of Affected Class Vehicles.

5. Electric vehicles (“EVs”) require numerous components and modules to function cohesively and deliver the electrical power necessary for motive propulsion. In EVs, these functions are monitored by the Battery Management System (“BMS”), which operates as the brain or gateway that manages how the vehicles are charged from an external power source and distributes that energy to the high-voltage lithium-ion traction battery, 12-volt battery, and other essential electrical components and modules within the vehicle.

6. Integral components managed by the BMS include: (i) the on-board charger; (ii) DC-DC (Direct Current-Direct Current) converter; (iii) integrated circuits; (iv) microcontrollers; (v) fuses; and/or (vi) cooling system.

7. The Defendants have combined the conversion and power distribution system into an Electricity Supply Unit (“ESU”), developed by Denso Corporation (“Denso”). The ESU handles, *inter alia*, Alternating Current (AC)/Direct Current (DC) charging, DC-DC conversion, and power distribution.

8. The ESU is an integral component that performs the essential function of charging the 12-volt battery under all vehicle operating states, including: (i) by acting as an alternator while the vehicle is operating to convert energy from the high-voltage battery to power the 12-volt battery and maintain charge; (ii) by automatically recharging the 12-volt battery from the high-voltage battery when the vehicle is parked and the battery voltage drops below a prescribed threshold; and (iii) by topping up the 12-volt battery whenever the vehicle is connected to an external charger,

such that a failure of the ESU in any of these states results in inadequate charging and progressive battery drain.

9. While some putative class members have had their 12-volt batteries replaced under warranty to date, a battery replacement is not readily available to all putative class members where the Charging Defect cannot be replicated at the dealership. Further, for putative class members whose vehicles fall outside the warranty period, battery replacement is an out-of-pocket expense.

10. In fact, battery replacement is not an adequate remedy for the Charging Defect as it does not address the underlying defect in the ESU, which fails to provide sufficient and consistent current to the 12-volt battery to maintain the voltage levels required to power essential auxiliary functions of the Affected Class Vehicles, including: system startup; safety and control systems; peripheral operations; and security systems.

11. The only alternative and effective remedy and/or fix is a complete redesign of the Affected Class Vehicles' BMS, and in particular the ESU, to properly and consistently route power from the high-voltage battery so as to adequately and reliably charge the 12-volt battery.

12. At all material times to the cause of action herein, the Defendants knew, or ought to have known, about the Charging Defect as evidenced by: (i) consumer complaints lodged with American and Canadian government vehicle safety regulators, including the United States National Highway Traffic Safety Administration ("NHTSA"), Transport Canada and elsewhere online; (ii) warranty claims, part sales, and consumer complaints lodged with the Defendants directly; and (iii) the vehicle manufacturer Defendants own pre-sale durability testing of the Affected Class Vehicles.

13. The Defendants have exclusive knowledge of, and have been in exclusive possession of, facts and/or information pertaining to the Charging Defect, which were material to the Plaintiff and putative class members, who could not have reasonably known of the Charging Defect. Under the circumstances, the Defendants had an affirmative duty to disclose the Charging Defect at the point of sale and/or lease of the Affected Class Vehicles to putative class members and consumers.

14. Despite that knowledge and duty, the Defendants have repeatedly failed to disclose and actively concealed the Charging Defect from putative class members and consumers, and

continued to market and represent the Affected Class Vehicles as safe, reliable and durable vehicles which, as a result of the Charging Defect, they are not.

15. As a direct and proximate result of the Defendants' unfair, misleading, deceptive, and/or fraudulent business practices in failing to disclose the Charging Defect, the Plaintiff and putative 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 Charging Defect significantly diminishes the value of the Affected Class Vehicles; (iii) have Affected Class Vehicles that are unsafe, unreliable and dangerous in their operation; (iv) have Affected Class Vehicles that have significantly reduced re-sale value; (v) must use alternative non-comparable modes of transportation or vehicles while their Affected Class Vehicles are repaired; and/or (vi) must expend significant money to have their Affected Class Vehicles repaired.

16. The Plaintiff and putative 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 Charging Defect at the point of sale and/or lease. The Plaintiff and putative class members have consequently suffered ascertainable losses and actual damages as a result of the Defendants' unlawful conduct.

17. In engineering, designing, developing, manufacturing, assembling, testing, marketing, distributing, supplying, leasing and/or selling the Affected Class Vehicles, the Defendants have engaged in unfair, deceptive, and/or misleading consumer practices, and further have breached their express warranties.

18. No reasonable consumer would have purchased and/or leased an Affected Class Vehicle had the Defendants made full and complete disclosure of the Charging Defect or would have paid a lesser price.

19. The Plaintiff and putative class members expected that the Defendants would disclose, and not actively conceal, material facts about the existence of any defect that will result in expensive and non-ordinary repairs. The Defendants failed to do so.

20. The Plaintiff seeks relief for all other owners and/or lessees of the Affected Class Vehicles with the Charging Defect, including, *inter alia*, recovery of damages, repair and/or buy

back under various provincial consumer protection legislation, breach of express warranty, breach of implied warranty of merchantability and reimbursement of all expenses associated with the repair and/or replacement of the Affected Class Vehicles.

B. The Parties

i. Representative Plaintiff

21. The Plaintiff [REDACTED] an address c/o 210-4603 Kingsway, Burnaby, British Columbia, V5H 4M4, Canada.

22. On or about November 30, 2023, the Plaintiff entered into a 52-month lease agreement for a 2023 Toyota bZ4X XLE AWD (“bZ4X”) from Jim Pattison Toyota Downtown, an authorized Toyota dealership located in Vancouver, British Columbia.

23. At all material times to the cause of action herein, the bZ4X was acquired and used primarily for personal, family, or household purposes and not for resale or for the purpose of carrying on business. The principal driver of the bZ4X was Steven Azpiri (“Azpiri”), the son of the Plaintiff’s principals.

24. In deciding to lease the bZ4X, the Plaintiff relied upon the Defendants’ representations concerning the safety, reliability, durability, charging capabilities, and advanced electric technology of the vehicle and the e-TNGA electric platform. The Plaintiff paid a premium for a fully electric vehicle based on those representations and intended to exercise the lease buyout option at the conclusion of the lease term.

Early electrical malfunctions prior to delivery

25. On September 14, 2023, the bZ4X underwent pre-delivery inspection.

26. On September 26, 2023, at approximately 75 kilometers, the bZ4X’s service records indicate a “12V BATTERY MALFUNCTION.”

27. On November 30, 2023, at approximately 246 kilometers, the bZ4X again presented with “CHECK ENGINE LIGHT AND/OR WARNING LIGHT(S) ON DASH (MIL)” and electrical/equipment servicing.

28. When Azpiri took possession of the bZ4X on December 8, 2023, he was not advised that the bZ4X had experienced 12-volt battery malfunction and electrical system warnings shortly after registration and at extremely low mileage.

Recurring charging and EV system malfunctions

29. Since leasing the bZ4X, the vehicle has experienced diminished charging capacity and repeated electrical and EV system malfunction incidents that have impaired its operation and placed the vehicle occupants at real, substantial, and imminent risk of harm and/or injury.

30. On May 2, 2024, while the bZ4X was parked in the garage and upon starting the vehicle, multiple safety malfunction messages appeared, including:

- “EV System Malfunction, Output Power Reduced, Visit Your Dealer”;
- “System Malfunction, Visit Your Dealer”;
- “Drive-Start Control Malfunction, Visit Your Dealer”; and
- “AWD System Malfunction, 2WD Mode Engaged,”

following which, the bZ4X entered “limp mode,” resulting in severely reduced acceleration.

31. The error messages eventually cleared without repair, and the bZ4x temporarily operated normally.

32. On May 8, 2024, while being driven at highway speeds, the vehicle again experienced a sudden and dangerous loss of acceleration.

33. On May 9, 2024, Azpiri brought the bZ4X to Regency Toyota, an authorized Toyota dealership located in Vancouver, British Columbia, and reported the malfunction warnings and loss of power.

34. Regency Toyota advised Azpiri that no fault was found and suggested the issue may be related to the “Connect” system, advising the Plaintiff to contact Toyota Connect Services if the issue reoccurred.

35. On August 20, 2024, upon starting the bZ4X, the same safety malfunction warnings appeared again.

36. On the same day, Azpiri contacted Toyota Roadside Assistance, Safety Connect, and Toyota's Brand Department and spent approximately ninety minutes attempting to obtain diagnostic assistance; however, no meaningful diagnosis was provided.

37. The error messages eventually cleared without repair, and the bZ4x temporarily operated normally.

38. On August 30, 2024, while in operation, the bZ4X displayed the message: "12V Battery Charging System Malfunction. Visit Your Dealer," together with previously exhibited EV and safety malfunction warnings.

39. Shortly thereafter, while turning through an intersection, the bZ4X lost motive power and came to a stop in the middle of active traffic. Although the bZ4X remained powered on, it could not be shifted into Park or Neutral, or turned off using the power button. A low battery warning message was also displayed on the information cluster.

