



Court File No. **VLC-S-S-259750**  
NO.  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:



PLAINTIFF

AND:

BAYERISCHE MOTOREN WERKE AG,  
BMW OF NORTH AMERICA, LLC, and  
BMW 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 and model year Bayerische Motoren Werke (“**BMW**”)-brand vehicles, defined below as “**Affected Class Vehicles**”, engineered, designed, developed, manufactured, assembled, tested, marketed, distributed, supplied, leased and/or sold by the Defendants, BAYERISCHE MOTOREN WERKE AG (“**BMW AG**”), BMW OF NORTH AMERICA, LLC (“**BMW NA**”), and BMW CANADA INC. (“**BMW Canada**”), that are equipped with the Defendants’ xDrive all-wheel drive system. In particular, all Affected Class Vehicles are equipped with substantially same or similar transfer cases, which were factory-filled with out-of-specification transfer case fluid leading to accelerated wear and permanent damage to internal components of the transfer case, including, *inter alia*, the multi-plate clutch system, gears, bearings and seals, thereby causing the transfer case to improperly transmit the torque between the front and rear wheels of the vehicle (the “**Transfer Case Defect**”).

2. The Transfer Case Defect manifests in the form of jerking or shuddering sensations when driving the vehicle, especially when shifting gears, making turns, or driving at low speeds, which adversely affects the drivability of the Affected Class Vehicles and causes the transfer cases

to fail and require premature replacement. As such, the Transfer Case Defect poses a real, substantial and imminent risk of harm and/or injury to vehicle occupants.

3. “**Affected Class Vehicles**” include, but are not limited to, the following model year BMW-brand vehicles equipped with the defective transfer case:

MODEL	MODEL YEAR
<b>F-Chassis</b>	
F90 (M5 Sedan)	2018-2023
F91 (M8 Convertible)	2019-2026
F92 (M8 Coupe)	2019-2026
F93 (M8 Gran Coupe)	2019-2026
F95 (X5 M Sports Activity Vehicle)	2020-2026
F96 (X6 M Sports Activity Coupe)	2020-2026
F97 (X3 M Sports Activity Vehicle)	2020-2026
F98 (X4 M Sports Activity Coupe)	2020-2026
<b>G-Chassis</b>	
G01 (X3 Sports Activity Vehicle)	2018-2024
G02 (X4 Sports Activity Coupe)	2018-2026
G05 (X5 Sports Activity Vehicle)	2019-2026
G06 (X6 Sports Activity Coupe)	2020-2026
G07 (X7 Sports Activity Vehicle)	2019-2026
G09 (BMW XM)	2023-2026
G12 (7 Series Sedan)	2016-2022
G14 (8 Series Convertible)	2019-2026
G15 (8 Series Coupe)	2019-2026
G16 (8 Series Gran Coupe)	2019-2026
G20 (3 Series Sedan)	2019-2026
G22 (4 Series Coupe)	2020-2026
G23 (4 Series Convertible)	2020-2026
G26 (4 Series Gran Coupe)	2020-2026
G30 (5 Series Sedan)	2017-2023
G32 (640i xDrive Gran Turismo)	2017-2023
G42 (2 Series Coupe)	2022-2026
G45 (X3 Sports Activity Vehicle)	2025-2026
G60 (5 Series Sedan)	2024-2026
G70 (7 Series Sedan)	2023-2026

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

4. Before replacing the defective transfer cases, the Defendants frequently require owners and/or lessees of the Affected Class Vehicles to replace the transfer case fluid at a cost ranging from approximately \$400 to \$1,500 when the fluid replacement is not covered under warranty. However, except for certain high-performance vehicles like the Defendants' M-series models, transfer case fluid is factory-filled with the expectation that it will last for the life of the vehicle. Accordingly, transfer case fluid replacement is not listed on the maintenance schedule that the Defendants provide with every vehicle.

5. Despite the costly repair, many owners and/or lessees of the Affected Class Vehicles who replaced the transfer case fluid continued to experience the Transfer Case Defect and were subsequently informed by the BMW dealership or independent mechanics that the transfer case itself required replacement.

6. Transfer cases are designed, built, and installed with the expectation that they will last for the life of the vehicle.

7. No warning lights or messages appear on the Affected Class Vehicles' cluster gauge when the transfer case is damaged, meaning that it is very difficult to diagnose the issue until it progresses far enough to manifest as a jerking or shuddering sensation when driving the vehicle.

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

9. In particular, the Defendants knew, or ought to have known, since at least 2018 of the risk of premature transfer case failure in the Affected Class Vehicles, based on standard pre-sale design, testing, and validation information collected by reasonably prudent vehicle manufacturers.

10. The Defendants have themselves acknowledged the Transfer Case Defect since at least May 2020 through their own Service Industry Bulletins ("SIBs"). The Defendants' SIB 27-02-20 is titled "Jerking or Shuddering From The Driveline (XDrive Transfer Case ATX13-X)." The Defendants issued four further revised SIBs, with the most recent being as of June 2025 regarding



the same transfer case issue and indicated additional affected BMW-brand vehicles.

11. In the past, when owners and/or lessees of the Affected Class Vehicles who experienced the Transfer Case Defect contacted the Defendants, and/or their authorized dealers, they disavowed all knowledge of the problem and refused to fully reimburse owners for the repairs and transfer case replacement, which typically costs anywhere from \$7,000 to \$13,000.

12. Despite having knowledge of the Transfer Case Defect since at least 2018, the Defendants have repeatedly failed to disclose and actively concealed the Transfer Case 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 Transfer Case Defect, they are not.

13. The Defendants cover the fluid change replacement and transfer case replacement for owners and/or lessees of the Affected Class Vehicles that are still within the original New Vehicle Limited Warranty but do not cover either of these services for owners and/or lessees of the Affected Class Vehicles whose warranty has expired. Furthermore, the Defendants' SIBs explicitly state that transfer case fluid replacement is not covered under the Certified Pre-Owned warranty or Extended Service Contract even though the transfer case itself is not excluded from coverage by the terms of the Certified Pre-Owned warranty.

14. The Defendants have issued no recall or extended warranty regarding the Transfer Case Defect in the Affected Class Vehicles, nor sent notice to owners and/or lessees of the Affected Class Vehicles regarding the possibility of premature transfer case failure. Instead, the Defendants have concealed and continue to actively conceal the Transfer Case Defect in the Affected Class Vehicles.

15. As a direct and proximate result of the Defendants' unfair, misleading, deceptive, and/or fraudulent business practices in failing to disclose the Transfer Case Defect, the Plaintiff and putative class members: (i) overpaid for the Affected Class Vehicles, either through a higher purchase price and/or lease payments, which vehicles are non-merchantable and not fit for their ordinary purpose due to the Transfer Case Defect; (ii) overpaid for the Affected Class Vehicles as the Transfer Case Defect significantly diminishes their value; (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; and/or (v) have paid, and will continue to be required to pay, out-of-pocket costs to replace transfer case fluid that should not require replacement and to replace defective transfer cases during the expected useful life of the Affected Class Vehicles.

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 Transfer Case 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 Transfer Case 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 Transfer Case Defect, including, *inter alia*, recovery of damages, repair 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 of the Affected Class Vehicles.

## **B. The Parties**

### **i. The Representative Plaintiff**

21. The Plaintiff [REDACTED] has an address c/o 210-4603 Kingsway,

Burnaby, British Columbia, V5H 4M4, Canada.

22. In 2019, the Plaintiff purchased a new 2019 BMW X5 (“**BMW X5**”) from an authorized BMW dealership for approximately \$100,000, inclusive of fees and taxes.

23. Since purchasing the BMW X5, the Plaintiff has used the vehicle for personal and household purposes in the ordinary course and has routinely maintained it through authorized BMW dealerships.

24. Beginning in or about July 2024, the Plaintiff started experiencing shuddering and jerking sensations when driving his BMW X5 at low speeds while turning.

25. On other occasions, the Plaintiff experienced a decrease in the transmission of power to the front wheels of his BMW X5, in addition to the shuddering and jerking sensations.

