



Court File No. **VLC-S-S-205494**  
NO. \_\_\_\_\_  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

[REDACTED]

**PLAINTIFF**

**AND:**

DENSO CORPORATION,  
DENSO INTERNATIONAL AMERICA, INC.,  
HONDA MOTOR COMPANY, LTD.,  
HONDA OF AMERICA, MFG., INC.,  
TOYOTA MOTOR CORPORATION,  
TOYOTA MOTOR MANUFACTURING CANADA INC.,  
TOYOTA MOTOR ENGINEERING & MANUFACTURING  
NORTH AMERICA INC.,  
TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC.,  
TOYOTA MOTOR MANUFACTURING, INDIANA, INC.,  
TOYOTA MOTOR MANUFACTURING, MISSISSIPPI, INC. and  
TOYOTA MOTOR MANUFACTURING, TEXAS, 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. Introduction**

1. The within proposed class proceeding involves a defective low-pressure fuel pump designed, engineered, tested, validated, manufactured, assembled and/or supplied by the Defendants, DENSO CORPORATION ("DENSO") and/or DENSO INTERNATIONAL AMERICA, INC. ("DENSO AMERICA"), for certain Affected Class Vehicles, as defined herein, which were designed, manufactured, assembled, marketed, distributed, leased and/or sold by the Defendants, HONDA MOTOR COMPANY, LTD. ("HMC"), HONDA OF

AMERICA, MFG., INC. ("HAM"), TOYOTA MOTOR CORPORATION ("TMC"), TOYOTA MOTOR MANUFACTURING CANADA INC. ("TMMC"), TOYOTA MOTOR ENGINEERING & MANUFACTURING NORTH AMERICA INC. ("TMEENA"), TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC. ("TMMK"), TOYOTA MOTOR MANUFACTURING, INDIANA, INC. ("TMMI"), TOYOTA MOTOR MANUFACTURING, MISSISSIPPI, INC. ("TMMMS") and TOYOTA MOTOR MANUFACTURING, TEXAS, INC. ("TMMTX"). The fuel pump, located within the fuel tank of the Affected Class Vehicles, has a low-density plastic impeller that is subject to cracking which absorbs excessive fuel and consequently deforms causing the impeller to make contact with the fuel pump body so as to make the fuel pump inoperable ("Fuel Pump Defect"), resulting in rough engine running, engines that fail to start, engines that stall at high speeds and/or a sudden loss of engine power while driving, all of which increases the likelihood of an automobile accident and poses an unreasonable risk of bodily injury or harm to vehicle occupants.

2. "Affected Class Vehicles" refers to the following model year Honda and Toyota vehicles designed, manufactured, assembled, tested, marketed, distributed, leased, sold and/or placed into the stream of commerce by the Defendants, HMC, HAM, TMC, TMMC, TMEENA, TMMK, TMMI, TMMMS and/or TMMTX, in Canada, including the Province of British Columbia, equipped with the defective Denso made low-pressure fuel pump:

Make	Model	Model Year(s)	Defendant Vehicle Manufacturer
ACURA	MDX	2016 2017 2018	HAM
ACURA	TLX	2015-2019	HMC
HONDA	ACCORD	2015-2017	HMC
LEXUS	ES 350	2018 2019	TMC/TMMK
LEXUS	GS 350	2013 2014 2015 2018 2019	TMC
LEXUS	GX 460	2014 2015	TMC
LEXUS	S 200T	2017	TMC
LEXUS	S 300	2018 2019	TMC
LEXUS	S 350	2014 2015 2018 2019	TMC
LEXUS	S F	2014	TMC
LEXUS	LC 500	2018 2019	TMC
LEXUS	LC 500H	2018 2019	TMC
LEXUS	S 460	2014 2015	TMC
LEXUS	S 500	2018 2019	TMC
LEXUS	S 500H	2018	TMC

LEXUS	LX 570	2014 2015	TMC
LEXUS	NX 200T	2015	TMC
LEXUS	RC 300	2018 2019	TMC
LEXUS	RC 350	2015 2018 2019	TMC
LEXUS	RX 350	2017 2018 2019	TMC/TMMC
TOYOTA	4RUNNER	2014 2015	TMC
TOYOTA	AVALON	2019	TMMK
TOYOTA	CAMRY	2018 2019	TMMK
TOYOTA	COROLLA	2018 2019	TMMC/TMMMS
TOYOTA	FJ CRUISER	2014	TMC
TOYOTA	HIGHLANDER	2018 2019	TMMI
TOYOTA	SEQUOIA	2018 2019	TMMI
TOYOTA	SIENNA	2017 2018 2019	TMMI
TOYOTA	TACOMA	2018 2019	TMMTX
TOYOTA	TUNDRA	2018 2019	TMMTX

3. On April 27, 2020, the Defendants, DENSO and/or DENSO AMERICA, submitted a Part 573 Safety Recall Report (the "Denso Recall Report") to the United States National Highway Traffic Safety Administration ("NHTSA") voluntarily recalling approximately 2,020,000 defective low-pressure fuel pumps ("Denso Recall") that they designed, engineered, tested, validated, manufactured, assembled and/or supplied to vehicle manufacturers, including, *inter alia*, the Defendants, HMC, HAM, TMC, TMMC, TMMNA, TMMK, TMMI, TMMMS and/or TMMTX, as they posed a serious safety risk to vehicle occupants. In the Denso Recall Report, the Defendants, DENSO and/or DENSO AMERICA, acknowledged and/or admitted that their low-pressure fuel pump is dangerously defective as it could fail and cause the Affected Class Vehicles to unexpectedly stall, lose engine power and/or shut down while in operation. The Defendants, DENSO and/or DENSO AMERICA, described the defect and its cause as follows:

An impeller in some low pressure fuel pumps may become deformed under certain conditions which could render the fuel pump inoperable...

Under current knowledge, if an impeller is manufactured with a lower density, and contains a lower surface strength or is exposed to production solvent drying for a longer period of time, higher levels of surface cracking may occur which, when excessive fuel absorption occurs, may result in

impeller deformation. Geographic location and vehicle applications influence the potential for deformation resulting in fuel pump inoperability.