40. Azpiri promptly contacted Toyota Roadside Assistance to request a tow truck, as he was unable to disengage or maneuver the bZ4X to the roadside in any way when disabled. After approximately twenty minutes, Azpiri was able to power the bZ4X off; however, error messages persisted and the vehicle would not start properly.

41. Shortly thereafter, the bZ4X restarted with error messages still displayed, and Azpiri was able to drive home with severely reduced acceleration.

42. The following day, Azpiri delivered the bZ4X to Jim Pattison Toyota Downtown for diagnosis and repair.

43. On September 3, 2024, the dealership inspected the bZ4X. During the inspection, the dealership noted that the bZ4X had numerous malfunction warnings on the dash and performed an Automatic Voltage Regulator test, which is used to determine if a charging system is faulty by checking for stable voltage output. The dealership also replaced the high-voltage battery.

44. On November 29, 2024, the bZ4X was brought to the dealership again with similar complaints as noted above, specifically relating to the Charging Defect.

45. All fixes implemented by the dealership to date have been inadequate in remedying the Charging Defect.

46. Further, the sudden loss of motive power in active traffic has caused Azpiri significant concern regarding the safety and reliability of the bZ4X.

Extended repair period and loss of use

47. During the first two years of the lease, the Plaintiff has not had possession of the bZ4X for approximately ten months due to frequent visits to and retention by the dealership for diagnosis and repair.

48. For approximately three months, the Plaintiff was provided with a Toyota Corolla Hybrid. For more than six months thereafter, the Plaintiff was provided with a Toyota Prius Hybrid. These substitute vehicles were not comparable in value, electric functionality, size, or features to the leased bZ4X.

49. During this period, the Plaintiff continued to make monthly lease payments and incurred gasoline expenses.

Ongoing defect and diminution of value

50. The foregoing incidents are consistent with the Charging Defect described herein, including failure of the 12-volt battery charging system and related components.

51. The Defendants have not offered any remedy and/or fix to the Plaintiff for the Charging Defect, leaving vehicle occupants at a real, substantial, and imminent risk of harm and/or danger.

52. The Defendants failed to disclose the Charging Defect to consumers, including the Plaintiff and the putative class members, and the Plaintiff, therefore, purchased the bZ4X on the reasonable, but mistaken, belief that it would be a safe, reliable and durable vehicle. The Plaintiff would not have purchased the bZ4X, or would not have paid as much for it, had it known of the Charging Defect and the propensity of the vehicle to suddenly and without warning lose all motive

power, thereby placing the vehicle occupants in a real, substantial, and imminent risk of harm and/or danger.

53. The Plaintiff has consistently maintained and used the bZ4X in a manner consistent with reasonable expectations of vehicle ownership.

54. The Plaintiff suffered a concrete and ascertainable loss as a direct and proximate result of the Defendants' misconduct in that Plaintiff overpaid for bZ4X at the time of entering into the lease, and the value of the bZ4X has been diminished as a result of the Charging Defect.

ii. The Defendants

55. The Defendant, TMC, is a company duly incorporated pursuant to the laws of Japan and has an address for service at 1 Toyota-Cho, Toyota City, Aichi Prefecture 471-8571, Japan.

56. The Defendant, TCI, is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0020649, and has a registered agent, Stikeman Elliott LLP, located at Suite 1700, Park Place, 666 Burrard Street, Vancouver, British Columbia V6C 2X8.

57. The Defendant, SC, is a company duly incorporated pursuant to the laws of Japan and has an address for service at Ebisu Subaru Bldg. 1-20-8, Ebisu, Shibuya-ku, Tokyo 150-8554.

58. The Defendant, SCI, is a company duly incorporated pursuant to the laws of British Columbia, under the incorporation number BC0373370, having a registered and records office located at Suite 2700, 1133 Melville Street, Vancouver, British Columbia V6E 4E5.

59. At all material times to the cause of action herein, the Defendant, TMC, designed, engineered, developed, manufactured, assembled, tested, marketed, distributed, supplied, and/or sold Toyota- and Lexus-brand vehicles, including the Affected Class Vehicles, equipped with the Charging Defect, through its related subsidiaries, operating units, affiliates, independent retailers, and authorized dealerships in Canada, including within the Province of British Columbia.

60. The Defendant, TCI, is a wholly owned Canadian subsidiary and/or controlled affiliate of the Defendant, TMC, and was responsible for, *inter alia*, the marketing, advertising,

importation, distribution, servicing, warranty administration, recall administration, customer communication, sale and/or lease of Toyota and Lexus-brand vehicles, including the Affected Class Vehicles, in Canada, including within the Province of British Columbia.

61. At all material times to the cause of action herein, the Defendant, TMC, provided technical specifications, engineering standards, software, calibration parameters, design requirements, and service and repair information relating to the BMS, ESU, and 12-volt charging architecture of the Affected Class Vehicles to its subsidiaries and affiliates, including the Defendant, TCI.

62. At all material times to the cause of action herein, the Defendants, TMC and TCI, shared a common purpose of, *inter alia*, designing, engineering, developing, manufacturing, assembling, marketing, distributing, supplying, leasing, and/or selling Toyota- and Lexus-brand Affected Class Vehicles equipped with the Charging Defect in Canada, including within the Province of British Columbia.

63. The business operations, interests, and activities of the Defendants, TMC and TCI, relating to the design, manufacture, distribution, servicing, warranty, and remediation of the Charging Defect were interwoven and integrated such that each acted as the agent of the other in respect of the Affected Class Vehicles.

64. At all material times to the cause of action herein, the Defendant, SC, designed, engineered, developed, manufactured, assembled, tested, marketed, distributed, supplied, and/or sold Subaru-brand vehicles, including the Affected Class Vehicles, equipped with the Charging Defect, through its related subsidiaries, operating units, affiliates, independent retailers, and authorized dealerships in Canada, including within the Province of British Columbia.

65. The Defendant, SCI, is a wholly owned Canadian subsidiary and/or controlled affiliate of the Defendant, SC, and was responsible for, *inter alia*, the marketing, advertising, importation, distribution, servicing, warranty administration, recall administration, customer communication, sale and/or lease of Subaru-brand vehicles, including the Affected Class Vehicles, in Canada, including within the Province of British Columbia.

66. At all material times to the cause of action herein, the Defendant, SC, provided

technical specifications, engineering standards, software, calibration parameters, design requirements, and service and repair information relating to the BMS, ESU, and 12-volt charging architecture of the Affected Class Vehicles to its subsidiaries and affiliates, including the Defendant, SCI.

67. At all material times to the cause of action herein, the Defendants, SC and SCI, shared a common purpose of, *inter alia*, designing, engineering, developing, manufacturing, assembling, marketing, distributing, supplying, leasing, and/or selling Subaru-brand Affected Class Vehicles equipped with the Charging Defect in Canada, including within the Province of British Columbia.

68. The business operations, interests, and activities of the Defendants, SC and SCI, relating to the design, manufacture, distribution, servicing, warranty, and remediation of the Charging Defect were interwoven and integrated such that each acted as the agent of the other in respect of the Affected Class Vehicles.

69. The Defendants, TMC, TCI, SC, and SCI, exercised joint control over, and participated in, decisions concerning the design, validation, calibration, testing, deployment, servicing, warranty treatment, and remediation of the BMS, ESU and other related electrical components and systems in the Affected Class Vehicles.

70. At all material times to the cause of action herein, the Defendants, TMC, TCI, SC, and SCI, shared the common purpose of, *inter alia*, engineering, designing, developing, manufacturing, assembling, marketing, distributing, supplying, leasing and/or selling the Affected Class Vehicles with the Charging Defect in Canada. Further, the business and interests of the Defendants are inextricably interwoven with that of the other such that each is the agent or alter ego of the other.

71. The Defendants, TMC, TCI, SC, and SCI, are collectively referred to as the “**Defendants**”, unless referred to individually or otherwise.

C. The Class

72. This action is brought on behalf of members of a class consisting of the Plaintiff and all other persons and legal entities resident in Canada, who own, owned, lease and/or leased any

one or more of the 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.

D. Factual Allegations

i. The Defendants’ EV technology

73. The Defendants, TMC and SC, are multinational vehicle manufacturers that have engaged in multiple joint ventures and strategic collaborations for more than two decades. Since approximately 2005, the Defendant, TMC, has held a substantial ownership interest in the Defendant, SC, and the two companies have cooperated in the design, development, and manufacture of vehicles for both brands, including the production of Toyota-brand vehicles at Subaru manufacturing facilities, beginning with the assembly of Toyota Camry vehicles for the United States market at a Subaru plant in Indiana, United States.

74. The Defendant, TMC and SC, also jointly developed a small sports car that utilized a Subaru-designed engine and was manufactured at a Subaru facility, which entered the United States market in or about 2012 and was sold by the Defendant, SC, as the Subaru BRZ and by the Defendant, TMC, initially under its Scion brand as the FR-S and later as the Toyota GR86.