26. Each time these problems occurred, the Plaintiff noticed that the transfer case was not functioning properly, leading to improper torque distribution between the front and rear wheels of his BMW X5.

27. In or about late August 2025, the Plaintiff took his BMW X5 to Brian Jessel BMW, an authorized BMW dealership, for inspection and repair. The BMW dealership acknowledged that the transfer case in his vehicle was faulty and indicated that this is a common occurrence in BMW vehicles with the same or substantially similar transfer cases as the Plaintiff’s BMW X5.

28. Despite acknowledging an inherent issue with the transfer cases, the BMW dealership replaced the transfer case fluid, for which the Plaintiff paid approximately \$1,300 out-of-pocket. The BMW dealership advised him that, in the likely event a replacement of the transfer case is required, he would have to pay approximately \$7,000 plus for a replacement transfer case.

29. As a result of the Transfer Case Defect, and the potential for costly transfer case replacement, the Plaintiff has lost confidence in his BMW X5 to provide safe and reliable transportation. The Plaintiff expected his BMW X5 to be of good and merchantable quality and not defective. He had no reason to know, or expect, that the transfer case in his BMW X5 would prematurely fail, nor was he aware from any source prior to the purchase of his BMW X5 of the significant expense he would incur should the replacement of the transfer case becomes necessary.

30. The Defendants failed to disclose the Transfer Case Defect in the Affected Class Vehicles to consumers, including the Plaintiff and putative class members. As a result, the Plaintiff purchased the BMW X5 under the reasonable, but mistaken, belief that it was a safe, reliable, and durable vehicle. The Plaintiff would not have purchased the BMW X5, or would have paid significantly less for it, had he known of the Transfer Case Defect and the real, substantial, and imminent risk of harm and/or injury it posed to him and vehicle occupants.

31. At all material times to the cause of action herein, the Plaintiff has used and maintained his BMW X5 in a manner consistent with reasonable expectations of vehicle ownership.

32. The Plaintiff has suffered a concrete and ascertainable loss as a direct and proximate result of the Defendants' misconduct in that Plaintiff overpaid for his BMW X5 at the time of purchase, and the value of his BMW X5 has been diminished as a result of the Transfer Case Defect.

**ii. The Defendants**

33. The Defendant, BMW AG, is a company duly incorporated pursuant to the laws of the Federal Republic of Germany and has an address for service at Petuelring 130, 80788 Munich, Germany.

34. The Defendant, BMW NA, is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, The Corporation Trust Company, at Corporation Trust Center 1209 Orange Street, Wilmington, Delaware, 19801, United States of America.

35. The Defendant, BMW Canada, is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under registration number A0045365, and has a registered agent, Lawson Lundell LLP, at 1600 Cathedral Place, 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

36. At all material times to the cause of action herein, the Defendant, BMW AG, engineered, designed, developed, researched, manufactured, tested, assembled, exported, marketed, advertised, distributed, sold, and/or leased BMW-brand vehicles worldwide, including

the Affected Class Vehicles, through its related subsidiaries, affiliates, agents, and/or operating or organizational units, including the Defendants, BMW NA and BMW Canada, and its authorized dealerships and/or independent retailers in North America.

37. The Defendant, BMW NA, is a wholly owned American subsidiary of the Defendant, BMW AG, and is involved in, has responsibility for, and provides direction regarding the research, design, development, engineering, manufacture, regulatory compliance, marketing, distribution, sale, and/or lease of BMW-brand vehicles, including the Affected Class Vehicles, throughout North America.

38. The Defendant, BMW Canada, is a wholly owned Canadian subsidiary of the Defendant, BMW AG. While the Defendant, BMW Canada, does not manufacture automobiles in Canada, it is involved in, has responsibility for, and provides direction regarding the research, design, development, engineering, regulatory compliance, marketing, distribution, sale, and/or lease of the Affected Class Vehicles throughout Canada.

39. At all material times to the cause of action herein, the Defendant, BMW Canada, imports, markets, advertises, distributes, sells and/or leases BMW-brand vehicles, including the Affected Class Vehicles, in Canada, and within the Province of British Columbia. The Defendant, BMW Canada, is the Defendant's, BMW AG's, Canadian distribution, marketing and/or sales arm of BMW-brand vehicles, which the Defendant, BMW AG, exercises direct and/or indirect control over, including, *inter alia*, management policies, information governance policies, pricing, repair and/or warranty terms

40. At all material times to the cause of action herein, the Defendants 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 Transfer Case Defect, averred to herein, in Canada. Further, the business operations 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.

41. Hereinafter, the Defendants, BMW AG, BMW NA, and BMW Canada, are collectively referred to as the “**Defendant, BMW**”, or the “**Defendants**”, unless referred to individually or

otherwise.

**C. The Class**

42. This action is brought on behalf of members of a class consisting of the Plaintiff, and all other persons or 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.

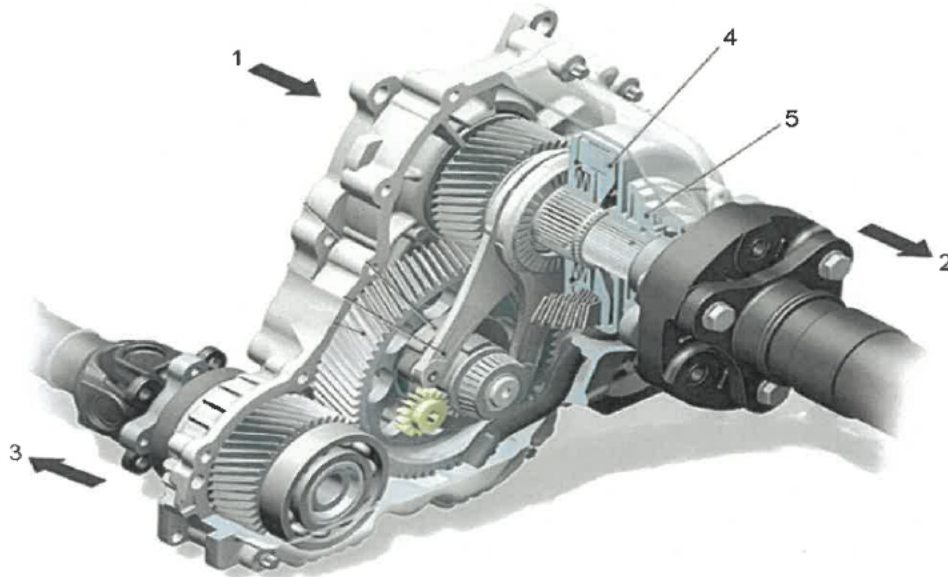
**D. Factual Allegations**

**i. Technical Details**

**a) Mechanical purpose of a Transfer Case**

43. All-wheel-drive and four-wheel-drive vehicles contain a transmission component called the transfer case as part of the drivetrain, which transfers power from the transmission of the motor vehicle to the drive axles.

44. The diagram below illustrates a BMW transfer case using a gear drive, as used in the Affected Class Vehicles:



45. The transfer case receives power from the transmission of the vehicle (shown as 1 in the above diagram) and splits it between the rear (shown as 2 in the above diagram) and front (shown as 3 in the above diagram) wheels.

46. BMW-brand vehicles equipped with the xDrive system, including the Affected Class Vehicles, uniformly utilize an identical multi-plate clutch system (shown as 4 in the above diagram) that can vary the amount of torque directed to the front and rear wheels. This system allows the vehicle to control its traction capability and dynamics. For example, if the rear wheels begin to slip, the vehicle can electronically remove torque from the wheels that have lost traction and put more torque into the wheels which have traction.

47. The transfer cases are filled with a specialized fluid that is formulated with specific viscosity, friction modifiers, and additives tailored to the design and materials of a particular transfer case. The clutches rely on friction to transmit torque, and the fluid controls the friction conditions between the clutch components, namely the steel discs and friction discs. The steel discs separate the friction discs and provide a highly finished friction surface for them to operate on. To ensure that the multi-disc clutches and gears in the transfer case receive the proper amount of lubrication, an oil pump (shown as 5 in the diagram above) circulates lubricant to the bearings and gears, thereby preventing overheating and excessive wear.