4. The Defendants, DENSO and/or DENSO AMERICA, acknowledged and/or admitted that the Fuel Pump Defect can cause rough engine running, engines that fail to start, stall at low speeds and increase the likelihood of an automobile accident while driving at high speeds, describing the safety risks it poses to vehicle occupants as follows:

If an impeller deforms to a point that creates sufficient interference with the fuel pump body, the fuel pump becomes inoperative. According to vehicle manufacturer's system evaluation, an inoperative fuel pump may result in the illumination of the check engine light and/or master warning indicators, rough engine running, engine no start and/or vehicle stall while driving at low speed, and, in rare instances, a vehicle could stall could occur while driving at higher speeds, increasing the risk of a crash.

5. In the Denso Recall Report, the Defendants, DENSO and/or DENSO AMERICA, disclosed that a number of vehicle manufacturers including, *inter alia*, the Defendants, HMC, HAM, TMC, TMMC, TMMNA, TMMK, TMMI, TMMMS and/or TMMTX, collectively purchased over two million of their self-described "defective/noncompliant equipment for possible use or installation in new motor vehicles or new items of motor vehicle equipment". All of the Affected Class Vehicles equipped with the Fuel Pump Defect gave rise to component part and vehicle manufacturer recalls.
6. The Denso Recall is an admission that the Fuel Pump Defect in the Affected Class Vehicles presents an immediate and unreasonable risk of serious bodily injury or harm when the fuel pump is used in its intended, foreseeable and ordinary purpose.
7. The Fuel Pump Defect in the Affected Class Vehicles exposes vehicle occupants and others to extreme danger. A vehicle that stalls, loses engine power and/or suffers engine shutdown is at heightened risk for collision because it exposes drivers to react to remove themselves from danger, typically by exiting or attempting to exit the road. Drivers stranded

on the side of the road experience a heightened risk of danger, whether it is from oncoming vehicles or weather elements.

8. Fuel pump failure can also prevent the driver of an Affected Class Vehicle from accelerating at the necessary and anticipated speed. Diminished acceleration ability creates unexpected hazards, startling drivers of the Affected Class Vehicles and other drivers in their proximity. Once an Affected Class Vehicle fuel pump fails, the vehicle becomes totally inoperable and will not start.
9. The Defendants collectively designed, engineered, tested, validated, manufactured and/or placed in the stream of commerce in Canada, including the Province of British Columbia, the low-pressure fuel pump with the defective impeller as identified in the Denso Recall. Further, at all material times to the cause of action herein, the Defendants collaborated and continue to collaborate regarding product quality as to the low-pressure fuel pump. Through such collaborations, each Defendant knew, or should have known, or was reckless in not knowing, what the other knew about the Fuel Pump Defect or the fuel pump in general.
10. While the Defendants, HMC, HAM, TMC, TMMC, TMEANA, TMMK, TMMI, TMMMS and/or TMMTX knew, or should have known, or were reckless in not knowing, about the Fuel Pump Defect and the associated dangers, they designed, manufactured, assembled, marketed, distributed, leased, sold and/or warranted the Affected Class Vehicles without disclosing to consumers that the Affected Class Vehicles were inherently defective, dangerous and created a serious risk for bodily injury or harm. The Defendants, HMC, HAM, TMC, TMMC, TMEANA, TMMK, TMMI, TMMMS and/or TMMTX, failed to disclose what they knew about the Fuel Pump Defect to prospective purchasers and/or lessees, and existing owners and/or lessees of the Affected Class Vehicles.
11. The Defendants, HMC and/or HAM, knew that the Defendant, DENSO's and/or DENSO AMERICA's, fuel pump in certain of their Acura and Accord model year vehicles was defective because on January 29, 2019, the Defendants, HMC and/or HAM, recalled approximately 437,032 of such vehicles in the United States for a defect in the Denso made

low-pressure fuel pump that can cause mechanical resistance, which can result in hesitated vehicle acceleration or stalling ("Honda Recall"). In particular, the Defendants, HMC and/or HAM, acknowledged and/or admitted knowing of the Fuel Pump Defect as early as 2016. Although the Defendants, HMC and/or HAM, knew that the low-pressure Denso fuel pump in certain of their Acura and Accord model year vehicles was defective, they misdiagnosed the condition and failed to provide an adequate repair or fix. Rather than replacing the Defendant, DENSO's and/or DENSO AMERICA's, defective fuel pump with a properly functioning or improved fuel pump, the Defendants, HMC and/or HAM, issued a software upgrade as a temporary remedy for the Fuel Pump Defect if and when the fuel pump failed. As a result, owners and/or lessees whose vehicles were included in the Honda Recall did not receive a sufficient fix that actually remedied the Fuel Pump Defect in those vehicles. No such Honda Recall was initiated in Canada.

12. Similarly, on or about January 13, 2020, the Defendants, TMC, TMMC, TMEANA, TMMK, TMMI, TMMMS and/or TMMTX, submitted a Part 573 Safety Recall Report to NHTSA voluntarily recalling 695,541 certain model year Toyota and Lexus vehicles equipped with the Fuel Pump Defect ("Toyota Recall"), which included 46,733 Toyota and Lexus vehicles in Canada. At all material times to the cause of action herein, the Defendants, TMC, TMMC, TMEANA, TMMK, TMMI, TMMMS and/or TMMTX, knew about the Fuel Pump Defect and the associated dangers thereof but failed to disclose such to prospective purchasers and/or lessees, and existing owners and/or lessees of such vehicles.
13. On or about March 4, 2020, the Defendants, TMC, TMMC, TMEANA, TMMK, TMMI, TMMMS and/or TMMTX, expanded their North American recall to now include two million certain model year Toyota and Lexus vehicles equipped with the Fuel Pump Defect. The Toyota Recall included a Transport Canada recall of 111,835 Toyota and Lexus vehicles in Canada.
14. The Defendants, TMC, TMMC, TMEANA, TMMK, TMMI, TMMMS and/or TMMTX, have yet to identify a remedy for the Fuel Pump Defect, stating only that known owners of the affected Toyota and Lexus vehicles would be notified by mail to return their vehicles to a Toyota or Lexus dealer, who would replace the fuel pump assembly with an improved one.