75. More recently, the Defendants, TMC and SC, have shared hybrid-vehicle technology primarily developed by the Defendant, TMC, including the use by the Defendant, SC, of a Toyota-derived hybrid powertrain in its first plug-in hybrid vehicle, a variant of the Subaru Crosstrek crossover.

76. When the Defendants entered the EV market, they again worked together, and in or about 2019, the Defendant, TMC and SC, publicly announced that they would jointly develop a new electric sport utility vehicle (SUV) based on a shared EV platform, the e-TNGA.

77. The resulting electric SUV entered the market for the 2023 model year and is sold by the Defendant, SC, as the Subaru Solterra and by the Defendant, TMC, as the Toyota bZ4X.

78. Although the Subaru Solterra and Toyota bZ4X have minor differences, including modest exterior and interior styling variations and certain option configurations tailored to each brand, those differences are limited; for example, the Solterra features slightly increased ground clearance and standard all-wheel drive with Subaru's proprietary traction-management system, while all-wheel drive is optional on the bZ4X, which is marketed primarily for urban driving and commuting.

79. Aside from these minor distinctions, the Subaru Solterra and Toyota bZ4X are substantially identical in all material respects, including sharing the same chassis architecture, electric motors, high-voltage battery, and core electrical systems, including the BMS and DC-DC converter responsible for charging and maintaining the 12-volt battery.

80. The Lexus RZ is likewise built on the same jointly developed e-TNGA platform as the Toyota bZ4X and Subaru Solterra and is, on information and belief, substantially similar in all material respects.

81. The vehicles also utilize the same electrical and charging architecture; as wholly electric vehicles, they rely on external charging to replenish their lithium-ion high-voltage batteries, which consist of multiple rechargeable battery cells that store electrical energy to power the electric drive motors.

82. Accordingly, the Toyota bZ4X, Subaru Solterra, and Lexus RZ share common design, engineering, development, and manufacturing decisions with respect to their electric and auxiliary charging systems, including the BMS and DC-DC converter, and as such the Charging Defect is common to all Affected Class Vehicles.

ii. The Charging Defect

83. EVs are equipped with both a high-voltage lithium-ion traction battery and a low-voltage 12-volt battery, each of which requires charging.

84. While the high-voltage battery is charged from an external power source, the 12-volt battery is charged using power supplied from the high-voltage battery through a DC-DC converter that reduces high-voltage direct current to low-voltage direct current.

85. All major vehicle systems in the Affected Class Vehicles operate on electrical power, including propulsion systems powered by the high-voltage battery and numerous essential systems—including electronic control units, safety systems, lighting, cameras, infotainment, and security systems—powered by the 12-volt battery.

86. Since the 12-volt battery supplies power to these essential systems, it must be reliably and consistently recharged from the high-voltage battery through the ESU, and properly managed by the BMS, in order to maintain sufficient voltage levels for proper vehicle operation

87. The ESU, guided and controlled by the BMS, is therefore a mission-critical component of the Affected Class Vehicles' electrical architecture and must be capable of delivering stable, continuous low-voltage power under varying operating conditions without interruption or excessive loss.

88. The 12-volt battery also plays a critical role in vehicle startup by powering the systems and electronic controls that enable the high-voltage battery to connect to and energize the electric drive motors. If the 12-volt battery lacks sufficient charge to perform these startup and control functions, the Affected Class Vehicles are unable to start or operate, even when the high-voltage battery is fully charged.

89. The BMS used in the shared e-TNGA EV platform is designed to, *inter alia*, monitor individual battery cell conditions, manage thermal systems, support charging operations, and coordinate battery safety and diagnostics with other vehicle control units.

90. Notwithstanding these design intentions, the 12-volt charging system in the Affected Class Vehicles is defective, in that the ESU fails to consistently and adequately recharge the 12-volt battery during vehicle operation. The Charging Defect is exacerbated by excessive parasitic drain when the vehicle is not in use. As a result, the 12-volt batteries in the Affected Class Vehicles prematurely lose charge, including during periods of minimal or no vehicle use, and are frequently depleted to the point of failure.

91. Consumers have reported that the 12-volt battery in the Affected Class Vehicles drain within weeks, even without regular driving, and the Defendants have acknowledged the risk of parasitic electrical draw in technical service materials addressing vehicle storage and factory-

disabled electrical functions.

92. The Defendant, Toyota, has further acknowledged, through dealer guidance, that both high-voltage and 12-volt batteries in the Affected Class Vehicles experience state-of-charge depletion during storage, and has instructed dealerships to disconnect 12-volt batteries to mitigate drain, underscoring the susceptibility of the Affected Class Vehicles' auxiliary charging system to depletion.

93. The Charging Defect causes multiple harmful consequences, including:

- insufficient 12-volt battery charge to start the vehicle, rendering the Affected Class Vehicles inoperable without warning;
- inability to disengage or maneuver the vehicle when disabled, requiring specialized towing and increasing the risk of stranding;
- unexpected vehicle shutdowns or loss of essential systems while driving due to inadequate low-voltage power, creating an unreasonable safety risk; and
- premature degradation and failure of the 12-volt battery caused by repeated deep-discharge cycles, necessitating premature and repeated replacement.

All of which poses a real, substantial, and imminent risk of harm, injury, and/or death to vehicle occupants.

94. The Defendants have not acknowledged the existence of the Charging Defect nor provided an adequate remedy and/or fix. Further, the replacement of the 12-volt battery merely conceals the latent defect without correcting the underlying failure of the DC-DC converter, resulting in inevitable repeated failure.

iii. The Defendants' knowledge and concealment of the Charging Defect

95. At all relevant times to the cause of action herein, the Defendants knew, or ought to have known, about the Charging Defect, as evidenced by: (i) consumer complaints lodged with United States and Canadian government vehicle safety regulators, including NHTSA and Transport Canada, as well as reports shared online; (ii) warranty claims, part sales, and consumer

complaints submitted directly to the Defendants; and (iii) the vehicle manufacturer Defendants' own pre-production and pre-sale durability testing of the Affected Class Vehicles. Despite their knowledge, the Defendants failed to disclose the Charging Defect to, and actively concealed it from, the Plaintiff and Class Members.

96. Like all major vehicle manufacturers, the Defendants, TCI and SC, employ extensive pre-production testing protocols designed to identify defects, including, but not limited to, testing at numerous global "proving grounds," where vehicles are subjected to extreme environmental and operational conditions, each of which would reveal, or ought to have revealed, the Charging Defect prior to vehicle release.

97. In addition to in-house pre-production testing, the vehicle Defendants, TCI and SC, impose strict compliance requirements on third-party component and parts suppliers. Components, including those used in the Affected Class Vehicles' DC-DC converters, BMS, and related electrical systems, must meet these supplier standards before installation into any vehicle.

98. In particular, like most major vehicle manufacturers, the Defendants, TCI and SC, require their electronic parts suppliers to comply with certain setups, limits and acceptance criteria to their vehicle architectures and safety strategies. This is especially important for EVs, which have a plethora of sensitive electrical components that can potentially interfere with the other. Any undesirable interference, such as the voltage stress discussed herein, can cause the various components to malfunction, thereby affecting the overall safety and usability of a vehicle.

99. A majority of the key electrification components in the Affected Class Vehicles are produced by Denso, which is substantially owned by the Defendant, TMC.

100. On April 13, 2022, Denso announced newly-developed products for Toyota's e-TNGA platform, in particular for the Affected Class Vehicles, including:

- Current Sensor, which detects the flow of charging and discharging battery electricity;
- ESU, which integrates the functions of battery charging, electrical power conversion, and electrical power distribution;

- Heat Pump System, which extracts heat from the air and uses it as a heat source for the vehicle climate control system; and
- Radiant Heating System, which warms the passengers' lower body (specific to the Toyota bZ4X).

101. Other Denso products incorporated into the Affected Class Vehicles include:

- Sensors, which monitor battery voltage and temperature
- Battery Monitoring Electronic Control Unit (ECU), which monitors the status of the battery;
- EV ECU, which combines sensor information to control energy flow;
- Inverters, which are used in the eAxle driving modules developed by Blue Nexus Corporation, a joint venture between Denso and Aisin Corporation, the latter also a subsidiary of Defendant TMC, for EV applications.

102. Given these extensive testing standards, the Defendants' own technical guidance to dealerships regarding battery storage and handling, their knowledge of repeated consumer complaints, and the development of the integral internal components of the Affected Class Vehicles by the Defendant's, TMC's, subsidiaries or affiliated corporations, the Defendants knew, or ought to have known, of the Charging Defect, yet actively concealed it from Plaintiffs and Class Members.

103. The Defendants' knowledge of the Charging Defect, in particular the defective design of the ESU, is further evidenced by a press release issued by Toyota Industries Corporation ("**TICO**"), an affiliate of the Defendant, TMC, on October 10, 2025, announcing a modified ESU for the 2026 model year Toyota bZ4X.

104. In the press release, TICO describes the ESU as an electronics component that integrates standard and rapid charging functions, powers supply functions, performs DC-DC voltage conversion functions and power distribution functions, and further states that the ESU is involved in vehicle charging, supplying power to external appliances, and powering electrical

devices within the vehicle.

