



Court File No. **VLC-S-S-259738**

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 a defective electrical starter which is increasingly susceptible to premature failure. In particular, the electrical starter suffers from a design and/or manufacturing defect whereby the pinion gear in the electrical starters either fails to extend to engage the ring gear on the flywheel, or the pinion gear extends but has worn teeth that prevent proper engagement and rotation of the flywheel, preventing the engine from starting (the “**Electrical Starter Defect**”).

2. As a result of the Electrical Starter Defect, repeated and continuous cranking of the electrical starter can cause internal electrical components to overheat, due to friction and excessive heat, potentially combusting or igniting the surrounding acoustic shielding, thereby posing a real,

substantial, and imminent risk of harm, injury, and/or death to vehicle occupants as a result of fire and related damage.

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

MODEL	MODEL YEAR
340i	2020
740Li	2020-2022
840i	2020-2025
X5	2019-2020
X6	2020
X7	2019-2020

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

4. The Defendants have unsuccessfully attempted to remedy the Electrical Starter Defect on two occasions. First, in a recall issued in August 2024 by government vehicle safety regulators, including **Transport Canada** and the United States National Highway Traffic Safety Administration (“**NHTSA**”), the Defendants implemented a software update that failed to remedy or fix the defect. Second, in a subsequent recall issued in September 2025 by Transport Canada and NHTSA, the Defendants purported to offer a remedy consisting of the replacement of the electrical starter with a “different design”; however, the Defendants have advised that this “Remedy is Unavailable.” As a result, the Electrical Starter Defect remains unresolved.

5. The Defendants purported remedies for the Electrical Starter Defect under these vehicle recalls are only a band-aid and fail to adequately cure or remedy the Electrical Starter Defect, while also failing to reimburse vehicle owners and/or lessees for out-of-pocket expenses, loss of use, or loss of value of the Affected Class Vehicles. The proposed remedy under the second recall is also not readily available, so Affected Class Vehicle owners and/or lessees are left without a safe operable vehicle for unknown and often lengthy periods of time.

6. The Defendants have exclusive knowledge of, and have been in exclusive possession of, facts and/or information pertaining to the Electrical Starter Defect, which were material to the

Plaintiff and putative class members, who could not have reasonably known of the Electrical Starter Defect. Under the circumstances, the Defendants had an affirmative duty to disclose the Electrical Starter Defect at the point of sale and/or lease of the Affected Class Vehicles to putative class members and consumers.

7. Prior to selling and/or leasing the Affected Class Vehicles, the Defendants knew that the vehicles were defective yet omitted and concealed this material fact from the Plaintiff and putative class members. Rigorous pre-release durability testing made the Defendants aware of the Electrical Starter Defect. The Defendants were further aware of the Electrical Starter Defect through warranty or replacement starter claims, widespread consumer complaints and discussions on internet forums and message boards devoted to the Affected Class Vehicles, as well as through complaints submitted directly to Transport Canada and/or NHTSA, all of which the Defendants monitor and review.

8. Despite that knowledge and duty, the Defendants have repeatedly failed to disclose and actively concealed the Electrical Starter 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 Electrical Starter Defect, they are not.

9. As a direct and proximate result of the Defendants' unfair, misleading, deceptive, and/or fraudulent business practices in failing to disclose the Electrical Starter Defect, the Plaintiff and putative class members: (i) overpaid for the Affected Class Vehicles, either through a higher purchase price and/or lease payments; (ii) overpaid for the Affected Class Vehicles as the Electrical Starter Defect significantly diminishes the value of the Affected Class Vehicles; (iii) have Affected Class Vehicles that are unsafe, unreliable and dangerous in their operation; (iv) have Affected Class Vehicles that have significantly reduced re-sale value; and/or (v) must expend significant money to have their Affected Class Vehicles repaired.

10. 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 Electrical Starter 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.

11. 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.

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

13. 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.

14. The Plaintiff seeks relief for all other owners and/or lessees of the Affected Class Vehicles with the Electrical Starter 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

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

16. 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.

17. 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.

18. Beginning in or about July 2024, the Plaintiff started experiencing intermittent starting issues, including no-start conditions.

19. In or about July 2025, while the BMW X5 was parked in the Plaintiff's garage, the vehicle exhibited prolonged cranking without starting.

20. In or about August 2025, [REDACTED] the BMW X5 again experienced no-start conditions. In an effort to rule out battery-related issues, the Plaintiff purchased and installed a new BMW-recommended battery; however, the no-start conditions persisted. The BMW X5 eventually started after being left idle for a period of time.