15. Both the Honda Recall and Toyota Recall were and are inadequate as they failed to accurately diagnose and remedy the Fuel Pump Defect, failed to include all Honda and Toyota vehicles equipped with the Denso low-pressure fuel pump and failed to recommend that owners and/or lessees stop driving their vehicles until they are repaired or fixed.
16. As a result of the Defendant, HMC's, HAM's, TMC's, TMMC's, TMEANA's, TMMK's, TMMI's, TMMMS' and/or TMMTX's, actions and/or inactions, owners and/or lessees of the Affected Class Vehicles have been and still are unknowingly driving potentially dangerous vehicles while the Defendants knowingly exposed the Plaintiff and proposed class members to the risk of serious bodily injury or harm.
17. Further, with or without a viable remedy for the Fuel Pump Defect, the Denso Recall has decreased the intrinsic and resale value of the Affected Class Vehicles. As a result thereof, the Plaintiff and proposed class members have suffered damages.
18. At all material times to the cause of action herein, the Defendant, HMC's, HAM's, TMC's, TMMC's, TMEANA's, TMMK's, TMMI's, TMMMS's and/or TMMTX's, marketing of the Affected Class Vehicles was and is replete with assurances about their safety and dependability. A vehicle that can suddenly stall, lose engine power and/or shutdown during normal operating conditions is inherently unsafe and renders the Defendant, HMC's, HAM's, TMC's, TMMC's, TMEANA's, TMMK's, TMMI's, TMMMS' and/or TMMTX's, marketing of the Affected Class Vehicles untrue and materially misleading. As a result thereof, the Plaintiff and proposed class members have suffered damages.
19. The Defendants, DENSO and/or DENSO AMERICA, are jointly and severally liable as they together with the Defendants, HMC, HAM, TMC, TMMC, TMEANA, TMMK, TMMI, TMMMS and/or TMMTX, designed, engineered, tested, validated, manufactured and/or placed in the stream of commerce in Canada, including the Province of British Columbia, the defective fuel pump in the Affected Class Vehicles.
20. The Plaintiff brings this proposed class proceeding on behalf of himself and all others similarly situated who own, owned, lease and/or leased an Affected Class Vehicle equipped



with the defective Denso low-pressure fuel pump.

**B. The Parties**

**The Representative Plaintiff**

21. The Plaintiff, [REDACTED]
22. In or about August 2018 the Plaintiff leased a new 2018 Honda Acura MDX ("Acura MDX") from Burrard Acura, an authorized Honda Acura dealership, in Vancouver, British Columbia, Canada. The Plaintiff's Acura MDX is included in the Affected Class Vehicles equipped with the defective Denso low-pressure fuel pump.
23. The Plaintiff's Acura MDX was designed, manufactured and/or assembled by the Defendant, HAM, and marketed, promoted, advertised, distributed, leased and/or sold in Canada by the Defendants, HMC and/or HAM, and their authorized sale representatives, agents and/or retail dealers.
24. Prior to leasing his Acura MDX, the Plaintiff interacted with a sales representative of Burrard Acura who failed to disclose the Fuel Pump Defect.
25. Through his exposure and interaction with Burrard Acura, the Plaintiff was aware of the Defendant, HMC's and/or HAM's, uniform and pervasive marketing message of safety and dependability, which was a primary reason why he leased his Acura MDX. However, despite touting the safety and dependability of the Acura MDX, at no point did the Defendants, HMC and/or HAM, disclose to the Plaintiff the Fuel Pump Defect.
26. The Plaintiff did not receive the benefit of his bargain. He leased a vehicle of lesser standard, grade, and quality than represented, and did not receive a vehicle that met ordinary and reasonable consumer expectations regarding safe and dependable operation. The Fuel Pump Defect has significantly diminished the value of Plaintiff's Acura MDX.

27. The Plaintiff would not have leased his Acura MDX had he known about the Fuel Pump Defect or would have paid less to do so. To date, the Plaintiff has not received any recall notices for his Acura MDX from the Defendants, HMC and/or HAM.

**The Defendants**

28. The Defendant, DENSO, is a company duly incorporated pursuant to the laws of Japan and has an address for service at 1-1, Showa-cho, Kariya, Aichi 448-9661, Japan.
29. The Defendant, DENSO AMERICA, is a company duly incorporated pursuant to the laws of the State of Michigan, one of the United States of America, and has a registered agent, CSC-Lawyers Incorporating Service (Company), at 601 Abbot Road, East Lansing, Michigan, 48823, United States of America.
30. The Defendant, HMC, is a company duly incorporated pursuant to the laws of Japan and has an address for service at 1-1, 2-Chome, Minami-Aoyama, Tokyo, 107-8556, Japan.
31. The Defendant, HAM, is a company duly incorporated pursuant to the laws of the State of Ohio, one of the United States of America, and has a registered agent, Statutory Agent Corporation, at 52 East Gay Street, Columbus, Ohio, 43215, United States of America.
32. The Defendant, TMC, is a company duly incorporated pursuant to the laws of Japan and has an address for service at 1 Toyota-Cho, Toyota City, Aichi Prefecture, 471-85712, Japan.
33. The Defendant, TMMC, is a company duly incorporated pursuant to the laws of Canada, under number 201602-8, and has a registered office at 1055 Fountain Street North, Cambridge, Ontario, N3H 5K2, Canada.
34. The Defendant, TMEENA, is a company duly incorporated pursuant to the laws of the State of Kentucky, one of the United States of America, and has a registered agent, CT Corporation System, at 306 West Main Street, Suite 512, Frankfort, Kentucky, 40601,

**United States of America.**

35. The Defendant, TMMK, is a company duly incorporated pursuant to the laws of the State of Kentucky, one of the United States of America, and has a registered agent, CT Corporation System, at 306 West Main Street, Suite 512, Frankfort, Kentucky, 40601, United States of America.
36. The Defendant, TMMI, is a company duly incorporated pursuant to the laws of the State of Indiana, one of the United States of America, and has a registered agent, CT Corporation System, at 334 North Senate Avenue, Indianapolis, Indiana, 46204, United States of America.
37. The Defendant, TMMMS, is a company duly incorporated pursuant to the laws of the State of Mississippi, one of the United States of America, and has a registered agent, CT Corporation System, at Suite 101, 645 Lakeland East Drive, Flowood, Mississippi, 39232, United States of America.
38. The Defendant, TMMTX, is a company duly incorporated pursuant to the laws of the State of Texas, one of the United States of America, and has a registered agent, CT Corporation System, at Suite 900, 1999 Bryan Street, Dallas, Texas, 75201, United States of America.
39. At all material times to the cause of action herein, the Defendant, DENSO, was and is a global automotive components and/or parts manufacturer and supplier, including the Denso low-pressure fuel pump, for the world's major vehicle manufacturers including, *inter alia*, the Defendants, HMC, HAM, TMC, TMMC, TMMNA, TMMK, TMMI, TMMMS and/or TMMTX. The Defendant, DENSO, is one of the largest Tier 1 original equipment manufacturers.
40. At all material times to the cause of action herein, the Defendant, DENSO AMERICA, was and is a wholly owned American subsidiary of the Defendant, DENSO, and designs, manufactures, assembles and/or supplies automotive components and/or parts including the Denso low-pressure fuel pump to vehicle manufacturers including, *inter alia*, the

Defendants, HMC, HAM, TMC, TMMC, TMEMNA, TMMK, TMMI, TMMMS and/or TMMTX.