105. TICO further states that the newly developed ESU provides higher output and improved power supply support compared to prior versions.

106. As such, the Defendants not only had knowledge of the Charging Defect, but also had the means, foresight, and technical understanding to implement a corrected design of the ESU prior to the 2026 model year of the Toyota bZ4X, yet consciously chose not to do so, prioritizing cost savings over consumer safety and reliability.

iv. The Defendants' representations regarding the safety, reliability and durability of the Affected Class Vehicles

107. As noted above, all Affected Class Vehicles are built on the Defendants' proprietary e-TNGA platform. The Defendants have publicly promoted the design and features of the e-TNGA platform through press kits and other marketing materials issued in connection with each Affected Class Vehicle, emphasizing the platform's safety, reliability, durability, and charging performance.

108. In a press release dated January 10, 2024, the Defendant, TCI, introduced the 2024 Toyota bZ4X as an all-electric vehicle described as innovative, advanced, and capable, and represented that it delivers performance, capability, and versatility suitable for drivers.

109. In the same press release, the Defendant, TCI, made representations concerning the charging capabilities of the 2024 Toyota bZ4X, including representations that the vehicle incorporated new features intended to improve charging convenience, provide enhanced charging information to drivers, and improve DC fast-charging performance in cold weather through enhancements to the battery thermal management system.

110. In that press release the Defendant, TCI, further represented that the Toyota bZ4X includes an extensive suite of standard safety features, including Toyota Safety Sense 3.0 and other safety systems, which were described as supporting driver awareness and reducing the potential for accidents.

111. The Defendants made similar representations regarding the safety, reliability,

durability, and charging performance of the Lexus- and Subaru-brand Affected Class Vehicles in comparable marketing materials, press releases, brochures, and promotional communications.

v. The Charging Defect poses a real, substantial and imminent risk of harm or injury to vehicle occupant safety and renders the Affected Class Vehicles *per se* defective

112. In Canada, motor vehicle safety standards are governed by the *Motor Vehicle Safety Act*, S.C. 1993, c.16 (“*MVSA*”) and the *Motor Vehicle Safety Regulations*, C.R.C., c. 1038 (“*Regulations*”). The Minister of Transport has the power and authority to verify that companies and persons comply with the *MVSA*, *Regulations* and vehicle safety standards. Transport Canada is delegated the authority to oversee the *MVSA* and *Regulations*. In the United States, the NHTSA oversees, *inter alia*, vehicle safety standards, such as the *Federal Motor Vehicle Safety Standard* (“*FMVSS*”). Increasingly, the general approach to setting vehicle safety standards in Canada is to harmonize or analogize them with the *FMVSS* in the United States as much as possible. As such, vehicles designed or manufactured in the United States that comply with *FMVSS* may be imported and sold in Canada pursuant to the requirements of the *MVSA* and *Regulations*.

113. Vehicle manufacturers are required to file a report with Transport Canada and NHTSA within five days of identifying any safety related defects in their vehicles pursuant to the *MVSA* and *FMVSS*. The initial report is required to identify all vehicles potentially containing the defect and include a description of the manufacturer’s basis for its determination of the recall population and a description of how the vehicles or items of equipment to be recalled differ from similar vehicles or items of equipment that the manufacturer has not included in the recall. Additionally, the report must contain a “description of the defect” and identify and describe the risk to motor vehicle safety reasonably related to the defect.

114. The purpose of these government regulations is to facilitate the notification of owners of defective and noncomplying motor vehicles, and the remedy of such defects and noncompliance, by equitably apportioning the responsibility for safety-related defects and noncompliance with *MVSA* and *FMVSS* among vehicle manufacturers.

115. The Defendants have failed and/or neglected to comply with their mandatory obligations under the *MVSA* and *Regulations* to provide the Class Members with an adequate remedy or fix for the Charging Defect in the Affected Class Vehicles. As such, Class Members are

left to drive vehicles that pose a real, substantial and imminent risk of harm, injury and/or death.

vi. The warranties provided by the Defendants

116. At all material times to the cause of action herein, the Defendants provided written express warranties to purchasers and lessees of the Affected Class Vehicles covering hybrid-related and battery electric vehicle-specific components for defects in materials or workmanship, subject to stated exclusions.

117. Under the Defendants' Hybrid-Related Components Warranty, specified hybrid system components were warranted for a period of 96 months or 160,000 kilometers, whichever occurs first, including, *inter alia*: the battery control module, hybrid control module, inverter with converter, DC-DC converter control, motor generator ECU, and boost converter control.

118. The Defendants further provided a separate Hybrid Battery Warranty covering the hybrid battery for a period of 120 months or 240,000 kilometers, whichever occurs first.

119. Under the Defendants' Battery Electric Vehicle ("BEV")-Specific Components Warranty, specified BEV system components were warranted for defects in materials or workmanship for a period of 96 months or 160,000 kilometers, whichever occurs first, including, *inter alia*, the transaxle and inverter with converter.

120. The Defendants additionally provided an Electric Vehicle Traction Battery Warranty covering the lithium-ion traction battery for a period of 96 months or 160,000 kilometers, whichever occurs first, as well as a Traction Battery Capacity Warranty applicable where battery capacity falls below 70% of original capacity during that same period, with measurement, repair, and replacement methods determined by the Defendants.

121. The foregoing warranties expressly covered charging-related and power-management components integral to the operation of the Affected Class Vehicles, including components responsible for voltage conversion, power distribution, and battery charging functions.

122. The express warranty terms formed part of the basis of the bargain and were a material inducement in the Plaintiff's and Class Members' decisions to purchase or lease the Affected Class Vehicles.

vii. Agency relationship between Defendants and their authorized dealerships as to the Affected Class Vehicles

123. The Defendants have expressly or impliedly acknowledged that Toyota-, Lexus- and Subaru-authorized dealerships (collectively, the “**Dealerships**”) are their sales and service agents. The Dealerships have accepted that undertaking, and the Defendants exercise the ability to control the Dealerships, thereby establishing a principal–agent relationship, as further detailed below:

- (a) The Defendants can terminate the relationship with the Dealerships at will;
- (b) The relationship between the Defendants and the Dealerships is indefinite and ongoing;
- (c) The Defendants are in the business of selling vehicles, as are the Dealerships;
- (d) The Defendants provide tools, systems, training, and support necessary for the Dealerships to sell vehicles and perform warranty services;
- (e) The Defendants regularly supervise and audit the Dealerships’ operations, including sales, service, and customer communications;
- (f) Without the Defendants the Dealerships would not exist;
- (g) The Defendants as the principal require the following of the Dealerships:
 - (i) reporting of sales;
 - (ii) computer network connection with the Defendants;
 - (iii) training of their sales and technical personnel;
 - (iv) use of the Defendants-supplied computer software;
 - (v) participation in the Defendants’ training programs;
 - (vi) establishment and maintenance of service departments in the Dealerships;
 - (vii) certification of the Defendants’ pre-owned vehicles;
 - (viii) reporting to the Defendants with respect to vehicle delivery and sales, including, but not limited to: the names, addresses, preferred titles,

telephone numbers (primary and business), and e-mail addresses of owners and/or lessees; vehicle identification numbers; delivery dates; type of sale; lease or finance terms; applicable factory incentive coding; odometer readings at delivery; extended service contract sale designations, if any; and the names of the dealership employees involved in the delivery; and

(ix) displaying the Defendants' logos on signs, literature, products, and brochures within the vehicle showroom.

(h) Dealerships bind the Defendants with respect to:

(i) warranty repairs on the vehicles the dealers sell; and

(ii) issuing service contracts administered by the Defendants.

(i) The Defendants further exercise control over the Dealerships with respect to:

(i) financial incentives given to their employees;

(ii) locations of the Dealerships;

(iii) testing and certification of their personnel and technicians to ensure compliance with the Defendants' policies and procedures; and

(iv) customer satisfaction surveys, pursuant to which the Defendants allocate the number of their cars to the Dealerships, thereby directly controlling their profits.

(j) The Dealerships sell the Defendants' vehicles on the Defendants behalf, pursuant to a "floor plan," and the Defendants do not receive payment for their cars until the Dealerships sell them.

(k) Dealerships bear the Defendant brand names, use their logos in advertising and on warranty repair orders, post Toyota, Lexus and Subaru brand signs for the public to see, and enjoy a franchise to sell the Defendants products, including the Affected Class Vehicles.

(l) The Defendants require the Dealerships to follow the rules and policies of the Defendants in conducting all aspects of dealer business, including the delivery of the

Defendants' warranties, and the servicing of defective vehicles such as the Affected Class Vehicles.

(m) The Defendants require the Dealerships to post the Defendants' brand names, logos, and signs at dealer locations, including dealer service departments, and to identify themselves and to the public as authorized Toyota, Lexus and Subaru dealers and servicing outlets for the Defendants' vehicles.

(n) The Defendants require their dealers to use service and repair forms containing its brand names and logos.