21. Each time the no-start condition occurred, the Plaintiff observed that the electrical starter would continuously crank for an extended period without the engine starting.

22. In or about late August 2025, upon returning to Vancouver, British Columbia, the Plaintiff took the BMW X5 to Brian Jessel BMW, and authorized BMW dealership, for inspection and repair. The BMW dealership diagnosed a faulty electrical starter and replaced it with a similar defective unit, for which the Plaintiff paid approximately \$600 out-of-pocket.

23. On or about November 2025, the Plaintiff received a recall notice from the Defendants advising that the electrical starter in his BMW X5 was defective and suffered from the Electrical Starter Defect, and that a remedy was not available.

24. In December 2025, the Plaintiff contacted the BMW dealership to request reimbursement for the cost incurred in replacing the defective electrical starter. The BMW dealership advised the Plaintiff that the recall remedy was unavailable and directed him to contact the Defendant, BMW Canada, regarding reimbursement of his out-of-pocket repair costs.

25. The Defendants' purported recall measures are inadequate, exposing the Plaintiff to real, substantial, and imminent risk of harm and/or danger from fire.

26. Further, the Plaintiff paid out-of-pocket to replace a defective electrical starter with another electrical starter that is similarly defective.

27. The Defendants failed to disclose the Electrical Starter Defect 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 Electrical Starter Defect and the real, substantial, and imminent risk of harm it posed to him and other vehicle occupants.

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

29. 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 Electrical Starter Defect.

ii. The Defendants

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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

37. 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 Electrical Starter 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.

38. 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

39. 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. The Electrical Starter Defect

40. An electrical starter is a device that initiates engine operation. Since a vehicle engine cannot start unaided, an external force is required to provide sufficient rotational speed. The electrical starter uses the vehicle’s 12-volt battery to power an internal motor that generates the rotational force necessary to start the engine. Unlike standard direct current motors, the electrical starter is designed for brief operation, typically rated at approximately 30 seconds, and is therefore compact despite producing high output. As such, electrical starters are not intended to be run continuously for longer periods of time.

41. A typical electrical starter consists of an armature, pinion gear, magnetic switch, drive lever and overrunning clutch, and its construction can be broadly divided into the ‘motor section’ and the ‘engine engagement and disengagement mechanism.’

42. The electrical starter rotates the engine by engaging the pinion gear with the engine ring gear attached to the flywheel.

43. Regardless of design, the pinion gear is the most integral component of the electrical starter, as it transmits rotational force to the engine flywheel through contact with the ring gear. Depending on the design, the pinion gear either extends outward to engage the ring gear or remains in near-constant proximity and engages only when needed.

44. In the Affected Class Vehicles, the Electrical Starter Defect manifests in one or more of the following ways:

- (a) where the pinion gear is required to extend, the pinion gear fails to extend outward to engage the ring gear;

- (b) where the pinion gear moves freely but remains in contact with the ring gear, the pinion gear fails to properly engage when required; and/or
- (c) in either design, if engagement occurs, the worn teeth prevent it from turning the ring gear.

45. In substantially all Affected Class Vehicles, the ignition switch is designed to continue supplying electrical power to the starter motor until the vehicle successfully starts, thereby repeatedly activating the motor even after the driver has pressed and released the switch, resulting in continuous cranking beyond the driver's control.

46. As a result of the Electrical Starter Defect, regardless of how it manifests, repeated and continuous cranking of the electrical starter—often beyond the driver's control due to the design of the ignition switch—causes internal electrical components to overheat as a result of friction and excessive heat, potentially combusting or igniting the surrounding acoustic shielding and thereby posing a real, substantial, and imminent risk of harm, injury, and/or death to vehicle occupants from fire and related damage.

ii. The Defendants' knowledge of the Electrical Starter Defect

a) The Defendants' pre-production internal testing and compliance standards

47. Like all automobile manufacturers, the Defendants employ extensive and robust pre-production testing that revealed, or ought to have revealed, the Electrical Starter Defect to them. In particular, the Defendants have set up numerous "proving grounds" all across the globe, where their vehicles are subjected to extreme real-world testing.

48. In addition to rigorous pre-production testing at their proving grounds, the Defendants impose strict compliance requirements on their third-party component and parts suppliers, which must be satisfied before the components and parts from these suppliers can be used in the Defendants' vehicles.