41. At all material times to the cause of action herein, the Defendant, HMC, designs, manufactures, assembles, markets, advertises, distributes, leases and/or sells certain Affected Class Vehicles as averred to in paragraph 2 herein directly and/or indirectly through related subsidiaries and/or operating units including the Defendant, HAM, independent retail dealers and authorized dealerships in North America.
42. At all material times to the cause of action herein, the Defendant, HAM, was and is a wholly owned American subsidiary of the Defendant, HMC, and designs, manufactures and/or assembles Honda vehicles including certain Affected Class Vehicles as averred to in paragraph 2 herein, equipped with the defective Denso low-pressure fuel pump, in automobile plants located, *inter alia*, in the State of Ohio, United States of America, for distribution, lease and/or sale in the United States of America and Canada, including the Province of British Columbia.
43. At all material times to the cause of action herein, the Defendant, TMC, designs, manufactures, assembles, markets, advertises, distributes, leases and/or sells, certain Affected Class Vehicles as averred to in paragraph 2 herein directly and/or indirectly through related subsidiaries and/or operating units including the Defendants, TMMC, TMEMNA, TMMK, TMMI, TMMMS and/or TMMTX, independent retail dealers and authorized dealerships in North America.
44. At all material times to the cause of action herein, the Defendant, TMMC, was and is a wholly owned Canadian subsidiary of the Defendant, TMC, and designs, manufactures and/or assembles Toyota vehicles including certain Affected Class Vehicles as averred to in paragraph 2 herein, equipped with the defective Denso low-pressure fuel pump, at an automobile plant located in the Province of Ontario for distribution, lease and/or sale in Canada, including the Province of British Columbia.
45. At all material times to the cause of action herein, the Defendant, TMEMNA, was and is a wholly owned American subsidiary of the Defendant, TMC, and is responsible for

engineering, design, development, research and/or manufacturing activities of Toyota vehicles including certain Affected Class Vehicles as averred to in paragraph 2 herein, equipped with the defective Denso low-pressure fuel pump, for distribution, lease and/or sale in the United States of America and Canada, including the Province of British Columbia.

46. At all material times to the cause of action herein, the Defendant, TMMK, was and is a wholly owned American subsidiary of the Defendant, TMC, and designs, manufactures and/or assembles Toyota vehicles including certain Affected Class Vehicles as averred to in paragraph 2 herein, equipped with the defective Denso low-pressure fuel pump, at an automobile plant located in the State of Kentucky, United States of America, for distribution, lease and/or sale in the United States of America and Canada, including the Province of British Columbia.
47. At all material times to the cause of action herein, the Defendant, TMMI, was and is a wholly owned American subsidiary of the Defendant, TMC, and designs, manufactures and/or assembles Toyota vehicles including certain Affected Class Vehicles as averred to in paragraph 2 herein, equipped with the defective Denso low-pressure fuel pump, at an automobile plant located in the State of Indiana, United States of America, for distribution, lease and/or sale in the United States of America and Canada, including the Province of British Columbia.
48. At all material times to the cause of action herein, the Defendant, TMMMS, was and is a wholly owned American subsidiary of the Defendant, TMC, and designs, manufactures and/or assembles Toyota vehicles including certain Affected Class Vehicles as averred to in paragraph 2 herein, equipped with the defective Denso low-pressure fuel pump, at an automobile plant located in the State of Mississippi, United States of America, for distribution, lease and/or sale in the United States of America and Canada, including the Province of British Columbia.
49. At all material times to the cause of action herein, the Defendant, TMMTX, was and is a wholly owned American subsidiary of the Defendant, TMC, and designs, manufactures

and/or assembles Toyota vehicles including certain Affected Class Vehicles as averred to in paragraph 2 herein, equipped with the defective Denso low-pressure fuel pump, at an automobile plant located in the State of Texas, United States of America, for distribution, lease and/or sale in the United States of America and Canada, including the Province of British Columbia.

50. At all material times to the cause of action herein, the Defendants, DENSO and DENSO AMERICA, shared the common purpose of, *inter alia*, designing, engineering, testing, validating, manufacturing, assembling and/or supplying automotive components and/or parts, including the defective Denso low-pressure fuel pump, to vehicle manufacturers including, *inter alia*, the Defendants, HMC, HAM, TMC, TMMC, TMEANA, TMMK, TMMI, TMMMS and/or TMMTX. Further, the business and interests of the Defendants, DENSO and DENSO AMERICA, are interwoven with that of the other as to the Fuel Pump Defect in certain Affected Class Vehicles as averred to in paragraph 2 herein, such that each is the agent of the other.
51. Hereinafter, the Defendants, DENSO and DENSO AMERICA, are collectively referred to as the Defendant, "DENSO".
52. At all material times to the cause of action herein, the Defendants, HMC and HAM, shared the common purpose of, *inter alia*, designing, manufacturing, assembling, marketing, distributing, supplying, leasing and/or selling Honda vehicles including certain Affected Class Vehicles as averred to in paragraph 2 herein, containing the Fuel Pump Defect in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendants, HMC and HAM, are interwoven with that of the other as to the Fuel Pump Defect in certain Affected Class Vehicles as averred to in paragraph 2 herein, such that each is the agent of the other.
53. Hereinafter, the Defendants, HMC and HAM, are collectively referred to as the Defendant, "HONDA".
54. At all material times to the cause of action herein, the Defendants, TMC, TMMC, TMEANA,



TMMK, TMMI, TMMMS and/or TMMTX, shared the common purpose of, *inter alia*, designing, manufacturing, assembling, marketing, distributing, supplying, leasing and/or selling Toyota vehicles including certain Affected Class Vehicles as averred to in paragraph 2 herein, containing the Fuel Pump Defect in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendants, TMC, TMMC, TMMNA, TMMK, TMMI, TMMMS and/or TMMTX, are interwoven with that of the other as to the Fuel Pump Defect in certain Affected Class Vehicles as averred to in paragraph 2 herein, such that each is the agent of the other.