(o) The Defendants require the Dealerships to perform the Defendants' warranty diagnoses and repairs, and to do the diagnoses and repairs according to the procedures and policies set forth in writing by the Defendants.

(p) The Defendants require the Dealerships to use parts and tools either provided by the Defendants or approved by Defendants and to inform the Defendants when dealers discover that unauthorized parts have been installed on one of the Defendants' vehicles.

(q) The Defendants require the Dealerships' service and repair employees to be trained by the Defendants in the methods of repair of the Defendants' vehicles.

(r) The Defendants audit the Dealerships' sales and service departments and directly contact customers of the Dealerships to assess their level of satisfaction with sales and repair services. Based on these assessments, the Defendants provide financial incentives or impose reprimands on the Dealerships.

(s) The Defendants require the Dealerships to provide them with monthly statements and records pertaining, in part, the sales and servicing of the Defendants' vehicles.

(t) The Defendants provides technical service bulletins and messages to the Dealerships detailing chronic defects present in product lines, and repair procedures to be followed for chronic defects.

- (u) The Defendants provide the Dealerships with specially trained service and repair consultants with whom the Dealerships' personnel are required to consult when they are unable to correct a vehicle defect on their own.
- (v) The Defendants require Toyota-, Lexus- and Subaru-brand vehicle owners to go to the Dealerships to obtain servicing under the Defendants' warranties.
- (w) The Dealerships are required to notify the Defendants whenever a vehicle is sold or put into warranty service.

Part 2: RELIEF SOUGHT

124. 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 pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the "*CPA*"), and appointing the Plaintiff as representative plaintiff;
- (b) a declaration that the Defendants:
 - (i) were negligent in the manufacture and/or design of the Affected Class Vehicles causing the Plaintiff and Class Members to suffer damages;
 - (ii) breached their duty of care to the Plaintiff and Class Members, and are consequently liable to the Plaintiff and Class Members for damages;
 - (iii) breached the terms of their express warranty, and are consequently liable to the Plaintiff and Class Members for damages;
 - (iv) breached implied warranties or conditions of merchantability as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages pursuant to sections 18(a), (b) and 56 of the *Sale of Goods Act*, R.S.B.C. 1996, c. 410 ("*SGA*"); sections 16(2), (4) and 52 of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; sections 16(1), (2) and 52 of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; sections 16(a), (b) and 54 of

The Sale of Goods Act, C.C.S.M. 2000, c. S10; sections 15(1), (2) and 51 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1; sections 16(a),(c) and 54 of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; sections 17(a), (b) and 54 of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; sections 20(a), (b) and 67 of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; sections 16(a), (b) and 53 of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; sections 15(a), (b) and 50 of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; sections 18(a),(b) and 60 of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and sections 18(a), (b) and 60 of the *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2; and articles 1726 to 1730 of the *Civil Code of Québec*, C.Q.L.R., c. C.C.Q.-1991 (collectively, “**Provincial Sale of Goods Acts**,” unless otherwise referred to individually);

- (v) breached articles 37, 38, 40, 41, 53, 54 of the *Consumer Protection Act*, C.Q.L.R. c P-40.1;
- (vi) breached the duty to act in good faith and with honesty in representations and in the performance of obligations, pursuant to articles 6, 7, and 1375 of the *Civil Code of Québec*, C.Q.L.R., c C.C.Q.-1991; and
- (vii) engaged in unfair practices contrary to sections 4 and 5 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004 (“**BPCPA**”); sections 5 and 6 of the *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; 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, (collectively, “**Parallel Consumer Protection Legislation**,” unless otherwise referred to individually), 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 *BPCPA*, and *Parallel Consumer Protection Legislation*, and waiving any such applicable notice provisions;
- (d) an order for the statutory remedies available under the *BPCPA*, and *Parallel Consumer Protection Legislation*, including damages, cancellation and/or rescission of the purchase of the Affected Class Vehicles;
- (e) an Order directing the Defendants to advertise any adverse findings against it pursuant to section 172(3)(c) of the *BPCPA*; section 19 of the *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; 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*, R.S.C 1985, c. C-34 (“**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 Charging Defect in the Affected Class Vehicles from the Plaintiff and Class Members;
- (i) injunctive and/or declaratory relief requiring the Defendants to recall, repair and/or replace the defective BMS, ESU or other related components or systems equipped in the Affected Class Vehicles and/or buy back all 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 24 of the *CPA* requiring the Defendants to pay the costs of notice to the Class and the costs of administering any plan of distribution, together with applicable taxes;
- (k) an order pursuant to section 29 of the *CPA* directing an aggregate assessment of damages;
- (l) damages, including actual, compensatory, incidental, statutory and consequential damages;
- (m) punitive damages;
- (n) costs of investigation pursuant to section 36 of the *Competition Act*;
- (o) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (p) such further and other relief as this Honorable Court deems just.

Part 3: LEGAL BASIS

A. Jurisdiction

125. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c.28 (“*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.

B. Causes of Action

i. Negligence

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

127. At all material times to the cause of action herein, the Defendants owed a duty of care to the Plaintiff and Class Members to design, manufacture, and supply vehicles free from defects. The Affected Class Vehicles, equipped with the defective 12-volt battery charging system, specifically the ESU, poses a real and substantial danger to Class Members and vehicle occupants due to the sudden and unexpected loss of motive power resulting from the Charging Defect.

128. The Defendants, as designers, engineers, manufacturers, promoters, marketers, and/or distributors of the Affected Class Vehicles intended for use by ordinary consumers, owed a duty of care to the Plaintiff and Class Members to ensure that the Affected Class Vehicles were reasonably safe in their operation.

129. At all material times to the cause of action herein, the Defendants breached this duty of care. They knew, or ought to have known, that the Charging Defect caused the sudden and unexpected loss of motive power, posing a real, substantial, and imminent risk of harm, injury, and/or death to vehicle occupants. Despite such knowledge, the Defendants continued to distribute, sell, and/or lease Affected Class Vehicles equipped with the defective BMS, ESU and/or related systems.

130. The Defendants owed a duty to carefully monitor the safety and post-market

performance of the Affected Class Vehicles. They had a duty to warn, or promptly warn, the Plaintiff and Class Members that the Charging Defect results in sudden and unexpected loss of motive power, which poses a real, substantial, and imminent risk of harm, injury, and/or death to vehicle occupants, but failed to do so.

131. By designing, manufacturing, distributing, selling, leasing, and/or placing the Affected Class Vehicles and their component parts, including the defective BMS, ESU and/or related systems, into the Canadian stream of commerce, the Defendants were in a position of legal proximity to the Plaintiff and Class Members and were under an obligation to be fully aware of safety risks when designing, manufacturing, assembling, distributing, and/or selling such products.

132. It was reasonably foreseeable that the Defendants' failure to design, manufacture, and/or install an ESU capable of adequately charging the Affected Class Vehicles' 12-volt battery and powering essential low-voltage systems, and their subsequent failure to monitor the performance of the Affected Class Vehicles post-market and take corrective action, would result in the vehicles losing motive power, causing harm to the Plaintiff and Class Members and damage to the Affected Class Vehicles.

133. The Defendants, through their employees, officers, directors, and agents, failed to meet the reasonable standard of care expected of a vehicle supplier, distributor, and/or manufacturer in the circumstances, in that they:

- (a) knew, or ought to have known, about the Charging Defect in the Affected Class Vehicles and should have timely warned the Plaintiff and Class Members;
- (b) designed, developed, manufactured, tested, assembled, marketed, advertised, distributed, supplied, leased, and/or sold vehicles equipped with a defective ESU, the internal components of which are susceptible to failure, resulting in sudden loss of motive power and posing a real, substantial, and imminent risk of harm, injury, and/or death to vehicle occupants;
- (c) failed to timely warn the Plaintiff, Class Members, and/or consumers about the Charging Defect;

- (d) failed to properly inspect, test and/or redesign the defective ESU in the Affected Class Vehicles;
- (e) failed to provide an alternative design of the defective ESU in the Affected Class Vehicles in a timely manner;
- (f) knew, or ought to have known, about the Charging Defect but failed to disclose it;
- (g) failed to timely issue and implement safety, repair, or replacement recalls of the Affected Class Vehicles;
- (h) notwithstanding the foreseeable risk of personal injury, loss of life, and property damage, failed to promptly and properly eliminate or correct the Charging Defect; and
- (i) failed to exercise reasonable care and judgment in matters of design, manufacture, materials, workmanship, and quality of the ESU, which would reasonably be expected of an automobile supplier, distributor, and/or manufacturer.

134. As a result of the Charging Defect in the Affected Class Vehicles, and due to the Defendants' negligence and failure to disclose and/or adequately warn, the Plaintiff and Class Members have suffered, and will continue to suffer, damages. The value of each Affected Class Vehicle is diminished. Class Members must expend time and resources to repair their vehicles and are deprived of use of their vehicles for an indeterminate period. The Defendants should compensate the Plaintiff and each Class Member for all incurred out-of-pocket expenses, including, *inter alia*, repair costs, towing, alternative transportation, and vehicle payments caused by the Charging Defect.

ii. Breach of Express Warranty

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

136. At all material times to the cause of action herein, the Defendants, as express warrantors, manufacturers, distributors, suppliers, and/or merchants, issued express warranties

requiring that the Affected Class Vehicles and their EV system components, including the BMS, ESU and/or related systems, conform to the terms of those warranties.