**b) The critical role of transfer case fluid**

48. In a gear-driven transfer case design, like the transfer cases in the Affected Class Vehicles, manual transmission fluid is used.

49. Manual transmission fluid is carefully engineered to withstand extreme conditions and protect the complex internal components of the transfer case. The fluid serves its purpose in the following ways:

(a) Lubrication: At its most fundamental level, transfer case fluid acts as a lubricant. Inside the transfer case is a sophisticated array of gears, chains, shafts, and bearings that constantly mesh and rotate at high speeds, often under immense pressure. Without adequate lubrication, these metal components would grind against each other, creating intense friction and heat. The fluid forms a thin, protective film that minimizes metal-to-metal contact, allowing the components to operate smoothly, reducing wear and tear, and ensuring efficient and quiet transfer case operation.

(b) Cooling: Mechanical movement generates heat, which can build up rapidly in a transfer case, especially during demanding conditions such as off-roading, or heavy towing. Transfer case fluid dissipates this heat by absorbing thermal energy from the components and transferring it to the casing, where it can cool. Without this cooling function, excessive heat can lead to fluid breakdown, component warping, seal failure, and catastrophic transfer case damage.

(c) Cleaning: Even in a sealed environment, microscopic wear particles and contaminants such as moisture can accumulate over time. Transfer case fluid contains detergents and dispersants that suspend these particles, preventing them from settling and forming harmful sludge or varnish. By keeping contaminants suspended, the fluid reduces abrasion on delicate surfaces and prevents clogging of internal passages until the fluid is changed.

(d) Protection Against Wear and Corrosion: Transfer case fluid contains specialized additives that protect against rust and corrosion from moisture or chemical reactions. Certain fluids also contain extreme pressure (EP) additives, which form a



sacrificial layer on metal surfaces to prevent direct metal-to-metal contact and scuffing under heavy loads or momentary lubricant film breakdown. This comprehensive protection is critical for long-term transfer case reliability.

50. In modern automobiles, vehicle manufacturers are moving towards dedicated transfer case fluids that are often highly sophisticated synthetic or synthetic-blend formulations with unique additive packages.

51. These fluids are precisely engineered to function with specific materials, tolerances, and electronic controls within a vehicle manufacturer's transfer case design. They may include specialized friction modifiers for clutch engagement, advanced anti-wear agents, or specific viscosity stabilizers to ensure optimal performance and longevity. Substituting these fluids with generic Automatic Transmission Fluids or gear oils can result in improper engagement, noise, premature wear, or failure, as the transfer case relies on the exact properties of these specifically engineered fluids. The correct transfer case fluid, and its unique fluid chemistry, ensures smooth operation, prevents excessive wear, dissipates heat and protects internal components of the transfer case.

52. The transfer cases in the Affected Class Vehicles were factory-filled with a specific transfer case fluid, which the Defendants have acknowledged in various SIBs issued since May 2020 as being out-of-specification.

53. Subsequent revised SIBs authorized BMW service centers to begin adding nano EP additives to provide an additional layer of lubrication; however, this measure does not remedy or fix the accelerated wear and/or permanent damage to the internal components already caused by the out-of-specification factory-filled transfer case fluid in the Affected Class Vehicles.

#### **c) Mechanical consequences of the Transfer Case Defect**

54. A transfer case is designed, built, and installed with the expectation that it will never need to be replaced.

55. The cost of a transfer case replacement, including parts and labor, is between \$7,000 and \$13,000.

56. Transfer case fluid is filled with the expectation that it will last for the life of the vehicle. In fact, the Defendants' maintenance guide describes transfer case fluid as a "long-term rated fluid" and states that "replacement is only necessary when repairs are being performed" except for the high performance M5 and M8 models not included in the Affected Class Vehicles.

57. If not covered by warranty, the cost of transfer case fluid replacement, including parts and labor, is between \$400 and \$1,500.

58. When an owner and/or lessee of an Affected Class Vehicle reports a jerking or shuddering sensation to a BMW dealership, the Defendants' SIBs first instruct the dealer to inspect the vehicle for unevenly worn or improperly fitted tires. If there is no issue with the tires, the dealer is instructed to electronically disconnect the transfer and test drive the vehicle. If the juddering sensation is not present during the test drive, the dealer diagnoses an issue with the transfer case.

59. Once a transfer case issue is diagnosed, the dealer first replaces the transfer case fluid and instructs the owner and/or lessee to drive the vehicle for at least 125 miles (200 kilometers). If the problem persists, the owner and/or lessee must replace the transfer case.

60. Operation of the transfer case with out-of-specification factory-filled transfer case fluid permanently damages the multi-plate clutches due to improper friction coefficients and causes accelerated wear and/or permanent damage to the drive gears, bearings, and seals.

61. When the above damage manifests, Affected Class Vehicle users experience a juddering sensation due to an improper split of torque between the front and rear wheels, typically during low-speed maneuvers, and especially when turning the vehicle.

**ii. The Defendants' knowledge of the Transfer Case Defect**

62. As early as 2018, the Defendants knew, or ought to have known, of the Transfer Case Defect, based on, *inter alia*, the following sources:

- (a) Pre-release design, manufacturing, engineering, and testing data;
- (b) SIBs sent by the Defendants to their authorized dealerships evidencing knowledge of the Transfer Case Defect in the Affected Class Vehicles;

(c) Knowledge that the Defendants had of the large number of replacement transfer cases ordered from them and detailed data gathered by the Defendants about a large number of Transfer Case Defect repairs by authorized BMW dealers; and

(d) Numerous and consistent complaints made directly to the Defendants, government vehicle safety regulators and posted on online forums regarding the Transfer Case Defect.

**a) The Defendants' knowledge of the Transfer Case Defect gained from pre-release design, manufacture, and testing data**

63. During the pre-release process of designing, manufacturing, engineering, and testing the Affected Class Vehicles, the Defendants necessarily acquired comprehensive and exclusive knowledge regarding the transfer cases, including the fundamental engineering principles underlying their construction and materials, as well as the conditions and uses the transfer cases would be expected to encounter in ordinary customer operation.

64. An adequate pre-release analysis of the design, engineering, and manufacture of the transfer cases in the Affected Class Vehicles would have revealed to the Defendants that the transfer cases were defective and prone to premature failure when exposed to normal road conditions.

65. Due to the critical role of the transfer case in the drivetrain of all-wheel-drive vehicles, vehicle manufacturers conduct a wide range of pre-sale tests to ensure that both the component parts and the vehicle as a whole are properly designed and manufactured. These tests include:

(a) "Worst case" parts testing: As part of normal automotive engineering practice, the manufacturer tests the maximum and minimum tolerances for components such as clutches by operating the transfer case with components at the extreme limits of the product specifications and validating that the control system can accommodate these tolerance variations.

(b) Component and drivetrain testing: Testing of the transfer case as a separate element on a rig or dynamometer, where torque is input and the clutches are actuated; and testing of the full drivetrain on a dynamometer to observe interactions between the

transfer case and other driveline components, such as the rear prop shaft and transmission, during gear changes.

(c) Full vehicle environmental testing: Testing of the complete vehicle under varying environmental conditions, including on test tracks with differing friction coefficients, to assess performance, durability, and reliability of the transfer case under real-world driving scenarios.

66. A reasonably prudent vehicle manufacturer would have conducted the above tests, or a substantially similar battery of tests, to ensure that its vehicles' transfer cases were properly designed and manufactured. As a result of such testing, the Defendants knew, or ought to have known, of the Transfer Case Defect but nevertheless chose to sell and/or lease the Affected Class Vehicles.

**b) The Defendants knew of the Transfer Case Defect as evidenced by their own SIBs**

67. On May 5, 2020, the Defendants sent out an SIB to its authorized dealers, advising service technicians about an issue with the transfer case as follows:

“There is a jerking or shuddering during either or both of the following:

- Cornering or accelerating from low speeds
- Driving with low to medium loads[.]

There are no warning lights or Check Control messages.”

68. In the section under “Cause,” this SIB states:

“...the factory-filled transfer case oil does not meet BMW specifications.”