49. In particular, and consistent with industry practice, the Defendants require their electronic parts suppliers to comply with specific design parameters, operational limits, testing protocols, and acceptance criteria tailored to the Defendants' vehicle architectures and safety

strategies.

50. The Defendants outsource the production and supply of numerous vehicle components, including electrical starters, to third-party suppliers.

51. The Defendants rely on a tiered supplier network, consisting of Tier 1 suppliers that provide finished components or modules directly to the Defendants, and Tier 2 and Tier 3 suppliers that provide subcomponents, materials, or parts to Tier 1 suppliers.

52. The Defendants contracts with DENSO Europe B.V. as a Tier 1 supplier for the manufacture of electrical starters equipped in the Affected Class Vehicles, which are produced in accordance with the Defendant's, BMW AG's, design specifications, engineering requirements, and quality standards.

53. The Defendant, BMW AG, controls the design, specifications, and quality standards of third-party components, including the electrical starters equipped in the Affected Class Vehicles, and maintains oversight over their production and supply to ensure conformity with BMW-brand vehicles.

54. Given these extensive testing, validation, and supplier-oversight standards, the Defendants knew or ought to have known of the Electrical Starter Defect—particularly that the electrical starters were susceptible to premature failure and repeated starting attempts could result in local overheating of the electrical starters—but nevertheless failed to disclose and actively concealed it from the Plaintiff and Class Members.

b) Vehicle Safety Recalls

NHTSA Investigations and Recalls

55. The Defendants have issued two recalls that fail to adequately address, remedy and/or fix the Electrical Starter Defect. The first recall was issued through NHTSA in August 2024, followed by a second recall in September 2025. Transport Canada issued similar parallel recalls in or around the same times.

56. On August 1, 2024, NHTSA issued a Part 573 Safety Recall Report (NHTSA Recall

No. 24V-576) covering approximately 105,588 vehicles, including model year 2019–2020 BMW X5, 2020 BMW X6, 2019–2020 BMW X7, 2020 BMW 3 Series, 2020–2021 BMW 7 Series, and 2020 BMW 8 Series vehicles (the “**First Recall**”). The First Recall stated, in part, as follows:

Description of the Defect:

This safety recall involves the engine starter. In certain cases in which the engine starter has some mechanical damage, the engine may not be able to be started. If the driver repeatedly attempts to start the engine using excessively long starting attempts, this may cause an electrical overload of the starter.

Description of the Safety Risk:

If the engine acoustic protection material is contaminated by, e.g. oil, then in an extreme case, the proximity of the starter to the acoustic protection material could lead to a thermal event.

Description of Remedy Program:

Potentially affected vehicles will receive a software update that will prevent the engine starter from being electrically overloaded.

57. The First Recall also included the following chronology in the Part 573 Safety Recall Report:

- In March 2023, after receiving several field reports regarding engine no-start conditions and indications of local thermal damage within the engine compartment, an engineering investigation was initiated.
- Initial reviews found that there were only a few reports of thermal damage when compared to a larger number of engine no-start conditions. At that time, it was not yet clear if there was a direct relationship between the engine starter and the observed damage within the engine compartment. The field continued to be monitored.
- By August 2023, various groupings of components were established based upon reviews of damaged hardware from the field. Possible fault patterns that could result in the observed damage were discussed.

- By November, additional analyses included a review of the records regarding starter failure and the specific number of attempted engine starts. A review of supplier production records was also conducted. Several additional field incidents were reported.
- Between January and June 2024, further reviews pointed to specific engine starter production configurations that could be associated with the reported field cases. By June, several additional field incidents were reported.
- Vehicle assembly information and supplier production records were reviewed to determine the number and production dates of potentially affected vehicles.
- On July 25, 2024, BMW decided to conduct a voluntary safety recall.
- BMW has not received, nor is BMW otherwise aware, of any accidents or injuries related to this issue. BMW is aware of approximately twelve customer complaints and associated field incidents related to this issue.

58. The First Recall did not adequately remedy or fix the Electrical Starter Defect.

59. On September 25, 2025, and amended on November 24, 2025, NHTSA issued a subsequent Part 573 Safety Recall Report (NHTSA Recall No. 25V-644) covering approximately 145,102 vehicles, including model year 2019–2020 BMW X5, 2020 BMW X6, 2019–2020 BMW X7, 2020 BMW 340i, 2020–2022 BMW 740Li, and 2020–2025 BMW 840i vehicles (the “**Second Recall**”). The Second Recall stated, in part, the following:

Description of the Defect:

This safety recall involves the engine starter. In certain cases, the engine starter may not start the vehicle properly. These improper starting attempts could result in local overheating of the engine starter.