137. The Defendants marketed, distributed, and/or sold the Affected Class Vehicles in Canada, including in the Province of British Columbia, as safe and reliable vehicles through authorized dealerships and/or independent retail dealers. These representations formed part of the basis of the bargain in the Plaintiff's and Class Members' decisions to purchase and/or lease the Affected Class Vehicles.

138. The Defendants' Hybrid-Related Components Warranty expressly covered original EV system components, including components responsible for charging and maintaining the vehicle's low-voltage electrical system, such as the ESU and DC-DC converter for a period of 96 months or 160,000 kilometers, whichever occurs first.

139. The express warranty terms became part of the basis of the bargain when the Plaintiff and Class Members purchased and/or leased their Affected Class Vehicles.

140. Under the express warranties provided to Class Members, the Defendants promised to repair or replace covered EV system components arising from defects in materials and/or workmanship, including the BMS, ESU and/or related systems, at no cost to owners and/or lessees of the Affected Class Vehicles.

141. The Defendants also represented that the Affected Class Vehicles were safe, reliable, and durable, and that the Defendants would stand behind the quality of their products by promptly repairing defects. These representations contributed to concealing the existence of the Charging Defect and its associated safety risks, and shifted the costs of repair or replacement of defective EV system components to the Plaintiff and Class Members.

142. Under the express warranties, the Defendants promised to repair or replace defective EV system components, including the ESU, free of charge and within a reasonable time. As alleged herein, the Defendants breached their express warranties by concealing the Charging Defect and failing to provide an effective repair.

143. Class Members experienced manifestations of the Charging Defect within the

applicable warranty periods but lacked knowledge of the defect and its safety implications, which were known to and concealed by the Defendants. Despite the existence of express warranties, the Defendants failed to inform the Plaintiff and Class Members that the Affected Class Vehicles were equipped with defective EV system components and failed to provide a suitable repair or replacement within a reasonable time.

144. The failure to provide a suitable and effective repair or replacement of the defective charging components constitutes a failure of the express warranties and renders them futile.

145. The defective ESU is substantially certain to prematurely fail or malfunction.

146. The Defendants breached their express warranties by failing to repair or correct defects in materials and/or workmanship in EV system components supplied with the Affected Class Vehicles.

147. The Defendants have not suitably repaired or replaced the defective BMS, ESU and/or related systems for the Plaintiff and Class Members, despite the existence of the Charging Defect at the time of sale and/or lease.

148. The Defendants further breached their express warranties by selling and/or leasing Affected Class Vehicles that were defective with respect to BMS, ESU and/or related systems, in design, workmanship, and manufacture.

149. The Affected Class Vehicles were not of merchantable quality and were unfit for their ordinary purpose because their BMS, ESU and/or related systems did not perform as warranted.

150. The Plaintiff and Class Members had sufficient direct dealings with the Defendants, their agents, and/or authorized dealerships to establish privity of contract. In the alternative, privity is not required because the Plaintiff and Class Members are intended third-party beneficiaries of the warranties issued in connection with the sale and lease of the Affected Class Vehicles.

151. The Defendants received notice of the Charging Defect through consumer complaints to authorized dealers and through their own testing and analysis. Any further opportunity to cure would be futile, as the Defendants have long been aware of the defect and have failed to provide a suitable repair or replacement free of charge and within a reasonable time.

152. Any attempt by the Defendants to disclaim or limit liability through the express warranties is unconscionable and unenforceable. The Defendants knowingly sold defective vehicles without disclosing the Charging Defect, and the warranty limitations unreasonably favor the Defendants in circumstances involving a latent safety-related defect.

153. The limited warranty fails in its essential purpose because the promised remedy has not been provided within a reasonable time and is insufficient to make the Plaintiff and Class Members whole.

154. The Defendants knew that the Affected Class Vehicles were defective and did not conform to their express warranties, and the Plaintiff and Class Members were induced to purchase and/or lease the vehicles under false or misleading representations.

155. Class Members experienced the Charging Defect within the warranty periods but were unaware of its existence due to the Defendants' concealment. Despite the express warranties, the Defendants failed to inform the Plaintiff and Class Members of the defect and improperly shifted repair and replacement costs onto consumers.

156. As a result of the Charging Defect, the Affected Class Vehicles are unreliable, and owners and lessees have lost confidence in their ability to provide safe, reliable, and durable transportation.

157. The Plaintiff and Class Members could not reasonably have discovered the Charging Defect at the time of purchase or lease.

158. As a direct and proximate result of the Defendants' breach of express warranties, the Plaintiff and Class Members have suffered damages.

159. As additional and/or alternative relief, the Plaintiff and Class Members seek revocation of acceptance of the Affected Class Vehicles, restitution of purchase prices and/or lease payments, and recovery of all incidental and consequential damages permitted by law.

iii. Breach of the Implied Warranties or Condition of Merchantability pursuant to SGA and Parallel Provincial Sale of Goods Legislation

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

161. The Defendants are a “seller” with respect to the Affected Class Vehicles within the meaning of the *SGA*, and *Provincial Sale of Goods Acts*, pursuant to its role in manufacturing, marketing, distributing, supplying, and/or selling the Affected Class Vehicles directly or through its authorized Canadian dealers, distributors, resellers, retailers, and/or intermediaries.

162. At all relevant times to the cause of action herein, the Defendants were sellers of the Affected Class Vehicles equipped with a defective 12-volt charging system, including the ESU. The Defendants marketed and sold such vehicles to consumers through authorized dealers for their ordinary and intended use, and the Defendants knew that the vehicles would pass unchanged from dealers to end purchasers and lessees, including the Plaintiff and Class Members.

163. The ESU installed in the Affected Class Vehicles is defective in that it fails to adequately and consistently charge the 12-volt battery, resulting in loss of vehicle functionality, including inability to start or operate the vehicle, and posing a real, substantial, and imminent risk of harm, injury, and/or death to vehicle occupants.

164. A warranty that the Affected Class Vehicles were in merchantable condition was implied by law pursuant to sections 18(a) and/or (b) of the *SGA*, sections 16(2) and/or (4) of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; sections 16(1) and (2) of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; sections 16(a) and/or (b) of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; sections 15(1) and/or (2) of the *Sale of Goods Act*, RSO 1990, c. S.1; sections 16(a) and/or (c) of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; sections 17(a) and/or (b) of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; sections 20(a) and/or (b) of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; sections 16(a) and/or (b) of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; sections 15(a) and/or (b) of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; sections 18(a) and/or (b) of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; sections 18(a) and (b) of the *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2; and articles 1726 and 1728 of the *Civil Code of Québec*, C.Q.L.R. c. C.C.Q.-1991.

165. The Defendants marketed, distributed, and/or sold the Affected Class Vehicles in Canada, including in the Province of British Columbia, as safe, reliable, and durable vehicles. These representations formed part of the basis of the bargain for Class Members' purchases and/or leases.

166. The Affected Class Vehicles were defective at the time they left the possession and control of the Defendants. The Defendants knew, or ought to have known, of the Charging Defect at the time of sale and distribution. Accordingly, the Affected Class Vehicles were not of merchantable quality and were not fit for their ordinary purpose at the time of sale and at all material times thereafter.

167. The Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles directly or indirectly from the Defendants through subsidiaries, authorized dealers, agents, or other intermediaries, and were intended end users of the vehicles. At all relevant times, the Defendants were manufacturers, distributors, warrantors, and/or sellers of the Affected Class Vehicles.

168. Privity of contract exists, or alternatively vertical privity exists, between the Plaintiff and Class Members and the Defendants. In the further alternative, privity is not required because the Plaintiff and Class Members are intended third-party beneficiaries of the contracts between the Defendants and their authorized dealers and distributors, including the implied warranties arising therefrom.

169. The Defendants' authorized dealers and distributors acted as intermediaries and were not end users of the Affected Class Vehicles. The implied warranties were intended to benefit, and were relied upon by purchasers and lessees of the Affected Class Vehicles.

170. The Defendants knew or had reason to know the ordinary purpose for which the Affected Class Vehicles were purchased and/or leased, namely safe, reliable, and durable personal transportation.

171. As a result of the Charging Defect, the Affected Class Vehicles were not of merchantable quality when sold and/or leased and were unfit for their ordinary purpose.

172. The Defendants knew, or ought to have known, of the Charging Defect and were

therefore in a position to cure the breach of implied warranties, but failed to do so.

173. At all material times to the cause of action herein, the Defendants knew, or ought to have known, that the Affected Class Vehicles were defective and not of merchantable quality, yet continued to manufacture, market, distribute, and sell the vehicles without disclosure of the defect. The vehicles remained defective when delivered to dealers and when ultimately delivered to the Plaintiff and Class Members.