55. Hereinafter, the Defendants, TMC, TMMC, TMMNA, TMMK, TMMI, TMMMS and/or TMMTX, are collectively referred to as the Defendant, "TOYOTA".

**C. The Class**

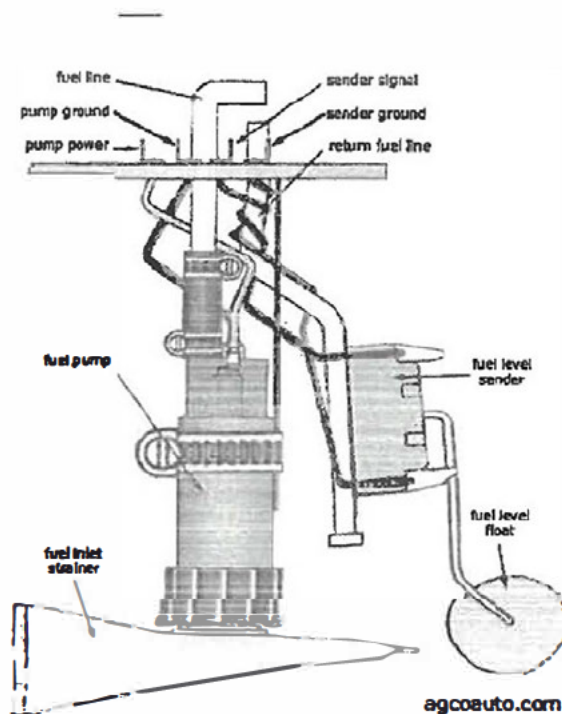
56. This action is brought on behalf of members of a class consisting of the Plaintiff, all British Columbia residents and all other persons resident in Canada, excluding the Province of Quebec, who own, owned, lease and/or leased an Affected Class Vehicle designed, manufactured, assembled, marketed, advertised, distributed, leased and/or sold by the Defendants, HONDA and TOYOTA, in Canada equipped with a defective low-pressure fuel pump designed, engineered, tested, validated, manufactured, assembled and/or supplied by the Defendant, DENSO, ("Class Members"), and who claim to have suffered damages as a result of the defective low-pressure fuel pump in the Affected Class Vehicles, or such other class definition or class period as the Court may ultimately decide on the application for certification.

**D. Factual Allegations**

**i. The Denso Low-Pressure Fuel Pump**

57. The Affected Class Vehicles are equipped with a Denso made low-pressure fuel pump (the "Fuel Pump").

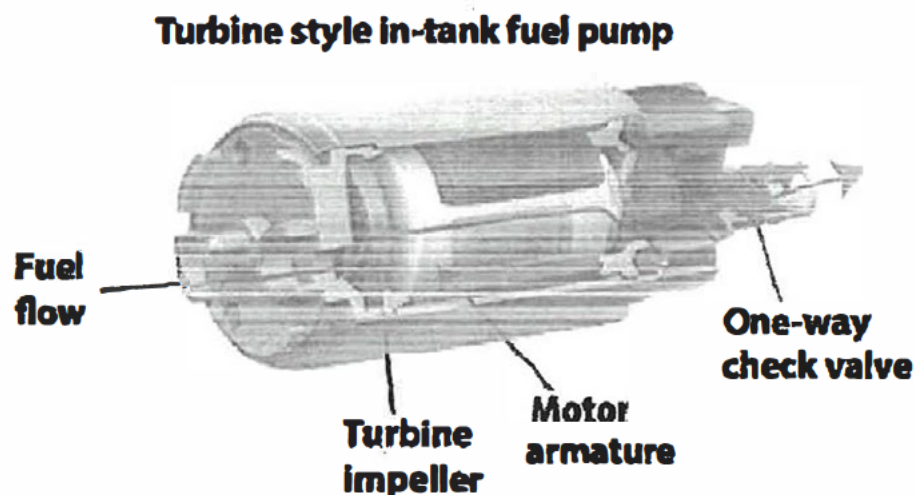
58. All Affected Class Vehicles are equipped with the same or substantially similar defective Fuel Pump.
59. The Fuel Pump assembly is mounted inside of the vehicle fuel tank. The Fuel Pump assembly consists of a fuel inlet strainer at one end and a fuel output line at the other. At the heart of the Fuel Pump assembly is an electric motor with a plastic impeller attached to a rotating shaft. Protruding from the side of the Fuel Pump assembly is a fuel level float and a fuel level sender. The figure below illustrates the parts of the Fuel Pump assembly.



60. As the electric motor rotates, the plastic impeller spins generating negative pressure. The negative pressure pulls fuel into the pump housing while it passes through the electric motor assembly and exits through the output, into the fuel line and forward to the fuel filter.



After exiting the fuel filter, the fuel flow is accelerated via a high pressure pump which delivers pressurized fuel to injectors mounted in the engine. The figure below illustrates this sequence:



61. At all material times to the cause of action herein, by design and/or manufacture the Fuel Pump assembly and all of its components are exposed to gasoline within the vehicle gas tank. Fuel pumps are designed to last between 100,000 to 150,000 miles (160,934 to 241,401 kilometers) or longer.

ii. The Fuel Pump Defect

62. As described herein, the Fuel Pump within the Affected Class Vehicles suffers from a fundamental defect causing it to prematurely fail. Based on the Defendant, DENSO's, own acknowledgment and/or admission, the failure results from a defectively designed and/or manufactured plastic impeller in the Fuel Pump.
63. The Defendant, DENSO's, HONDA's and/or TOYOTA's, goal in designing a fuel pump must be to design one that operates safely for the life of the vehicle. The Fuel Pump assembly in the Affected Class Vehicles was underdesigned. In particular, as the Defendant, DENSO,

acknowledged, and/or admitted, in the Denso Recall Report, “[i]f an impeller deforms to a point that creates interference with the fuel pump body, the fuel pump becomes inoperative”.