69. This SIB recommends replacing the “transfer case oil” and that after a “run-in period” of up to 125 miles, “the shuddering should diminish...before completely smoothing out.”

70. Over the next several years, the Defendants issued several revised SIBs. The most recent edition, Revision 5, was published on June 6, 2025. It contains the same operative language but includes several additional models. Accordingly, the Defendants continued to update its

internal guidance, including claim procedures, updated parts lists, and revised diagnostic steps.

71. Starting with Revision 4, published on March 26, 2025, the “Parts Information” section was updated to include the following:

Additionally, other materials and small parts that are not specified above, such as fluids, lubricants, one-time use screws, nuts, and seals, which must be replaced or installed (according to the ISTA repair instructions/ETK/AIR), are to be selected from the Electronic Parts Catalog, and/or other approved BMW Group’s resources according to the respective vehicle type. Invoiced these items separately under the Repair Code listed in this bulletin.

72. Since this revision, the Defendants have employed additional additives to the transfer case, in addition to the transfer case fluid, without explicitly identifying the type of additives used or the function they serve.

73. Furthermore, the SIBs specifically exclude certified pre-owned vehicles from warranty coverage:

“When applicable to the vehicle being repaired, standalone transfer box/case oil change procedures are not covered or claimable under an active BMW Certified Pre-Owned Program or Extended Service Contract.”

**c) The Defendants knew, or ought to have known, of the Transfer Case Defect based on the receipt of a large number of orders for replacement transfer cases**

74. The Defendants also knew, or ought to have known, of the Transfer Case Defect due to the higher-than-expected number of replacement transfer cases and transfer case fluid ordered by BMW service centers, which should have alerted the Defendants that this defect affected a large number and wide range of their vehicles.

75. Moreover, BMW service centers use replacement parts ordered directly from the Defendants. Accordingly, the Defendants possess detailed and accurate data regarding the number and frequency of replacement part orders, including replacement transfer cases and transfer case fluid. The ongoing high volume of such orders was, or should have been, known to the Defendants and should have alerted them that the transfer cases were defective.

**d) The Defendants were made directly aware of the Transfer Case Defect based on a large number of Class Member complaints to the Defendants, government vehicle safety regulators and on online forums**

76. The Defendants also knew, or ought to have known, about the Transfer Case Defect because numerous consumers complained directly to the Defendants about the symptoms arising from the Transfer Case Defect. The large number of complaints, and the consistency of their descriptions of the Transfer Case Defect alerted, or ought to have alerted, the Defendants to this serious defect, which affects a wide range of vehicles.

77. In addition, numerous complaints were submitted by the Class Members to government vehicle safety regulators, including Transport Canada and the United States National Highway Traffic Safety Administration (“NHTSA”), which alerted, or ought to have alerted, the Defendants of the Transfer Case Defect.

78. Beyond complaints made directly to the Defendants and those collected by the NHTSA and/or Transport Canada, many owners and/or lessees of Affected Class Vehicles posted complaints about the Transfer Case Defect on public online forums, further providing notice to the Defendants of the widespread nature and severity of the defect.

**iii. The Defendants’ marketing and concealment**

79. The Defendants manufactured, sold and/or leased the Affected Class Vehicles with the Transfer Case Defect, while willfully concealing the serious reliability impacts of the defect, as well as the inferior quality and limited longevity of the Affected Class Vehicles’ transfer cases.

80. The Defendants directly market the Affected Class Vehicles to consumers via extensive nationwide, multimedia advertising campaigns on television, the internet, billboards, print publications, and through other mass media.

81. The Defendants regularly release advertisements and marketing materials touting the reliability of its vehicles, including its xDrive technology. The following are a few examples of such widely circulated advertisements and marketing materials:

82. On its website page “What is xDrive?” the section titled “Intelligent All-Wheel Drive”

provides:

“BMW’s xDrive helps you navigate the road on your own terms from hot summer drives to navigating a polar vortex. The xDrive system uses your driving data to automatically relay power to individual wheels for optimal traction and control. Meaning you can still conquer every corner in any season.”

83. Under “Dynamic Stability Control,” the Defendants further state, in part, the following:

“When you hit a slick stretch of road, your natural instinct is to steer against the slip – and that can make a skid even worse. xDrive’s Dynamic Stability Control takes over when traction loss is detected by applying each individual brake as needed in milliseconds. That means more stability for your BMW, and more driving confidence for you.”

84. Furthermore, in the section titled “Dynamic Traction Control,” the Defendants state, in part, the following:

“The winter’s harshest days can sometimes lead to a situation where you’re stuck in snow. Dynamic Traction Control, a part of the Dynamic Stability Control system, provides the necessary wheel spin and brake adjustments to keep you moving forward without losing power. This action keeps you in complete control of your BMW, especially in exceptional situations.”

85. In a press release published on June 6, 2018, the Defendants described the xDrive technology, in part, as follows:

“The task of maximizing traction, agility and directional stability in the new BMW X5 falls to the latest generation of the BMW xDrive intelligent all-wheel-drive system, which is now able to split drive torque between the front and rear wheels with even greater precision and speed, as the situation demands. For added efficiency, full power can be directed to the rear wheels only in situations where all-wheel drive is surplus to requirements.”

86. None of the Defendants’ advertisements warned customers that their vehicles were likely to experience premature failure of the transfer case that would impact their ability to drive the Affected Class Vehicles.

87. The Plaintiff and Class Members were exposed to the Defendants long-term, national multimedia marketing campaign, which focused on the reliability of the Affected Class Vehicles. The Plaintiff and Class Members justifiably chose to purchase and/or lease the Affected Class Vehicles based on the Defendants' misleading marketing, which concealed the true, defective nature of the Affected Class Vehicles' transfer cases.

88. Further, the Defendants knowingly misled Class Members about the defective nature of the Affected Class Vehicles. As detailed above, the Defendants have been aware of the Transfer Case Defect since at least 2018 and likely earlier.

89. Despite the Defendants' knowledge of the Transfer Case Defect, it told Class Members who complained to customer service about the Transfer Case Defect that it was not aware of any defect, was not responsible for the defect, and that they were not responsible for full reimbursement for the repair.

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

90. 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*") pursuant to Title 49 of the Code of Federal Regulations, Part 571. 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*.

91. 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.

92. 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.

93. 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 Transfer Case Defect in the Affected Class Vehicles, or to issue a recall. As a result, Class Members are left to drive vehicles that pose a real, substantial and imminent risk of harm, injury and/or death.

**v. The warranties provided by the Defendants**

94. The Defendants provide warranties directly to the Plaintiff and Class Members for the Affected Class Vehicles.

95. In Canada, the Defendant, BMW Canada, warrants any vehicle imported by the Defendant, BMW Canada, or sold through the BMW Canada European Delivery Program, to be free of defects in material or workmanship. The warranty period is up to four (4) years or 80,000 kilometers (kms), whichever occurs first, and begins on the date of first retail sale, or the date the vehicle is placed in service as a demonstrator or company vehicle, whichever is earlier.

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

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

97. The Defendants have expressly or impliedly acknowledged that BMW-authorized dealerships (the "**Dealerships**") are their sales 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 relationships are indefinite;
- (c) The Defendants are in the business of selling vehicles as are the Dealerships;
- (d) The Defendants provide tools and resources for the Dealerships to sell and/or lease vehicles;
- (e) The Defendants supervise the Dealerships regularly;
- (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 BMW-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 BMW 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 BMW-brand vehicle owners to go to the Dealerships to obtain servicing under the Defendants' warranties; and
- (w) The Dealerships are required to notify the Defendants whenever a car is sold or put into warranty service.