174. Any attempt by the Defendants to disclaim or limit the implied warranty or condition of merchantability is unconscionable and unenforceable. The Defendants knowingly sold defective vehicles without disclosure of the Charging Defect, and the warranty limitations unreasonably favored the Defendants in circumstances involving a latent defect affecting vehicle operability and safety.

175. The Plaintiff and 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 Defendants' conduct alleged herein. Affording the Defendants a reasonable opportunity to cure their breach of written warranties, therefore, would be unnecessary and futile.

176. As a direct and proximate result of the Defendants' breach of implied warranties or conditions of merchantability, the Plaintiff and Class Members have suffered loss, diminution and/or damage as a result of the Charging Defect, pursuant to sections 56 of the *SGA*, section 52 of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; section 52 of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; section 54 of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; section 51 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1; section 54 of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; section 54 of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; section 67 of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; section 53 of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; section 60 of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; section 60 of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; section 60 of the *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2; and articles 1726, 1727, and 1739 of the *Civil Code of Québec*, C.Q.L.R. c. C.C.Q.-1991.

iv. Violation of *BPCPA* and Parallel Provincial Consumer Protection Legislation

177. The Plaintiff and Class Members in British Columbia hereby incorporate by reference

the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

178. At all material times to the cause of action herein, the Defendants carried on business in British Columbia for the purposes of the *BPCPA*, and in other provinces with *Parallel Consumer Protection Legislation*.

179. The Affected Class Vehicles are consumer “goods” within the meaning of section 1(1) of the *BPCPA*, and the corresponding definitions under *Parallel Consumer Protection Legislation*.

180. The Plaintiff and Class Members in British Columbia 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 *BPCPA*, and in provinces with *Parallel Consumer Protection Legislation*.

181. The purchase and/or lease of the Affected Class Vehicles by the Plaintiff and Class Members in British Columbia 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 *BPCPA*, and in provinces with *Parallel Consumer Protection Legislation*.

182. The Defendants are a “supplier” within the meaning of section 1(1) of the *BPCPA*, and in provinces with *Parallel Consumer Protection Legislation*, as as they carried on business in British Columbia and, in the course of business, participated in consumer transactions by supplying goods to consumers and/or soliciting, offering, advertising, marketing, or promoting consumer transactions, whether or not privity of contract existed between the Defendants and the consumers.

183. The Defendants are the supplier and/or manufacturer of the Affected Class Vehicles and distribute, market and/or supply such vehicles to consumers including Class Members in British Columbia. At all relevant times, the Defendants were 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 Defendants.

184. By failing to disclose and actively concealing the Charging Defect, the Defendants engaged in unfair and deceptive acts or practices prohibited by sections 4 and 5 of the *BPCPA*, and the relevant provisions of *Parallel Consumer Protection Legislation*. The Defendants knew,

or ought to have known, that the Affected Class Vehicles were equipped with a defective 12-volt battery control and power-management system, including ESU, resulting in a sudden loss of motive power, creating a real, substantial, and imminent risk of harm to vehicle occupants.

185. As alleged herein, the Defendants made misleading representations and omissions concerning the safety, reliability and durability of the Affected Class Vehicles.

186. In purchasing or leasing the Affected Class Vehicles, the Plaintiff and Class Members were deceived by the Defendants' failure to disclose their knowledge of the Charging Defect and the associated safety risks.

187. In particular, the Defendants engaged in a pattern of unfair or deceptive acts or practices in failing to disclose to the Plaintiff and Class Members that the Affected Class Vehicles were equipped with a defective ESU, the internal components of which are susceptible to failure, resulting in sudden loss of motive power and posing a real, substantial, and imminent risk of harm, injury, and/or death to vehicle occupants. Without limitation, the Defendants engaged in unfair or deceptive acts or practices contrary to the *BPCPA*, and *Parallel Consumer Protection Legislation*, by:

- (a) failing to disclose that the Affected Class Vehicles were not of a particular standard, quality, or grade;
- (b) failing to disclose known material defects or material non-conformities affecting the Affected Class Vehicles;
- (c) failing to disclose that the Affected Class Vehicles were defective, not in good working order, and not fit for their ordinary and intended use, and created a real, substantial and imminent risk of harm, injury and/or death to users of the Affected Class Vehicles;
- (d) failing to provide adequate warnings or notices regarding the defects and associated risks, despite possessing exclusive knowledge thereof;
- (e) failing to disclose, or actively concealing, the existence, nature and/or scope of the Charging Defect;

(f) representing that any defects in the ESU and related components would be covered under its warranty program.

188. The Defendants' failure to disclose their exclusive knowledge of the Defect caused the Plaintiff and Class Members to enter into consumer transactions they otherwise would not have entered into, or would have entered into only at a substantially lower price.

189. By reason of the foregoing, the Defendants engaged in unfair or deceptive acts or practices prohibited by sections 4 and 5 of the *BPCPA*, and the relevant provisions of *Parallel Consumer Protection Legislation*.

190. Further, as alleged herein, the Defendants made misleading representations and/or omissions concerning the safety, reliability and durability of the Affected Class Vehicles by:

- (a) publishing Owners' Manuals, and marketing and promotional materials, that made materially misleading omissions as to claims of safety, reliability and durability but which uniformly omitted any warning to consumers that the Affected Class Vehicles were equipped with a defective ESU, the internal components of which are susceptible to failure, resulting in a complete loss of motive power, which poses a real, substantial and imminent risk of harm, injury and/or death to vehicle occupants;
- (b) disseminating advertisements and promotional materials that omitted material information regarding the Charging Defect; and
- (c) emphasizing claims of safety, reliability, and durability inconsistent with the true condition of the Affected Class Vehicles.

191. The Defendants' conduct, as alleged herein was, and is, in violation of sections 4 and 5 of the *BPCPA*, and the relevant provisions of *Parallel Consumer Protection Legislation*, by:

- (a) representing that the Affected Class Vehicles were defect-free and safe when 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 in a manner that was materially misleading; and

(d) representing that the Affected Class Vehicles conformed to prior representations regarding safety, reliability, and durability, when they did not.

192. Class Members could not have reasonably discovered the Charging Defect or the Defendants' misrepresentations prior to purchase or lease.

193. The Defendants intentionally or recklessly misrepresented and omitted material facts regarding the Affected Class Vehicles with the intent that consumers rely upon those misrepresentations and omissions.

194. Class Members reasonably relied on the Defendants' representations and omissions in purchasing or leasing the Affected Class Vehicles.

195. The Defendants knew, or ought to have known, that their conduct violated the *BPCPA* and *Parallel Consumer Protection Legislation*.

196. The Defendants owed a duty to disclose the Charging Defect because it created serious safety risks, the Defendants possessed exclusive knowledge of the Charging Defect, and consumers could not reasonably have discovered it.

197. The Defendants' conduct proximately caused loss and damage to the Plaintiff and Class Members.

198. Class Members suffered ascertainable loss and damage, including repair and replacement costs, loss of use, rental vehicle expenses, overpayment, and diminution in value of the Affected Class Vehicles.

199. The Defendants' conduct continues to cause harm and affects the public interest.

200. The facts concealed and omitted by the Defendants were material and would have been important to a reasonable consumer in deciding whether to purchase or lease an Affected Class Vehicle.

201. As a result of the Defendants' conduct as alleged herein, Class Members in British Columbia are entitled to: (i) a declaration under section 172(1)(a) of the *BPCPA* that the Defendants' acts or practices in respect of the purchase of the Affected Class Vehicles contravened the *BPCPA*; (ii) an injunction under section 172(1)(b) of the *BPCPA* restraining such conduct; and/or (iii) damages under section 171 of the *BPCPA*. Class Members in other provinces are likewise entitled to comparable remedies available under *Parallel Consumer Protection Legislation*.

202. Class Members in British Columbia are entitled, to the extent necessary, a waiver of any notice requirements under section 173(1) of the *BPCPA*, and Class Members in other provinces are entitled to similar relief under the applicable provisions of *Parallel Consumer Protection Legislation*, as a result of the Defendants' failure to disclose, and active concealment of, the Charging Defect, as well as their misrepresentations concerning the safety, reliability and durability of the Affected Class Vehicles.

v. Breach of the *Competition Act*

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

204. By making representations to the public concerning the safety, reliability, and durability of the Affected Class Vehicles, the Defendants breached sections 36 and/or 52 of the *Competition Act*, in that such representations:

- (a) were made to the public through advertising, promotional materials, owners' manuals, technical publications, statements, and other standardized representations;
- (b) were made for the purpose of promoting the supply, use, or sale of the Affected Class Vehicles and advancing the Defendants' business interests; and
- (c) were false or misleading in a material respect.

205. At all material times to the cause of action herein, the Defendants were the manufacturers, sellers, and/or suppliers of the Affected Class Vehicles. Contractual privity and/or vertical privity existed between the Plaintiff and Class Members and the Defendants, as the

Defendants' authorized dealers and distributors acted as their agents in the marketing and sale of the Affected Class Vehicles.