64. Plastics absorb liquids typically. However, the degree of absorption varies depending on the type of plastic and its environmental conditions. When plastics absorb liquid such as gasoline, the plastic pieces’ intended dimensions change. As such, original equipment and vehicle manufacturers such as the Defendants, DENSO, HONDA and/or TOYOTA, must adequately design and validate plastic materials exposed to liquids to ensure that they remain dimensionally stable.
65. The Defendant, DENSO, acknowledged and/or admitted its plastic impeller was poorly designed to the point it cannot remain dimensionally stable under its intended conditions. Specifically, the Defendant, DENSO, admitted in the Denso Recall Report that the plastic impeller “may become deformed” causing the Fuel Pump to fail and become inoperable. The Defendant, TOYOTA, admitted in its Part 573 Safety Recall Report that the plastic impeller deformation “may interfere with the fuel pump body” causing it to fail and become inoperable.
66. The Defendants, DENSO, HONDA and/or TOYOTA, did not design the Fuel Pump and plastic impeller with the necessary robustness to operate safely under normal operating conditions.
67. At the time that the Defendants, DENSO, HONDA and/or TOYOTA, designed, engineered, tested, validated, manufactured and placed in the stream of commerce the Fuel Pump, they were aware of and had access to reasonable alternative designs. Such designs would have mitigated and/or eliminated the Fuel Pump Defect.
68. For example, the Defendants, DENSO, HONDA and/or TOYOTA, could have mitigated and/or eliminated the Fuel Pump Defect by using different designs and/or materials where:
  - (a) the plastic impeller was not fuel permeable under intended and foreseeable

**purposes;**

(b) the plastic impeller would not lose its dimensional stability under intended and foreseeable purposes; and/or

(c) the plastic impeller would not contact the fuel pump body under intended and foreseeable purposes.

69. Nevertheless, the Defendants, DENSO, HONDA and/or TOYOTA, designed, engineered, tested, validated, manufactured and placed in the stream of commerce the Affected Class Vehicles equipped with the defective Fuel Pump that causes an unreasonable risk of bodily injury or harm to the Plaintiff and Class Members.

70. Further, the Fuel Pump Defect not only damages the Fuel Pump, but it also damages other downstream components separate from the product itself. In particular, the Fuel Pump feeds a down-stream high-pressure pump. The fuel supplied cools and lubricates the high-pressure pump, two purposes critical to fuel pump function and longevity. The Fuel Pump Defect deprives the high-pressure pump of both benefits causing overheating, cavitation, immediate and accelerated wear from decreased fuel flow volume. The Fuel Pump Defect also causes anemic/incomplete combustion, manifesting as engine shake, as the Defendant, DENSO, admitted in the Denso Recall Report. Engine shake causes immediate and accelerated wear on rubber engine and drivetrain mounts. Additionally, the Fuel Pump Defect causes anemic/incomplete combustion that manifests in lean combustion, which overheats and damages the catalytic converter's active materials--platinum, palladium and rhodium.

71. The additional component wear begins the moment the Fuel Pump Defect manifests and is permanent. The accelerated and irreversible damage to the above-mentioned components requires their replacement to restore the Affected Class Vehicles to their intended and reliably operable condition.

- iii. The Fuel Pump Defect causes the Affected Class Vehicles to stall, lose engine power and/or shut down while in operation exposing vehicle occupants to a serious risk of bodily injury or harm
72. The Fuel Pump Defect in the Affected Class Vehicles exposes occupants and others to a serious risk of bodily injury or harm. The Defendant, DENSO, specifically admitted in the Denso Recall Report that the Fuel Pump Defect can "increas[e] the risk of a crash".
73. The Fuel Pump is an integral component of safe vehicle operation. However, as averred herein, the Affected Class Vehicles suffer from a fundamental design and/or manufacturing flaw that causes the Fuel Pump to prematurely fail. As the Defendant, DENSO, admitted in the Denso Recall Report, the deformed plastic impeller comes in contact with the Fuel Pump body, creating excess running resistance, causing:
- illumination of the check engine light and/or master warning indicators, rough engine running, engine no start and/or vehicle stall while driving at low speed and, in rare instances, a vehicle stall could occur while driving at higher speeds, increasing the risk of a crash.
74. Engines require steady gasoline supply and flow in order to function properly. The Fuel Pump's primary purpose is to transfer gasoline from the tank to the engine. But when the Fuel Pump fails, gasoline is not supplied to the engine causing reduced engine power, stalling and/or engine shutdown.
75. Compounding the problem, the Fuel Pump Defect occurs spontaneously with no advance warning to the driver thereby creating a dangerous condition.
76. Vehicle manufacturers such as the Defendants, HONDA and TOYOTA, monitor NHTSA and other vehicle databases for consumer complaints as part of their ongoing obligation to uncover and report potential safety-related defects. As such, the Defendants, HONDA and TOYOTA, knew or should have known of the many consumer complaints lodged with NHTSA and elsewhere about the specific safety hazard arising from the Fuel Pump Defect in the Affected Class Vehicles.

- iv. The Defendants, HONDA and TOYOTA, failed to disclose the Fuel Pump Defect
77. The Defendants, HONDA and TOYOTA, knew, should have known or were reckless in not knowing about the Fuel Pump Defect, but concealed and/or failed to disclose the defect and continued to manufacture, market, distribute, lease and/or sell the Affected Class Vehicles equipped with the defective Fuel Pump. Specifically, the Defendants, HONDA and TOYOTA, knew, should have known or were reckless in not knowing that the defective Fuel Pump in the Affected Class Vehicles exposed the Plaintiff and Class Members to a serious risk of bodily injury or harm and in order to render them safe, the Affected Class Vehicles needed a new or enhanced fuel pump that functioned safely and as intended. Nonetheless, the Defendants, HONDA and TOYOTA, failed to take any corrective action.
78. The Defendants, HONDA and TOYOTA, knew, should have known or were reckless in not knowing about the Fuel Pump Defect since the pre-release process of designing, manufacturing, engineering and/or testing the Affected Class Vehicles. During these phases, the Defendants, HONDA and TOYOTA, gained comprehensive and exclusive knowledge about the Fuel Pump, particularly the basic engineering principles behind the construction and function of the Fuel Pump such as its susceptibility to fuel absorption and deformation. However, the Defendants, HONDA and TOYOTA, failed to act on that knowledge and instead installed the defective Fuel Pump in the Affected Class Vehicles and subsequently marketed, leased and/or sold the Affected Class Vehicles to unsuspecting consumers without disclosing the safety risk or warning to the Plaintiff or Class Members.
79. Further, the Defendants, HONDA and TOYOTA, specifically, knew about the Fuel Pump Defect based on the number of claims for Fuel Pump Defect repair and replacement that were received. For example, the Defendant, TOYOTA, had identified at least 2,571 warranty claims associated with the Fuel Pump Defect in its Affected Class Vehicles.
80. From their monitoring of NHTSA and other vehicle databases, the Defendants, HONDA and TOYOTA, knew or should have known of the many Fuel Pump Defect complaints lodged by consumers but failed to act on that knowledge by warning the Plaintiff and Class