## **Part 2: RELIEF SOUGHT**

98. The Plaintiff, on his own behalf and on behalf of Class Members, claims against the Defendants, jointly and severally, as follows:

- (a) an Order certifying this action as a class proceeding and appointing the Plaintiff as the named representative;
- (b) a declaration that the Defendants were negligent in the design and/or manufacture of the Affected Class Vehicles, causing the Plaintiff and Class Members to suffer damages;
- (c) a declaration that the Defendants:
  - (i) breached their duty of care to the Plaintiff and Class Members, and are consequently liable to the Plaintiff and Class Members for damages;
  - (ii) breached express warranties as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages;
  - (iii) 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, the “**Provincial Sale of Goods Acts**,” unless referred to individually or otherwise);

- (iv) breached articles 37, 38, 40, 41, 53, 54 of the *Consumer Protection Act*, C.Q.L.R. c P-40.1;
- (v) 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
- (vi) 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, the “**Parallel Consumer Protection Legislation**,” unless referred to individually or otherwise), and are consequently liable to the Plaintiff and Class Members for damages;

- (d) a declaration that it is not in the interests of justice to require that notice be given, where applicable, under the *BPCPA*, and the *Parallel Consumer Protection Legislation*, and waiving any such applicable notice provisions;
- (e) an Order for the statutory remedies available under the *BPCPA*, and the *Parallel Consumer Protection Legislation*, including damages, cancellation and/or rescission of the purchase of the Affected Class Vehicles;
- (f) 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*, S.N.B. 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;
- (g) 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;
- (h) an Order enjoining the Defendants from continuing their unlawful and unfair business practices as alleged herein;
- (i) a declaration that the Defendants fraudulently concealed the Transfer Case Defect in the Affected Class Vehicles from the Plaintiff and Class Members;
- (j) injunctive and/or declaratory relief requiring the Defendants to recall, and/or replace the transfer case equipped in the Affected Class Vehicles and/or to fully reimburse and make whole all Class Members for all costs and economic losses associated therewith;

- (k) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c. 50 (“*CPA*”) directing an aggregate assessment of damages;
- (l) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;
- (m) damages, including actual, compensatory, incidental, statutory and consequential damages;
- (n) punitive damages;
- (o) costs of investigation pursuant to section 36 of the *Competition Act*;
- (p) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (q) such further and other relief as this Honorable Court may seem just.

### **Part 3: LEGAL BASIS**

#### **A. Jurisdiction**

99. 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**

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

101. 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 transfer cases that are factory-filled with out-of-specification transfer case fluid, pose a real, substantial, and imminent risk of danger to vehicle occupants due to the Transfer Case Defect.

102. 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 for their intended operation.

103. At all material times to the cause of action herein, the Defendants breached this standard of care expected in the circumstances. They knew, or ought to have known, that the Transfer Case Defect poses a real, substantial and imminent risk of harm and/or injury as it adversely affects the drivability of the Affected Class Vehicles.

104. The Defendants owed the Plaintiff and Class Members a duty to carefully monitor the safety and post-market performance of the Affected Class Vehicles, or had a duty to warn, or promptly warn, the Plaintiff and Class Members that the Transfer Case Defect poses a real, substantial and imminent risk of harm and/or injury as it adversely affects the drivability of the

Affected Class Vehicles, which they failed to do so.

105. The circumstances of the Defendants being in the business of designing, manufacturing, distributing, selling, leasing and/or placing the Affected Class Vehicles and their component parts, including the Affected Class Vehicles' transfer cases, into the Canadian stream of commerce are such that the Defendants are in a position of legal proximity to the Plaintiff and Class Members, and therefore are under an obligation to be fully aware of safety when designing, manufacturing, assembling, distributing and/or selling a product such as the Affected Class Vehicles.

106. It was reasonably foreseeable that the Defendants' failure to factory-fill the transfer case with fluid having the correct chemistry and specifications suitable for the protection of its internal components and proper operation, coupled with their failure to monitor post-market performance and take corrective action, would expose vehicle occupants to a real, substantial, and imminent risk of harm and/or injury.

107. The Defendants, through their employees, officers, directors, and agents, failed to meet the reasonable standard of care or conduct expected of an automobile supplier, distributor and/or manufacturer in the circumstances in that:

- (a) they knew, or ought to have known, about the Transfer Case Defect in the Affected Class Vehicles and should have timely warned the Plaintiff and Class Members;
- (b) they designed, developed, manufactured, tested, assembled, marketed, advertised, distributed, supplied, leased and/or sold vehicles equipped with transfer cases that are factory-filled with out-of-specification transfer case fluid, which is unsuitable for the protection of its internal components and proper operation;
- (c) they failed to timely warn the Plaintiff, Class Members and/or consumers about the Transfer Case Defect in the Affected Class Vehicles;

- (d) they failed to replace the factory-filled out-of-specification transfer case fluid with transfer case fluid having the correct chemistry and specifications suitable for the protection of its internal components and proper operation, in a reasonable and timely manner;
- (e) they failed to properly inspect and test the factory-filled out-of-specification transfer case fluid in the Affected Class Vehicles;
- (f) they knew, or ought to have known, about the Transfer Case Defect in the Affected Class Vehicles but failed to disclose it;
- (g) they failed to timely issue and implement safety, repair and/or replacement recalls of the Affected Class Vehicles;
- (h) notwithstanding that they foresaw personal injury and the loss of life and property of the drivers and passengers in the Affected Class Vehicles, they failed to, or failed to promptly and/or adequately remedy or fix the Transfer Case Defect; and
- (i) they failed to exercise reasonable care and judgment in matters of design, manufacture, materials, workmanship, and/or quality of product which would reasonably be expected of them as an automobile supplier, distributor and/or manufacturer.

108. Further, and in particular, as a result of the inadequacy of the Defendants' SIBs:

- (a) Affected Class Vehicles continue to be equipped with transfer cases that are permanently damaged as a result of the use of out-of-specification factory-filled transfer case fluid, which is unsuitable for the protection of its internal components and proper operation;
- (b) owners and/or lessees of the Affected Class Vehicles remain exposed to a real, substantial and imminent risk of harm, injury, and/or death;

- (c) owners and/or lessees of the Affected Class Vehicles are forced to incur additional out-of-pocket expenses to replace the transfer case; and
- (d) the Defendants have failed to provide an adequate and timely remedy for the Transfer Case Defect.

109. Moreover, the SIBs constitute a continuation of the Defendants' failure to adequately address or remedy the Transfer Case Defect and demonstrate the Defendants' ongoing knowledge of, and failure to remedy, the defect while continuing to market the Affected Class Vehicles as safe, reliable, and operational.

110. The inadequacy of the SIBs forms part of the Defendants' ongoing negligence, which directly and proximately caused loss, damage, and the real, substantial and imminent risk of harm and/or injury to the Plaintiff and Class Members.

111. As a result of the Transfer Case Defect, and due to the Defendants' negligence and failure to disclose and/or adequately warn of the Transfer Case Defect, the Plaintiff and Class Members have suffered and will continue to suffer damages, including diminished value of their vehicles, expenditure of time and money to replace the transfer case, loss of use, and additional costs such as towing, alternative transportation, and vehicle payments. The Defendants should compensate the Plaintiff and Class Members for these out-of-pocket expenses and other damages resulting from the Transfer Case Defect.

## **ii. Breach of Express Warranty**

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

113. As express warrantors, manufacturers, distributors, suppliers and/or merchants, the Defendants had certain obligations to conform the Affected Class Vehicles to their express warranties.

114. The Defendants marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe, reliable and durable vehicles through authorized dealerships and/or independent retail dealers. Such representations formed the basis of

the bargain in the Plaintiff's and Class Members' decisions to purchase and/or lease the Affected Class Vehicles.

115. The Defendants offer warranty coverage for the Affected Class Vehicles for four (4) years or 80,000 kms, whichever occurs first. This warranty covers the Affected Class Vehicles' drivetrain, including the transfer case.

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

117. Under express warranties provided to Class Members, the Defendants promised to repair or replace covered defective components arising out of defects in materials and/or workmanship, including the transfer case, at no cost to owners and/or lessees of the Affected Class Vehicles.

118. As described above, the out-of-specification factory-filled transfer case fluid results in accelerated wear and/or permanent damage to the internal components of the transfer case, the early stages of which began prior to the expiration of the warranty period.