Description of the Safety Risk:

If the starter overheats, locally, during these starting situations, the engine acoustic protection material can be ignited if contaminated. In rare cases, this could lead to a thermal event while driving or

shortly after parking, if the vehicle had a starting event shortly before being parked.

Description of the Cause:

The vehicle's "fail-safe" mode will trigger upon detection of a fault associated with: A. Overvoltage induced at the start and end of the vehicle's battery charging cycle. B. Thermal loading during charging/driving.

Description of Remedy Program:

The engine starter will be replaced with one involving a different design.

How Remedy Component Differs from Recalled Component:

The engine starter will be replaced with one involving a different design.

60. The Second Recall also included the following chronology in the Part 573 Safety Recall Report:

- BMW referenced the earlier 24V-576 recall and remedy
- In March 2025, three field incidents involving BMW X5 models that had experienced thermal damage became known. Parts were requested for evaluation and each vehicle history was reviewed. Analysis indicated that the incident for each vehicle had occurred after having had the 24V-576 remedy performed.
- In April, a problem-solving team was established to further analyze the cases. A test program was established, and a comprehensive review of prior field incidents was initiated. One additional field incident occurred.
- In May, bench testing of engines and fault tree analyses were initiated. The 24V-576 remedy was reviewed, and tests were conducted on engines with and without the remedy. Analysis of various engine and engine-adjacent parts were conducted. CAD analyses were performed involving various vehicle geometries to further understand any relationship between the starter and other parts in the starter surrounding area, such as the oil level sensor and under shield insulation. During

this time, three additional field incidents became known.

- In June, root cause analysis continued.
- In August, analysis continued into thermal events after completion of recall 24V-576. The software remedy effectiveness continued to be analyzed, along with additional root cause analysis with supplier support.
- Vehicle assembly information and supplier production records were reviewed to determine the number and production dates of potentially affected vehicles.
- On September 18, 2025, BMW decided to conduct a voluntary safety recall.
- BMW has not received any reports, nor is BMW otherwise aware, of any accidents or injuries related to this issue.

Transport Canada Recalls

61. In lockstep with the recalls issued in the United States, shortly thereafter, similar parallel recalls were issued by the Defendant, BMW Canada, through Transport Canada as to the Affected Class Vehicles.

62. On or about August 1, 2024, Transport Canada issued Recall No. 2024-444 under BMW Canada recall reference 12 83 24RC, covering 11,802 BMW vehicles, including model year 2020 3 series, 2019-2020 X5, 2020 X6 and 2019-2020 X7 vehicles, which stated, in part, the following:

Issue: On certain vehicles, if you try to start the engine repeatedly, the starter could overheat. If this happens, and nearby components contact the starter, it could cause a fire.

Safety Risk: A fire can create the risk of injury.

Corrective Actions: BMW will notify owners by mail and advise you to take your vehicle to a dealership to update the vehicle software.

63. Despite the implementation of the foregoing software-based remedy, the Defendants were forced to re-recall vehicles that had already been purportedly remedied under Transport

Canada Recall No. 2024-444.

64. On or about September 9, 2025, Transport Canada issued Recall No. 2025-514 under BMW Canada recall reference 12 90 25RC, covering 14,573 BMW vehicles, including model year 2020 3 series, 2019-2020 X5, 2020 X6 and 2019-2020 X7 vehicles, expressly acknowledging the inadequacy of the software remedy. That recall stated, in part, the following:

Issue: On certain vehicles, the recall repairs completed by a BMW dealer during recall 12 83 24RC (Transport Canada recall no. 2024-444) may not be effective. As a result, certain vehicles require a second repair.

On certain vehicles, if you try to start the engine repeatedly, the starter could overheat. If this happens, and nearby components contact the starter, it could cause a fire.

Safety Risk: A fire can create the risk of injury.