Members of such.

v. The Defendants, HONDA and TOYOTA, marketed the Affected Class Vehicles as being safe and dependable while concealing the Fuel Pump Defect

81. The Defendant, HONDA's and TOYOTA's, overarching marketing message for the Affected Class Vehicles was and is that the vehicles are safe, dependable and that their engines can be relied on to perform well. This marketing message is false and misleading given the propensity of the Fuel Pump in the Affected Class Vehicles to fail, causing the vehicles' engines to run rough, stall, lose engine power and/or shutdown, which the Defendants, HONDA and TOYOTA, acknowledged and/or admitted, creating an unreasonable risk of a crash.
82. The Defendants, HONDA and TOYOTA, are some of the biggest advertising spenders in North America and much of that advertising budget goes toward promoting their vehicles as being safe and dependable. On their websites, the Defendants, HONDA and TOYOTA, tout the safety features of their vehicles, attempting to induce potential customers to purchase and/or lease the Affected Class Vehicles. Their websites provide a vast array of information about the purported safety features and mechanisms that the Defendants, HONDA and TOYOTA, offer in their vehicles including the Affected Class Vehicles, such as pre-collision technology and vehicle stability control. While the standard availability of certain safety features may vary on certain different models, the overall consistent and pervasive marketing message that the Defendants, HONDA and TOYOTA, advance through their web marketing as to the Affected Class Vehicles is clearly one of safety and dependability. For example, the Defendant, HONDA, dedicates a page on its website entitled "Safety" where it touts the safety of its vehicles stating: "Our Collision-Free Future", "We're focused on the safety of all road users", and "Honda is committed to providing safety for everyone - not only for own drivers and passengers, but also for other vehicle occupants and injury mitigation for pedestrians."
83. Similarly, the Defendant, TOYOTA, touts the safety of its vehicles on its website. For example, on its main website, there is a page describing the company's leadership that repeats its consistent and pervasive marketing message that Toyota vehicles are safe and



dependable stating: "We build cars and trucks that help you and your family go places reliably and safely." A further example is an image from the safety section of the Defendant, TOYOTA's, website for its Lexus model vehicles that begins with the language, "ONE STEP CLOSER TO A WORLD WITHOUT ACCIDENTS. LEXUS SAFETY. ... At Lexus, we're constantly looking out for the driver. It's why nearly every new Lexus model comes standard with Lexus Safety System +, a comprehensive suite of active safety equipment".

84. The Defendant, HONDA's and TOYOTA's, marketing of their Affected Class Vehicles conveys a clear, uniform and pervasive message that their Affected Class Vehicles are to be equated with safety and dependability, which are material to consumers when purchasing and/or leasing a vehicle. A vehicle with a defective fuel pump that can cause the engine to stall, lose engine power and/or shutdown while the vehicle is in motion as do the Affected Class Vehicles, and thereby expose its occupants to the risk of serious bodily injury or harm, is not a safe vehicle. As such, the Defendant, HONDA's and TOYOTA's, marketing of the Affected Class Vehicles as being safe is false and misleading and omits facts that would be material to consumers such as the Class Members.
85. The Defendants, HONDA and TOYOTA, marketed their Affected Class Vehicles as safe and dependable but failed to disclose the existence and impact of the Fuel Pump Defect and/or that the Affected Class Vehicles were not safe or dependable. Specifically, the Defendants, HONDA and TOYOTA:
  - (a) failed to disclose at and after the time of purchase, lease and/or service, any and all known material defects of the Affected Class Vehicles including the Fuel Pump Defect, despite their knowledge;
  - (b) failed to disclose at and after the time of purchase, lease and/or service, that the Affected Class Vehicles Fuel Pumps were defective and not fit for their ordinary purpose, despite their knowledge; and
  - (c) failed to disclose and actively concealed the existence and pervasiveness of the

Fuel Pump Defect, despite their knowledge.

86. The Defendant, HONDA's and TOYOTA's, deceptive marketing and willful and knowing failure to disclose the Fuel Pump Defect damaged and continues to damage the Plaintiff and Class Members. If the Plaintiff and Class Members had known of the Fuel Pump Defect and/or that the Affected Class Vehicles were not safe and durable, they would not have purchased and/or leased the Affected Class Vehicles or certainly would have paid less to do so.

vi. The Defendants, HONDA and TOYOTA, issue inadequate and incomplete recalls

Honda Recall

87. On January 29, 2019 the Defendant, HONDA, submitted a Part 573 Safety Recall Report to NHTSA for 473,032 model years 2016-2018 Acura MDX, 2015-2019 Acura TLX and 2015-2017 Accord vehicles for a defect in the Fuel Pump that can cause mechanical resistance, which can result in hesitated acceleration or stalling events. Specifically, the Defendant, HONDA, admitted knowing of the Fuel Pump Defect as early as 2016. Although the Defendant, HONDA, knew that the Fuel Pump in its Affected Class Vehicles was defective, it misdiagnosed the condition and failed to provide an adequate repair. Specifically, rather than replacing the defective Fuel Pump with a properly functioning or improved fuel pump, the Defendant, HONDA, issued a software upgrade as a temporary remedy for the Fuel Pump Defect if and when the Fuel Pump failed. As a result, Class Members whose vehicles were included in the Honda Recall did not receive a fix that actually remedied the Fuel Pump Defect in those vehicles. No such Honda Recall was initiated in Canada.

88. The Honda Recall was inadequate because:

- (a) it failed to accurately diagnose and remedy the Fuel Pump Defect;
- (b) it failed to include all Honda manufactured vehicles equipped with the Fuel Pump;



and

(c) it failed to recommend that consumers quit driving their vehicles until repaired.

89. As a result of the Defendant, HONDA's, actions and/or inactions, owners and/or lessees of its Affected Class Vehicles as averred to in paragraph 2 herein, have been and still are unknowingly driving such vehicles while the Defendant, HONDA, knowingly exposes Class Members to the risk of serious bodily injury or harm arising from the Fuel Pump Defect in its Affected Class Vehicles.

90. Evidencing the overall inadequacy of the Honda Recall are consumer complaints lodged with NHTSA stating their vehicles suffer the Fuel Pump Defect but:

(a) were not included in the Honda Recall, or

(b) the repair failed to remedy the issue.