119. The Defendants also marketed the Affected Class Vehicles as safe, reliable and durable vehicles and that the Defendants would stand behind the quality of their products and promptly repair any defects. These statements helped conceal the existence of the Transfer Case Defect and its corresponding safety risks from the Plaintiff and Class Members in order to shift the expense of repair and/or replacement of the Affected Class Vehicles' components, including the transfer case, to the Plaintiff and Class Members.

120. Under the express warranties provided to the Plaintiff and Class Members, the Defendants promised to repair and/or replace covered components arising out of defects in materials and/or workmanship, including the transfer case, at no cost to owners and/or lessees of Affected Class Vehicles and within a reasonable time. As alleged herein, the Defendants breached their express warranties by concealing the Transfer Case Defect.

121. Class Members experienced the existence of the Transfer Case Defect within the warranty periods but had no knowledge of the existence of the Transfer Case Defect and associated

safety risks, which were known and concealed by the Defendants. Despite the existence of the express warranties, the Defendants failed to adequately inform the Plaintiff and Class Members that Affected Class Vehicles were equipped with defective components, including the transfer case, and failed to provide a replacement of the transfer case free of charge and/or within a reasonable time.

122. The failure to provide a replacement transfer case constitutes futility of the warranty.

123. In addition, due to the use out-of-specification factory-filled transfer case fluid, the transfer cases in the Affected Class Vehicles are substantially certain to prematurely fail.

124. The Defendants breached their express warranty promising to repair and correct a manufacturing defect or defect in materials or workmanship of any parts it supplied.

125. The Defendants have not replaced the transfer cases for the Plaintiff and Class Members despite the existence of the Transfer Case Defect in Affected Class Vehicles at the time of sale and/or lease.

126. The Defendants further breached their express warranties by selling and/or leasing Affected Class Vehicles that were defective with respect to their components, including the transfer case, in their workmanship, and manufacture.

127. Affected Class Vehicles were not of merchantable quality and were unfit for the ordinary purposes for which passenger vehicles are used because their components, including the transfer case, did not perform as warranted.

128. The Plaintiff and Class Members had sufficient direct dealings with the Defendants and their agents and/or their authorized dealerships, to establish privity of contract between the Defendants on the one hand, and the Plaintiff and Class Members, on the other hand. Nonetheless, privity is not required here because the Plaintiff and each Class Member are intended third-party beneficiaries of contracts between the Defendants and their dealers, and specifically, of their warranties. The authorized dealers were not intended to be the ultimate users of the Affected Class Vehicles and have no rights under the warranty agreements provided with the Affected Class Vehicles; the warranty agreements were designed for and intended to benefit purchasers of the

Affected Class Vehicles only.

129. The Defendants were provided notice of the Transfer Case Defect by numerous consumer complaints made to their authorized dealers and through their own testing, affording the Defendants a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile here because the Defendants have known of and concealed the Transfer Case Defect and have failed to replace the transfer case free of charge within a reasonable time.

130. Any attempt by the Defendants to disclaim or limit recovery to the terms of the express warranties is unconscionable and unenforceable here. Specifically, the Defendants' warranty limitation is unenforceable because they knowingly sold a defective product without informing consumers of the Transfer Case Defect. The time limits incorporated in the Defendants' warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. The Plaintiff and Class Members did not determine these time limitations, the terms of which unreasonably favored the Defendants. A gross disparity in bargaining power existed between the Defendants and Class Members, and the Defendants knew or ought to have known that Affected Class Vehicles were defective at the time of sale and/or lease and that the Transfer Case Defect posed a serious safety risk.

131. The limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and Class Members whole because the Defendants failed and/or have refused to adequately provide a remedy and/or fix within a reasonable time.

132. The Defendants knew that Affected Class Vehicles were inherently defective and did not conform to their warranties and the Plaintiff and Class Members were induced to purchase and/or lease Affected Class Vehicles under false and/or fraudulent pretenses.

133. Class Members experienced the existence of the Transfer Case Defect within the warranty periods but had no knowledge of the existence of the Transfer Case Defect, which was known and concealed by the Defendants. Despite the existence of express warranties, the Defendants failed to inform the Plaintiff and Class Members during the warranty periods that Affected Class Vehicles were equipped with transfer cases that are factory-filled with out-of-

specification transfer case fluid, which is unsuitable for the protection of its internal components and proper operation, and/or wrongfully shifted the costs of transfer case fluid replacement or transfer case replacement onto the Plaintiff and Class Members

134. As a result of the Transfer Case Defect, the Affected Class Vehicles are not reliable, and owners and/or lessees of these vehicles have lost confidence in the ability of Affected Class Vehicles to perform the function of safe, reliable and durable transportation.

135. The Plaintiff and Class Members could not have reasonably discovered the Transfer Case Defect.

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

137. Finally, as a result of the Defendants' breach of express warranty as set forth herein, the Plaintiff and Class Members assert, as additional and/or alternative remedies, the revocation of acceptance of goods and the return to the Plaintiff and Class Members the purchase price, lease payments and/or repair costs of all Affected Class Vehicles currently owned and/or leased, and for such other incidental and consequential damages as allowed.

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

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

139. The Defendants are a "seller" with respect to the Affected Class Vehicles within the meaning of the *SGA*, and the *Provincial Sale of Goods Acts*, pursuant to their 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.

140. The Defendants are and were at all relevant times a seller with respect to the Affected Class Vehicles. The Defendants directly sold and marketed the Affected Class Vehicles to customers through authorized dealers, like those from whom Class Members bought and/or leased



their vehicles, for the intended purpose of consumers purchasing the vehicles. The Defendants knew that the Affected Class Vehicles would and did pass unchanged from the authorized dealers to Class Members, without modification.

141. The Affected Class Vehicles equipped with transfer cases that are factory-filled with out-of-specification transfer case fluid, pose a real, substantial, and imminent risk of danger to vehicle occupants due to the Transfer Case Defect.

142. 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*, R.S.O. 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.

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

144. Affected Class Vehicles were defective at the time they left the possession of the Defendants. The Defendants knew, or ought to have known, of the Transfer Case Defect at the time these transactions occurred. Thus, the Affected Class Vehicles, when sold, marketed and/or distributed, and at all material times thereafter, were not of merchantable condition or quality and were not fit for their ordinary intended purpose.

145. The Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles from the Defendants through their subsidiaries, authorized agents for retail sales, through private

sellers or were otherwise expected to be the eventual purchasers and/or lessees of the Affected Class Vehicles when bought and/or leased from a third party. At all relevant times, the Defendants were the manufacturers, distributors, warrantors and/or sellers of the Affected Class Vehicles. As such, there existed privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendants as to their Affected Class Vehicles. Alternatively, privity of contract need not be established nor is it required because the Plaintiff and Class Members are intended third-party beneficiaries of contracts between the Defendants and their resellers, authorized dealers and/or distributors and, specifically, of the Defendants' implied warranties.

146. The Defendants' resellers, authorized dealers and/or distributors are intermediaries between the Defendants and consumers. These intermediaries sell the Affected Class Vehicles to consumers and are not, themselves, consumers of the Affected Class Vehicles and, therefore, have no rights against the Defendants with respect to the Plaintiff's and Class Members' acquisition of the Affected Class Vehicles. The Defendants' warranties were designed to influence consumers who purchased and/or leased the Affected Class Vehicles.

147. The Defendants knew or had reason to know of the specific use for which the Affected Class Vehicles were purchased and/or leased.

148. As a result of the Transfer Case Defect, the Affected Class Vehicles were not in merchantable condition when sold and/or leased and are not fit for the ordinary purpose of providing safe and reliable transportation.

149. The Defendants knew about the Transfer Case Defect in the Affected Class Vehicles, allowing them to cure their breach of warranty if they chose to do so.

150. At all times that the Defendants warranted, leased and/or sold its Affected Class Vehicles, they knew, or should have known, that their warranties were false and yet they did not disclose the truth or stop manufacturing or selling their Affected Class Vehicles and, instead, continued to issue false warranties and continued to insist the products were safe. The Affected Class Vehicles were defective when the Defendants delivered them to its resellers, authorized dealers and/or distributors which leased and/or sold the Affected Class Vehicles and the Affected Class Vehicles were, therefore, still defective when they reached Plaintiff and Class Members.