Corrective Action: BMW will notify owners by mail and advise you to take your vehicle to a dealership to replace the engine starter.

c) Customer complaints, warranty claims and replacement starters as to the Electrical Starter Defect

65. The Defendants also knew, or ought to have known, about the Electrical Starter Defect as numerous consumer complaints regarding the Electrical Starter Defect were made directly to the Defendants, or on online sources monitored by the Defendants. The large number of complaints, and the consistency of their descriptions of the Electrical Starter Defect alerted, or ought to have alerted, the Defendants of the Electrical Starter Defect. Further, the Defendants were aware, or ought to have been aware of, the Electrical Starter Defect given the voluminous warranty claims and/or replacement electrical starters required.

iii. The Defendants' vehicle safety recalls and proposed remedies for the Electrical Starter Defect are inadequate

66. The Defendants' proposed remedy under the First Recall, and the parallel Transport Canada recall, namely the software update, was intended to reduce long cranks and prevent electrical overloading of the electrical starter. This purported remedy did not fix or resolve the underlying defect caused by the Electrical Starter Defect.

67. The Defendants' Second Recall remedy, and the similar parallel Transport Canada recall, namely the replacement of the defective electrical starters with a "different design," is inadequate because the replacement parts are unavailable and there are no assurances that this remedy will be effective. As a result, Class Members remain exposed to a real, substantial, and imminent risk of fire and related harm.

68. Further, the Defendants have forced Class Members to incur out-of-pocket expenses to replace failing electrical starters with the same defective electrical starters.

69. Consequently, while Class Members await an adequate and effective remedy, they are left with Affected Class Vehicles that are unsafe, unreliable, and not durable.

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

70. The BMW X5 has been touted as the flagship of the Defendants X-series vehicles. A press release for the 2019 BMW X5, dated June 5, 2018, contained the following representation, in part:

The BMW X5 embodies the origins of the BMW X family and, in its fourth generation, sends out its most powerful message yet in terms of presence and modernity," and "It defines a new X design language – robust, clear and precise.

71. The press release further highlighted the BMW X5's safety features and durability, emphasizing its newly designed engine for this model:

The BMW TwinPower Turbo technology in the gasoline engines features turbochargers, High Precision Injection, VALVETRONIC fully variable valve timing and Double-VANOS variable camshaft timing.

72. The press release also emphasized the vehicle's advanced Driver Assist Systems, stating in part;

Offering a significantly expanded array of driver assistance systems compared with its immediate predecessor, the new BMW X5 clearly demonstrates its commitment to taking comfort and safety to new heights. By processing camera images and data acquired by radar sensors, the new systems enable even more comprehensive support for

the driver in a variety of situations. As components of the BMW Personal CoPilot, they represent new milestones on the road to automated driving.

73. The Defendants have made, and continue to make, substantially similar representations as to the safety, reliability and durability of all Affected Class Vehicles.

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

74. 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*.

75. 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.

76. 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.

77. 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 Electrical Starter Defect in the Affected Class Vehicles. As such, Class Members are left to drive vehicles that pose a real, substantial and imminent risk of harm, injury and/or death.

vi. The warranties provided by the Defendants

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

79. 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.

80. 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.

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

81. 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

82. 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 equipped with the defective electrical starter, 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 Electrical Starter Defect in the Affected Class Vehicles from the Plaintiff and Class Members;
- (j) injunctive and/or declaratory relief requiring the Defendants to recall, repair and/or replace the defective electrical starter 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

83. 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

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

85. At all material times to the cause of action herein, the Defendants owed a duty of care to the Plaintiff and Class Members to design, manufacture, and supply vehicles free from defects. The Affected Class Vehicles, equipped with the defective electrical starter, pose a real, substantial and imminent risk of harm and/or danger to vehicle occupants from fire and related damage arising from the inherent susceptibility of the electrical starter to fail and subsequently overheat due to friction and excessive heat caused by inadvertent and continuous cranking, which can potentially ignite the surrounding acoustic shielding.

86. 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.

87. 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 Electrical Starter Defect posed a real, substantial and imminent risk of fire and injury due to the propensity of the electrical starters to overheat under repeated or prolonged cranking. Despite such knowledge, the Defendants continued to design, manufacture, distribute, sell, and/or lease Affected Class Vehicles equipped with defective electrical starters, thereby exposing the Plaintiff and Class Members to an ongoing serious risk of harm or injury.

88. 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 Electrical Starter Defect poses a real, substantial and imminent risk of harm and/or danger to vehicle occupants from fire and related damage, which it failed to do so.

89. 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' electrical starters, 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.

90. It was reasonably foreseeable that the Defendants' failure to equip the Affected Class Vehicles with an electrical starter capable of safely and reliably starting the engine, and their failure to monitor post-market performance and take corrective action, would expose vehicle occupants to a real, substantial, and imminent risk of fire and related harm.