206. The Defendants engaged in unfair competition and unlawful business practices by the acts, statements, and omissions described herein, including knowingly and intentionally concealing a material defect in the ESU, together with the associated safety risks, costs, and economic consequences. The Defendants were in a superior position to know the true facts relating to the Charging Defect, and the Plaintiff and Class Members could not reasonably have discovered those facts.

207. The Charging Defect constitutes a serious safety issue. The Defendants knew, or ought to have known, that the Affected Class Vehicles were susceptible to a sudden loss of motive power, creating a real, substantial, and imminent risk of harm to vehicle occupants, thereby triggering a duty to disclose such information to consumers.

208. These acts and practices deceived the Plaintiff and Class Members. By failing to disclose the Charging Defect and suppressing material facts, the Defendants breached their duty of disclosure, contravened the *Competition Act*, and caused loss and damage to the Plaintiff and Class Members. The omitted and concealed information was material and would have been important to reasonable consumers.

209. The Plaintiff and Class Members relied upon the Defendants' representations concerning the safety, reliability, and durability of the Affected Class Vehicles to their detriment in purchasing or leasing the Affected Class Vehicles, thereby suffering loss and damage.

210. The Plaintiff and Class Members have suffered damages and are entitled to recover damages pursuant to section 36(1) of the *Competition Act*, together with such further relief as may be available under section 52 of the *Competition Act*.

vi. Fraudulent Concealment

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

212. The Defendants intentionally and knowingly concealed, suppressed, and/or omitted

material facts concerning the standard, quality, and condition of the Affected Class Vehicles, including the existence of a defect in the low-voltage battery control and power-management system and the corresponding safety risks, with the intent that the Plaintiff and Class Members rely on those omissions. As a direct result of this conduct, the Plaintiff and Class Members have suffered actual damages.

213. The Defendants knew, at the time of sale and thereafter, including as a result of pre-production testing and internal data, that the Affected Class Vehicles incorporated the Charging Defect. The Defendants concealed the Charging Defect and failed to adequately repair or replace the defective components of the low-voltage battery control and power-management system, including the EUS, during the applicable warranty periods, or at all. To date, Class Members have not been provided with an adequate remedy or permanent fix for the Charging Defect.

214. The Defendants owed a duty to disclose the Charging Defect and its associated safety risks to the Plaintiff and Class Members because the Defendants possessed superior and exclusive knowledge of the Charging Defect. The Defendants further owed a duty to disclose material information relating to the safety, reliability, and durability of the Affected Class Vehicles, which they consistently marketed as safe, reliable, and durable.

215. Having made representations to the public concerning the safety, reliability, and durability of the Affected Class Vehicles, the Defendants were under a duty to disclose the omitted material facts concerning the Charging Defect. Instead, the Defendants intentionally concealed, suppressed, and/or omitted material facts regarding the condition and quality of the Affected Class Vehicles and the existence of the Charging Defect and its associated safety risks, in order to sell additional vehicles and avoid the costs associated with disclosure, repair, or replacement.

216. No reasonable consumer expects a vehicle to contain a concealed defect in manufacture, materials, or workmanship that compromises safety, reliability, or ordinary use.

217. The Defendants intended to conceal the material facts concerning the Charging Defect with the intent to deceive consumers. This intent is evidenced by the Defendants' failure to timely disclose the Charging Defect, delay in corrective action, and implementation of remedial measures that were inadequate to fully address the Charging Defect. The Defendants benefitted from this

concealment by charging a price premium and avoiding the costs of full remediation.

218. The Plaintiff and Class Members would not have purchased or leased the Affected Class Vehicles, or would have paid less for them, had the Defendants disclosed the Charging Defect and the associated safety risks.

219. The Defendants knew that their concealment and suppression of material facts concerning the Charging Defect was false and misleading and intended to induce the purchase or lease of the Affected Class Vehicles while discouraging consumers from seeking replacement, repair, or other remedies during applicable warranty periods, or by failing to provide any adequate remedy, thereby reducing costs and increasing profits.

220. The Defendants acted with malice, oppression, and fraud.

221. The Plaintiff and Class Members reasonably relied on the Defendants' concealment and omissions. As a direct and proximate result of the Defendants' omissions and active concealment of material facts concerning the defective ESU and related components, the Plaintiff and Class Members suffered loss and damage.

222. As a result of the Charging Defect and the associated safety risks, the Plaintiff and Class Members suffered actual damages, including economic loss and diminution in value, in amounts to be determined at trial.

vii. Tolling of the *Limitation Act*, S.B.C. 2012, c. 13 ("*Limitation Act*") and Parallel Provincial Limitation Period Legislation

223. The Plaintiff and Class Members had no way of knowing about the Charging Defect. The Defendants concealed their knowledge of the Charging Defect while continuing to market, sell and/or lease the Affected Class Vehicles.

224. Within the time limits prescribed in the *Limitation Act*, and the *Limitations Act*, R.S.A. 2000, c. L-12; *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; *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, “**Provincial Limitation Period Legislation**”), the Plaintiff and Class Members could not have discovered through the exercise of reasonable diligence that the Defendants were concealing the conduct complained of herein and misrepresenting the true qualities of the Affected Class Vehicles, in particular the Charging Defect.

225. The Plaintiff and Class Members did not know facts that would have caused a reasonable person to suspect or appreciate that there was a defect in the ESU equipped in the Affected Class Vehicles.

226. 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.

227. Further, due to Defendants’ knowledge and active concealment of the Charging Defect throughout the time period relevant to this proposed class proceeding, the *Limitation Act* and *Provincial Limitation Period Legislation* have been tolled.

228. Instead of publicly disclosing the Charging Defect, the Defendants kept the Plaintiff and Class Members in the dark as to the Charging Defect and the serious safety risks it presented.

229. The Defendants were under a continuous duty to disclose to the Plaintiff and Class Members the existence of the Charging Defect.

230. The Defendants knowingly, affirmatively and actively concealed or recklessly disregarded the safety, reliability and durability of the Affected Class Vehicles.

231. As such, the Defendants are estopped from relying on the *Limitation Act* and *Provincial Limitation Period Legislation* in defense of this proposed class proceeding.

Plaintiff's address for service:

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E-mail address for service (if any):

ksgarcha@dusevicgarchalaw.ca

Place of trial:

Vancouver, BC, Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: March 13, 2026



Signature of K.S. Garcha
Lawyer for the Plaintiff

**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 automotive defect multi-jurisdictional class proceeding involves certain model-year Toyota-, Lexus-, and Subaru-brand vehicles (the “**Affected Class Vehicles**”), engineered, designed, developed, manufactured, assembled, tested, marketed, distributed, supplied, leased, and/or sold in Canada, including the Province of British Columbia, by the Defendants, Toyota Motor Corporation, Toyota Canada Inc., Subaru Corporation, and/or Subaru Canada Inc., which are equipped with a defective auxiliary battery charging system that fails to properly and adequately recharge the vehicles’ 12-volt (low-voltage) battery, resulting in repeated loss of charge, damage to the 12-volt battery, and premature battery failure requiring replacement (the “**Charging Defect**”). In particular, the Charging Defect, which is latent and occurs without adequate warning or indication to drivers, renders the Affected Class Vehicles unable to start or operate, and/or loss of motive power during operation, thereby posing real, substantial, and imminent risk of harm, injury, and/or death to vehicle occupants.

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; *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, S.S., 2014, 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*, and SNB 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
4. *Sale of Goods Act*, R.S.B.C 1996, c. 410; *Sale of Goods Act*, RSA 2000, c. S-2; *Sale of Goods Act*, RSS 1978, c. S-1; *The Sale of Goods Act*, CCSM 2000, c. S10; *Sale of Goods Act*, RSO 1990, c. S.1; *Sale of Goods Act*, RSNL 1990, c. S-6 ;*Sale of Goods Act*, RSNS 1989, c. 408; *Sale of Goods Act*, RSNB 2016, c. 110; *Sale of Goods Act*, RSPEI 1988, c. S-1; *Sale of Goods Act*, RSY 2002, c. 198; *Sale of Goods Act*, RSNWT 1988, c. S-2; and *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2; and *Consumer Protection Act*, CQLR c. P-40.1
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; *Limitations Act*, R.S.A. 2000, c. L-12; *The Limitations Act*, S.S. 2004, c. L-16.1; *The Limitations Act*, S.S. 2004, c. L-16.1; *The Limitation of Actions Act*, C.C.S.M. c. L150; *Limitations Act*, 2002, S.O. 2002, c. 24, Sch. B; *Limitations Act*, S.N.L. 1995, c. L-16.1; *Limitation of Actions Act*, S.N.S. 2014, c. 35; *Limitation of Actions Act*, S.N.B. 2009, c. L-8.5; *Statute of Limitations*, R.S.P.E.I. 1988, c. S-7; *Limitation of Actions Act*, R.S.Y. 2002, c. 139; *Limitation of Actions Act*, R.S.N.W.T. 1988, c. L-8; and *Limitation of Actions Act*, R.S.N.W.T. (Nu) 1988, c. L-8