151. The Defendants' attempt to disclaim or limit the implied warranty of merchantability *vis-à-vis* the Plaintiff, Class Members and/or consumers is unconscionable and unenforceable. Specifically, the Defendants' warranty limitation is unenforceable because they knowingly sold and/or leased a defective product without informing the Plaintiff, Class Members and/or consumers about the Transfer Case Defect. The time limits contained in the Defendants' warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. Among other things, the Plaintiff and Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendants. A gross disparity in bargaining power existed between the Defendants, and the Plaintiff and Class Members, and the Defendants knew that the Affected Class Vehicles, equipped with transfer cases that are factory-filled with out-of-specification transfer case fluid, pose a real, substantial, and imminent risk of danger to vehicle occupants due to the Transfer Case Defect

152. 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.

153. 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, 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**

154. 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.

155. The Defendants are in British Columbia for the purposes of the *BPCPA*, and in provinces with the *Parallel Consumer Protection Legislation*.

156. The Affected Class Vehicles are consumer “goods” within the meaning of section 1(1) of the *BPCPA*, and in provinces with the *Parallel Consumer Protection Legislation*.

157. The Plaintiff and Class Members in British Columbia 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 the *Parallel Consumer Protection Legislation*.

158. 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 the *Parallel Consumer Protection Legislation*.

159. The Defendants are a “supplier” within the meaning of section 1(1) of the *BPCPA*, and in provinces with the *Parallel Consumer Protection Legislation*, as they carried on business in British Columbia and who in the course of business participated in a consumer transaction by: (i) supplying goods to a consumer, or (ii) soliciting, offering, advertising or promoting with respect to a consumer transaction, whether or not privity of contract exists between that person and the consumer, and includes an assignee of, any rights or obligations of the supplier under the *BPCPA*, and the *Parallel Consumer Protection Legislation*.

160. 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 their resellers, authorized dealers and/or distributors were acting as the agents of the Defendants.

161. By failing to disclose and actively concealing the Transfer Case Defect, the Defendants engaged in unfair and deceptive trade practices prohibited by sections 4 and 5 of the *BPCPA*, and

the relevant provisions of the *Parallel Consumer Protection Legislation*. The Defendants knew, or ought to have known, that the Affected Class Vehicles, equipped with transfer cases that are factory-filled with out-of-specification transfer case fluid, pose a real, substantial, and imminent risk of danger to vehicle occupants due to the Transfer Case Defect. The Defendants made misleading statements or omissions concerning the Transfer Case Defect, but yet failed to adequately warn consumers.

162. As alleged herein, the Defendants made misleading representations and omissions concerning the traction and control, agility, directional stability, reliability, functionality and/or performance of the Affected Class Vehicles.

163. In purchasing the Affected Class Vehicles, the Plaintiff and Class Members were deceived by the Defendants' failure to disclose their knowledge of the Transfer Case Defect and associated safety risks.

164. 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, equipped with transfer cases that are factory-filled with out-of-specification transfer case fluid, pose a real, substantial, and imminent risk of danger to vehicle occupants due to the Transfer Case Defect. In particular, the Defendants engaged in unfair or deceptive acts or practices pursuant to the *BPCPA*, and the *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 before, during and/or after the time of purchase any and all known material defects or material nonconformity of the Affected Class Vehicles, including the Transfer Case Defect;
- (c) failing to disclose at the time of purchase that the Affected Class Vehicles, including the transfer cases, were not in good working order, defective, not fit for their intended, and ordinary purpose, and posed a real, substantial and imminent risk of harm, injury and/or death to drivers and occupants of the Affected Class Vehicles;

- (d) failing to give adequate warnings and/or notices regarding the use, defects, and problems with the Affected Class Vehicles to the Plaintiff and Class Members, even though the Defendants possessed exclusive knowledge of the Transfer Case Defect before and at the time of sale;
- (e) failing to disclose, or adequately disclose, either through warnings and/or recall notices, and/or actively concealing, the Transfer Case Defect, even though the Defendants knew about the Transfer Case Defect; and
- (f) representing that the Transfer Case Defect in the Affected Class Vehicles would be covered under its warranty program.

165. In purchasing the Affected Class Vehicles, the Plaintiff and Class Members in British Columbia were deceived by the Defendants' failure to disclose their exclusive knowledge that the Affected Class Vehicles were equipped with transfer cases that are factory-filled with out-of-specification transfer case fluid, which is unsuitable for the protection of its internal components and proper operation.

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

167. Further, as alleged herein, the Defendants made misleading representations and/or omissions concerning the traction and control, agility, directional stability, reliability, functionality and/or performance of the Affected Class Vehicles by:

- (a) publishing Owners' Manuals 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 defective;
- (b) advertisements which uniformly omitted any information about the Transfer Case Defect, and which misled consumers into believing that the Affected Class Vehicles' transfer cases, and other related component parts would function properly; and

- (c) emphasizing and extolling in brochures and advertisements that the Affected Class Vehicles were fit for their intended purpose.

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

- (a) representing that the Affected Class Vehicles were defect-free and did not pose a safety hazard, when in fact they were not and did;
- (b) representing that the Affected Class Vehicles were of a particular standard, quality or grade, when in fact they were not;
- (c) advertising the Affected Class Vehicles with the intent not to sell them as advertised; and
- (d) representing that the Affected Class Vehicles have been supplied in accordance with a previous representation as to the traction and control, agility, directional stability, reliability, functionality and/or performance of the Affected Class Vehicles, when in fact they had not.

169. In purchasing the Affected Class Vehicles, Class Members in British Columbia were deceived by the Defendants' failure to disclose their exclusive knowledge of the Transfer Case Defect and/or its representations made as to the traction and control, agility, directional stability, reliability, functionality and/or performance of the Affected Class Vehicles in their sales brochure materials, manuals, press releases and/or websites.

170. The Defendants intentionally and knowingly misrepresented and omitted material facts regarding the Affected Class Vehicles, specifically regarding the Transfer Case Defect, with an intent to mislead Class Members.

171. In purchasing the Affected Class Vehicles, Class Members were deceived by the Defendants' failure to disclose their knowledge of the Transfer Case Defect and associated safety risks.

172. Class Members had no way of knowing that the Defendants' representations were false,

misleading and incomplete or knowing the true nature of the Transfer Case Defect. As alleged herein, the Defendants engaged in a pattern of deception in the face of a known defect in the Affected Class Vehicles. Class Members did not, and could not, unravel the Defendants' deception on their own.

173. The Defendants knew, or ought to have known, that their conduct violated sections 4 and 5 of the *BPCPA*, and the relevant provisions of the *Parallel Consumer Protection Legislation*.

174. The Defendants owed Class Members a duty to disclose the truth about the Transfer Case Defect as it created serious safety risks and the Defendants;

- (a) possessed exclusive knowledge of the Transfer Case Defect;
- (b) intentionally concealed the foregoing from Class Members; and/or
- (c) failed to warn consumers or to publicly admit that the Affected Class Vehicles, equipped with transfer cases that are factory-filled with out-of-specification transfer case fluid, pose a real, substantial, and imminent risk of danger to vehicle occupants due to the Transfer Case Defect.

175. The Defendants had a duty to disclose that the Affected Class Vehicles were fundamentally flawed as described herein because they created a serious safety risk, and Class Members relied on the Defendants' material misrepresentations and omissions regarding the Affected Class Vehicles.

176. The Defendants' conduct proximately caused injuries to Class Members that purchased the Affected Class Vehicles and suffered harm as alleged herein.

177. Class Members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of the Defendants' conduct. In particular, Class Members incurred costs and expenses related to the Transfer Case Defect, including, *inter alia*, repair, service, and/or replacement costs, rental car costs, and overpaid for their Affected Class Vehicles, which have suffered a diminution in value due to the existence and risk of the Transfer Case Defect.

178. The Defendants' violations cause continuing injuries to Class Members. As such, the



Defendants' unlawful acts and practices complained of herein affect the public interest.

179. The Defendants knew, or ought to have known, that the Transfer Case Defect materially compromised the safety, reliability and durability of the Affected Class Vehicles.