91. 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 Electrical Starter 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 a defective electrical starter, the internal components of which are susceptible to failure, causing no-start and long-crank conditions;
- (c) they failed to timely warn the Plaintiff, Class Members and/or consumers about the Electrical Starter Defect in the Affected Class Vehicles;
- (d) they failed to replace the electrical starter equipped in the Affected Class Vehicles with a functional and alternatively designed electrical starter that did not require repeated or prolonged cranking to start the engine, in a reasonable and timely manner, or at all;

- (e) they failed to properly inspect and test the defective electrical starter in the Affected Class Vehicles;
- (f) they knew, or ought to have known, about the Electrical Starter 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 Electrical Starter 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.

92. Further, and in particular, as a result of the inadequacy of the First Recall and Second Recall, and the similar parallel Transport Canada recalls:

- (a) Affected Class Vehicles continue to be equipped with a electrical starter that is susceptible to overheating, fire, and engine no-start conditions;
- (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 repair and/or replace the defective electrical starter; and
- (d) the Defendants have failed to provide an adequate and timely remedy for the Electrical Starter Defect.

93. Moreover, the Second Recall, and the similar parallel Transport Canada recall,

constitutes a continuation of the Defendants' failure to adequately address or remedy the Electrical Starter Defect and demonstrates the Defendants' ongoing knowledge of, and failure to remedy, the defect while continuing to market the Affected Class Vehicles as safe, reliable, and operational.

94. The inadequacy of both the First Recall and Second Recall, and the similar parallel Transport Canada recalls, including the unavailability of non-defective electrical starters, forms part of the Defendants' ongoing negligence, which directly and proximately caused loss, damage, and the real, substantial and imminent risk of harm or injury to the Plaintiff and Class Members.

95. As a result of the Electrical Starter Defect, and due to the Defendants' negligence and failure to disclose and/or adequately warn of the Electrical Starter 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 repair, 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 Electrical Starter Defect.

ii. Breach of Express Warranty

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

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

98. 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.

99. The Defendants offer warranty coverage for the Affected Class Vehicles for four (4) years or 80,000 kms, whichever occurs first. This warranty covers original component parts,

including the electrical starter.

100. 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.

101. 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 electrical starter, at no cost to owners and/or lessees of the Affected Class Vehicles.

102. 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 Electrical Starter Defect and its corresponding safety risks from the Plaintiff and Class Members in order to shift the expense of repair or replacement of the Affected Class Vehicles' components, including the electrical starters, to the Plaintiff and Class Members.

103. Under the express warranties provided to the Plaintiff and Class Members, the Defendants promised to repair or replace covered components arising out of defects in materials and/or workmanship, including the electrical starter, 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 Electrical Starter Defect.

104. Class Members experienced the existence of the Electrical Starter Defect within the warranty periods but had no knowledge of the existence of the Electrical Starter 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 electrical starter, and failed to provide a suitable repair or replacement of electrical starters free of charge and/or within a reasonable time.

105. The failure to provide a suitable repair or replacement of the defective electrical starter constitutes futility of the warranty.

106. In addition, the defective electrical starter is substantially certain to prematurely fail or malfunction preventing the engine from starting in the Affected Class Vehicles.

107. 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.

108. The Defendants have not suitably repaired or replaced the defective electrical starter for the Plaintiff and Class Members despite the existence of the Electrical Starter Defect in Affected Class Vehicles at the time of sale and/or lease.

109. 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 electrical starter, in their workmanship, and manufacture.

110. 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 electrical starter, did not perform as warranted.

111. 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.

112. The Defendants were provided notice of the Electrical Starter 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 Electrical Starter Defect and have failed to provide a suitable repair or replacement of the defective electrical starter free of charge within a reasonable time.

113. 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 Electrical Starter 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 Electrical Starter Defect posed a safety risk.

114. 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.

115. 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.

116. Class Members experienced the existence of the Electrical Starter Defect within the warranty periods but had no knowledge of the existence of the Electrical Starter 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 a defective electrical starter, and/or wrongfully transferred the costs of repair or replacement of the defective electrical starter to the Plaintiff and Class Members.

117. As a result of the Electrical Starter 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.

118. The Plaintiff and Class Members could not have reasonably discovered the Electrical

Starter Defect.

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

120. 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

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

122. 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.