180. The facts concealed and omitted by the Defendants from Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase an Affected Class Vehicle or pay a lower price. Had Class Members known about the Transfer Case Defect, they would not have purchased the Affected Class Vehicles or would not have paid the prices they paid.

181. Class Members' injuries were directly or proximately caused by the Defendants' unlawful and deceptive business practices.

182. 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 the *Parallel Consumer Protection Legislation*.

183. 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 the *Parallel Consumer Protection Legislation*, as a result of the Defendants' failure to disclose, and active concealment of, the Transfer Case Defect, as well as their misrepresentations concerning the traction and control, agility, directional stability, reliability, functionality and/or performance of the Affected Class Vehicles.

**v. Breach of the *Competition Act***

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

185. By making representations to the public as to the traction and control, agility, directional stability, reliability, functionality and/or performance of the Affected Class Vehicles, the Defendants breached sections 36 and/or 52 of the *Competition Act*, in that their representations:

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

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

187. The Defendants engaged in unfair competition and unfair or unlawful business practices through the conduct, statements and omissions described herein and by knowingly and intentionally concealing the Transfer Case Defect from the Plaintiff and Class Members, along with concealing the safety risks, costs, and monetary damage resulting from the Transfer Case Defect. The Defendants should have disclosed this information because they were in a superior position to know the true facts related to the Transfer Case Defect and the Plaintiff and Class Members could not reasonably be expected to learn or discover the true facts related to the Transfer Case Defect.

188. The Defendants knew that the Affected Class Vehicles, equipped with transfer cases that are factory-filled with out-of-specification transfer case fluid, pose a real, substantial, and imminent risk of danger to vehicle occupants due to the Transfer Case Defect. This safety risk triggered the Defendants' duty to disclose the defect to consumers.

189. These acts and practices have deceived the Plaintiff and Class Members. In failing to

disclose the Transfer Case Defect and suppressing other material facts from the Plaintiff and Class Members, the Defendants breached their duty to disclose these facts, violated the *Competition Act* and caused damage to the Plaintiff and Class Members. The Defendants' omissions and concealment pertained to information that was material to the Plaintiff and Class Members, as it would have been to all reasonable consumers.

190. Further, the Plaintiff and Class Members relied upon the Defendants' misrepresentations as to the traction and control, agility, directional stability, reliability, functionality and/or performance of the Affected Class Vehicles to their detriment in purchasing the Affected Class Vehicles so as to cause loss and/or damage to the Plaintiff and Class Members.

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

**vi. Fraudulent Concealment**

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

193. The Defendants intentionally and knowingly concealed, suppressed, and/or omitted material facts including the standard, quality, or grade of the Affected Class Vehicles and the fact that they contain a defect and corresponding safety risks, with the intent that the Plaintiff and Class Members rely on these omissions. As a direct result of this fraudulent conduct, the Plaintiff Class Members have suffered actual damages.

194. The Defendants knew (at the time of sale and thereafter) as a result of pre-production testing that Affected Class Vehicles incorporated the Transfer Case Defect, concealed the Transfer Case Defect and never intended to replace the transfer cases during the warranty periods. To date, the Defendants have not provided Class Members with an adequate remedy or fix for the Transfer Case Defect.

195. The Defendants owed a duty to disclose the Transfer Case Defect and its corresponding safety risks to the Plaintiff and Class Members because the Defendants possessed superior and exclusive knowledge concerning the Transfer Case Defect. The Defendants had a duty to disclose

any information relating to the traction and control, agility, directional stability, reliability, functionality and/or performance of the Affected Class Vehicles because they consistently marketed as safe, reliable and durable.

196. As the Defendants made representations to the public concerning the traction and control, agility, directional stability, reliability, functionality and/or performance of the Affected Class Vehicles, they were under a duty to disclose the omitted facts as to the Transfer Case Defect. Rather than disclose the Transfer Case Defect, the Defendants intentionally and knowingly concealed, suppressed, and/or omitted material facts including the standard, quality, or grade of the Affected Class Vehicles and the existence of the Transfer Case Defect and corresponding safety risks, to sell additional Affected Class Vehicles and avoid the cost of repair of the Affected Class Vehicles and/or replacement of the transfer cases.

197. No reasonable consumer expects a vehicle to contain a concealed defect in design, manufacture, materials and/or workmanship, such as the Transfer Case Defect.

198. The Defendants intended to conceal the material facts concerning the Transfer Case Defect with the intent to deceive. This intent was manifested by Defendants concealing the Transfer Case Defect from prospective purchasers, owners and/or lessees of Affected Class Vehicles during the warranty period. The Defendants benefitted by concealing the Transfer Case Defect in that they could charge a higher price premium by concealing the information and were therefore motivated to do so.

199. The Plaintiff and Class Members would not have purchased the Affected Class Vehicles but for the Defendants' omissions and concealment of material facts concerning the nature and quality of Affected Class Vehicles and existence of the Transfer Defect and corresponding safety risks or would have paid less for the Affected Class Vehicles. The Defendants knew their concealment and suppression of material facts was false and misleading and knew the effect of concealing those material facts. The Defendants knew their concealment and suppression of the Transfer Case Defect would sell more Affected Class Vehicles during the applicable warranty periods. The Defendants intended to induce the Plaintiff and Class Members into purchasing the Affected Class Vehicles without disclosing the Transfer Case Defect.

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

201. The Plaintiff and Class Members reasonably relied upon the Defendants' knowing concealment and omissions. As a direct and proximate result of the Defendants' omissions and active concealment of material facts concerning the transfer case.

202. As a result of the Transfer Case Defect and associated safety risks, the Plaintiff and Class Members suffered actual damages in an amount 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**

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

204. 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, the "***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 Transfer Case Defect.

205. 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 Affected Class Vehicles.

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

207. Further, due to Defendants' knowledge and active concealment of the Transfer Case Defect throughout the time period relevant to this proposed multi-jurisdictional class proceeding, the *Limitation Act* and the *Provincial Limitation Period Legislation* have been tolled.

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

209. The Defendants were under a continuous duty to disclose to the Plaintiff and Class Members the existence of the Transfer Case Defect in the Affected Class Vehicles.

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

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

Plaintiff's address for service:

Dusevic & Garcha  
Barristers & Solicitors  
210 - 4603 Kingsway  
Burnaby, BC V5H 4M4  
Canada

Fax number address for service (if any):

604-436-3302

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: December 29, 2025

  
\_\_\_\_\_  
Signature of K.S. Garcha  
lawyer for plaintiff

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

There is a real and substantial connection between British Columbia, the Defendants 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, the Defendants 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 and model year BMW-brand vehicles, engineered, designed, developed, manufactured, assembled, tested, marketed, distributed, supplied, leased and/or sold by the Defendants, BAYERISCHE MOTOREN WERKE AG, BMW OF NORTH AMERICA, LLC, and BMW CANADA INC., in Canada, including the Province of British Columbia, that are equipped with the Defendants' xDrive all-wheel drive system. In particular, all affected class vehicles are equipped with substantially same or similar transfer cases, which were factory-filled with out-of-specification transfer case fluid leading to accelerated wear and permanent damage to internal components of the transfer case, including, *inter alia*, the multi-plate clutch system, gears, bearings and seals, thereby causing the transfer case to improperly transmit the torque between the front and rear wheels of the vehicle (the "**Transfer Case Defect**").

The Transfer Case Defect manifests in the form of jerking or shuddering sensations when driving the vehicle, especially when shifting gears, making turns, or driving at low speeds, which adversely affects the drivability of the Affected Class Vehicles and causes the transfer cases to fail and require premature replacement. As such, the Transfer Case Defect poses a real, substantial and imminent risk of harm and/or injury 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. *Motor Vehicle Safety Regulations*, C.R.C., c. 1038
7. *United States Federal Motor Vehicle Safety Standard*: Title 49 of the Code of Federal Regulations, Part 5711
8. *Court Order Interest Act*, R.S.B.C., c. 79
9. *Competition Act*, R.S.C 1985, c. C-34
10. *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