123. The Defendants are and were at all relevant times a seller with respect to the Affected Class Vehicles equipped with defective electrical starters. The Defendants directly sold and marketed vehicles equipped with defective electrical starters 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 equipped with the defective electrical starter would and did pass unchanged from the authorized dealers to Class Members, without modification.

124. The electrical starter equipped in the Affected Class Vehicles is inherently defective as it is susceptible to failure and overheating due to friction and excessive heat caused by inadvertent and continuous cranking, which can ignite the surrounding acoustic shielding, posing a real,

substantial and imminent risk of harm from fire and related damage.

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

126. 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.

127. 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 Electrical Starter 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.

128. 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.

129. 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.

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

131. As a result of the Electrical Starter 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.

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

133. 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.

134. 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 Electrical Starter 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 were equipped with a defective electrical starter, as it is susceptible to failure and overheating due to friction and excessive heat caused by inadvertent and continuous cranking, which can ignite the surrounding acoustic shielding, creating a real, substantial and imminent risk of harm from fire and related damage.

135. 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.

136. 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

137. 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.

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

139. 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*.

140. 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*.

141. 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*.

142. 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*.

143. 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.

144. By failing to disclose and actively concealing the Electrical Starter 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 were equipped with a defective electrical starter, as it is susceptible to failure and overheating due to friction and excessive heat caused by inadvertent and continuous cranking, which can ignite the surrounding

acoustic shielding, posing a real, substantial and imminent risk of harm from fire and related damage. The Defendants made misleading statements or omissions concerning the Electrical Starter Defect, but yet failed to adequately warn consumers.

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

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

147. In particular, the Defendants engaged in a pattern of unfair or deceptive acts or practices in failing to disclose to the Plaintiff and Class Members that the Affected Class Vehicles were equipped with a defective electrical starter, as it is susceptible to failure and overheating due to friction and excessive heat caused by inadvertent and continuous cranking, which can ignite the surrounding acoustic shielding, posing a real, substantial and imminent risk of harm from fire and related damage. 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 equipped with a defective electrical starter 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 Electrical Starter Defect;
- (c) failing to disclose at the time of purchase that the Affected Class Vehicles, including the electrical starter, 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 Electrical Starter 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 fact that the electrical starter was defective, even though the Defendants knew about the Electrical Starter Defect; and
- (f) representing that the Electrical Starter Defect in the Affected Class Vehicles would be covered under its warranty program.

148. 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 defective electrical starter is susceptible to failure and overheating due to friction and excessive heat caused by inadvertent and continuous cranking, which can ignite the surrounding acoustic shielding, posing a real, substantial and imminent risk of harm from fire and related damage.

149. By failing to disclose and actively concealing the Electrical Starter 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*.

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

- (a) publishing Owners' Manuals that made materially misleading omissions as to claims of safety, reliability and durability but which uniformly omitted any warning to consumers that the Affected Class Vehicles were equipped with a defective electrical starter;
- (b) advertisements which uniformly omitted any information about the Electrical Starter Defect, and which misled consumers into believing that the Affected Class Vehicles' electrical starters, and other related component parts would function properly; and

- (c) emphasizing and extolling in brochures and advertisements that the Affected Class Vehicles were safe, reliable and durable.

151. 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 safety, reliability and durability, when in fact they had not.

152. In purchasing the Affected Class Vehicles, Class Members in British Columbia were deceived by the Defendants' failure to disclose their exclusive knowledge of the Electrical Starter Defect and/or its representations made as to the safety, reliability and durability of the Affected Class Vehicles in their sales brochure materials, manuals, press releases and/or websites.

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

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

155. Class Members had no way of knowing that the Defendants' representations were false, misleading and incomplete or knowing the true nature of the Electrical Starter 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.

156. 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*.

157. The Defendants owed Class Members a duty to disclose the truth about the Electrical Starter Defect as it created serious safety risks and the Defendants;

- (a) possessed exclusive knowledge of the Electrical Starter 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 were equipped with defective electrical starters.

158. The Defendants had a duty to disclose that the electrical starter equipped in the Affected Class Vehicles was fundamentally flawed as described herein because it created a serious safety risk, and Class Members relied on the Defendants' material misrepresentations and omissions regarding the Affected Class Vehicles.

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

160. 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 Electrical Starter 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 Electrical Starter Defect.

161. The Defendants' violations cause continuing injuries to Class Members. As such, the Defendants' unlawful acts and practices complained of herein affect the public interest.

162. The Defendants knew, or ought to have known, that the Electrical Starter Defect materially compromised the safety, reliability and durability of the Affected Class Vehicles.

163. 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 Electrical Starter Defect, they would not have purchased the Affected Class Vehicles or would not have paid the prices they paid.

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

165. 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*.

166. 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 Electrical Starter Defect, as well as their misrepresentations concerning the safety, reliability and durability of the Affected Class Vehicles.

v. Breach of the *Competition Act*

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

168. By making representations to the public as to the safety, reliability and durability 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.

169. 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.

170. 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 Electrical Starter Defect from the Plaintiff and Class Members, along with concealing the safety risks, costs, and monetary damage resulting from the Electrical Starter Defect. The Defendants should have disclosed this information because they were in a superior position to know the true facts related to the Electrical Starter Defect and the Plaintiff and Class Members could not reasonably be expected to learn or discover the true facts related to the Electrical Starter Defect.

171. The Electrical Starter Defect constitutes a serious safety issue. The Defendants knew that the Affected Class Vehicles were equipped with a defective electrical starter that is susceptible to failure and overheating due to friction and excessive heat caused by inadvertent and continuous cranking, which can ignite surrounding acoustic shielding and adjacent materials, posing a real, substantial, and imminent risk of fire and related damage. This safety risk triggered the Defendants' duty to disclose the defect to consumers.

172. These acts and practices have deceived the Plaintiff and Class Members. In failing to disclose the Electrical Starter 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.

173. Further, the Plaintiff and Class Members relied upon the Defendants' misrepresentations as to safety, reliability and durability 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.

174. 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

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

176. 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.

177. The Defendants knew (at the time of sale and thereafter) as a result of pre-production testing that Affected Class Vehicles incorporated the Electrical Starter Defect, concealed the Electrical Starter Defect and never intended to adequately repair or replace the defective electrical starters during the warranty periods. To date, the Defendants have not provided Class Members with an adequate remedy or fix for the Electrical Starter Defect.

178. The Defendants owed a duty to disclose the Electrical Starter Defect and its corresponding safety risks to the Plaintiff and Class Members because the Defendants possessed superior and exclusive knowledge concerning the Electrical Starter Defect. The Defendants had a duty to disclose any information relating to the safety, reliability and durability of the Affected Class Vehicles, because they consistently marketed Affected Class Vehicles as safe, reliable and

durable.

179. As the Defendants made representations to the public concerning the safety, reliability and durability of the Affected Class Vehicles, they were under a duty to disclose the omitted facts as to the Electrical Starter Defect. Rather than disclose the Electrical Starter 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 Electrical Starter 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 defective electrical starter with a non-defective electrical starter.

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

181. The Defendants intended to conceal the material facts concerning the Electrical Starter Defect with the intent to deceive. This intent was manifested by Defendants concealing the Electrical Starter Defect from prospective purchasers, owners and/or lessees during the warranty period by delaying the issuance of a recall and/or instituting a recall which is inadequate to provide a remedy and/or fix for the Electrical Starter Defect. The Defendants benefitted by concealing the Electrical Starter Defect in that they could charge a higher price premium by concealing the information and were therefore motivated to do so.

182. 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 Electrical Starter 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 Electrical Starter 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 Electrical Starter Defect.

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

184. 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 defective electrical starter.

185. As a result of the Electrical Starter 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

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

187. 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 Electrical Starter Defect.

188. 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 electrical starter equipped in the Affected Class Vehicles.

189. 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.

190. Further, due to Defendants' knowledge and active concealment of the Electrical Starter 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.

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

192. The Defendants were under a continuous duty to disclose to the Plaintiff and Class Members the existence of the Electrical Starter Defect in the Affected Class Vehicles.

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

194. 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:

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Place of trial:

Vancouver, BC, Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: December 26, 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, equipped with defective electrical starters that are increasingly susceptible to premature failure. In particular, the electrical starter equipped in the affected class vehicles suffer from a design and/or manufacturing defect whereby the pinion gear in the electrical starters either fails to extend to engage the ring gear on the flywheel, or the pinion gear extends but has worn teeth that prevent proper engagement and rotation of the flywheel, preventing the engine from starting.

As a result of the electrical starter defect, repeated and continuous cranking of the electrical starter can cause internal vehicle electrical components to overheat, due to friction and excessive heat, potentially combusting or igniting the surrounding acoustic shielding, thereby posing a real, substantial, and imminent risk of harm, injury, and/or death to vehicle occupants as a result of fire and related damage.

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