91. As such, the Honda Recall was inadequate and incomplete. It failed to accurately diagnose and repair the Fuel Pump Defect which inevitably will lead to more Fuel Pump failures and possibly bodily injury or harm. The Honda Recall was also inadequate in scope, omitting other models equipped with the same defective Fuel Pump. Further, the Defendant, HONDA, has not recommended or advised Class Members to stop driving their Affected Class Vehicles until the Fuel Pump Defect can be repaired or replaced. These actions are deceitful, unconscionable and expose Class Members to the risk of serious bodily injury or harm.

#### **Toyota Recall**

92. On January 13, 2020, the Defendant, TOYOTA, submitted a Part 573 Safety Recall Report to NHTSA voluntarily recalling 695,541 certain model year Toyota and Lexus vehicles equipped with the Fuel Pump Defect manufactured between August 1, 2018 and January 31, 2019 but failed to include certain hybrid vehicles that were also equipped with the same

defective Fuel Pump. The Defendant, TOYOTA, stated in the Safety Recall Report that there was no corrective repair for the Fuel Pump Defect and it was "still under study".

93. In the NHTSA Safety Recall Report the Defendant, TOYOTA, identified a defect in the Fuel Pump which can fail and cause certain of its Affected Class Vehicles as averred to in paragraph 2 herein, to unexpectedly stall and/or shut down:

These fuel pumps contain an impeller that could deform due to excessive fuel absorption. . . . [I]f impeller deformation occurs, the impeller may interfere with the fuel pump body, and this could result in illumination of check engine and master warning indicators, rough engine running, engine no start and/or vehicle stall . . . .

94. The Defendant, TOYOTA, identified the root cause as being the plastic impeller which deforms due to fuel absorption. The Defendant, TOYOTA, admitted in a Defect Information Report accompanying the NHTSA Safety Recall Report that it had received thousands of warranty requests related to the Fuel Pump Defect in certain of its Affected Class Vehicles. As such, it concluded that the Fuel Pump Defect in certain of its Affected Class Vehicles presented an immediate risk of physical injury when used in their intended manner and for their ordinary purpose, however, that there was no corrective repair for the Fuel Pump Defect and it was still under study. What this means is that the Defendant, TOYOTA, is willingly and knowingly permitting undeniably dangerous vehicles to be driven by its customers. It also means there is no guarantee that there will be a corrective repair and even if there is one, that it will be effective. Moreover, the Defendant, TOYOTA, has provided no date by which its study of a potential repair will be completed let alone when the fix can be implemented.

95. A similar Transport Canada recall of 46,733 Toyota and Lexus vehicles equipped with the Fuel Pump Defect in Canada was initiated on January 13, 2020, which stated the following:

Issue: On certain vehicles, the low-pressure fuel pump could fail. If this happens, then engine may run rough or may not start and the check engine

light may turn on. This could also result in a sudden loss of engine power while driving. Safety Risk: A sudden loss of engine power could increase the risk of a crash.

96. On March 4, 2020, the Defendant, TOYOTA, submitted an amended NHTSA Safety Recall Report which expanded its recall to now include 1,817,969 certain model year Toyota and Lexus vehicles equipped with the Fuel Pump Defect. The Defendant, TOYOTA, indicated in the amended NHTSA Safety Recall Report that owners of the affected vehicles currently in the recall that were not included in the original recall population of January 13, 2020 would be notified by May 3, 2020 and that owners of the affected vehicles originally covered by the recall would be notified by March 13, 2020.
97. Similarly, on March 4, 2020 the Transport Canada recall of certain Affected Class Vehicles of the Defendant, TOYOTA, was expanded to now include 111,835 Toyota and Lexus vehicles equipped with the Fuel Pump Defect in Canada. Owners of affected vehicles would be notified by mail and instructed to take their affected vehicle to a dealer to replace the fuel pump.
98. Although the Defendant, TOYOTA, undeniably knows about the serious dangers of the Fuel Pump Defect, it has not indicated that it intends to take its Affected Class Vehicles off the road—even temporarily—or enable Class Members to stop driving the dangerous vehicles until and if there is a repair by contacting them and offering them free loaner vehicles of the type of Affected Class Vehicles they own and/or lease.
99. As such, the Toyota Recall, including the Transport Canada recall, is inadequate and incomplete. It fails to promptly alert Class Members to the admittedly dangerous Fuel Pump Defect and provide them with a safe alternative, which will inevitably lead to more Fuel Pump failures and possibly bodily injury or harm. The Toyota Recall, including the Transport Canada recall, is also inadequate in scope, omitting hybrid versions of the Affected Class Vehicles equipped with the same Fuel Pump. These actions are deceitful, unconscionable and expose Class Members to bodily injury or harm.

**Part 2: RELIEF SOUGHT**

1. The Plaintiff, on his own behalf and on behalf of the Class Members, claims against each of 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 Affected Class Vehicles contain the Fuel Pump Defect;
  - (c) a declaration that the Defendants, DENSO, HONDA and/or TOYOTA, were negligent in the design, engineering, testing, validation and/or manufacturing of the Fuel Pump in the Affected Class Vehicles causing the Plaintiff and Class Members to suffer damages;
  - (d) a declaration that the Defendants, DENSO, HONDA and/or TOYOTA:
    - (i) breached their duty of care to the Plaintiff and Class Members;
    - (ii) fraudulently concealed material information from the Plaintiff and Class Members regarding the Fuel Pump;
    - (iii) breached express and implied warranties as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages pursuant to the *Sale of Goods Act*, R.S.B.C. 1996, c.410 ("SGA"), and equivalent legislative provisions in the rest of Canada;
    - (iv) breached the *Business Practices and Consumer Protection Act*, SBC 2004, c.2 ("BPCPA"), and equivalent legislative provisions in the rest of Canada, and are consequently liable to the Plaintiff and Class Members for damages;
    - (v) breached the *Competition Act*, R.S.C 1985, c. C-34 and are consequently

liable to the Plaintiff and Class Members for damages; and

- (vi) were unjustly enriched at the expense of the Plaintiff and Class Members.
- (e) an order enjoining the Defendants, HONDA and/or TOYOTA, from continuing their unlawful, unfair and fraudulent business practices as alleged herein;
- (f) injunctive and/or declaratory relief requiring the Defendants, HONDA and TOYOTA, to promptly and fully inform Class Members of the Fuel Pump Defect and its associated dangers, instructing such Class Members to cease driving their vehicles, and ordering the Defendants, HONDA and TOYOTA, to provide free loaner vehicles of the type of Affected Class Vehicle each Class Member owns and/or leases until a remedy for the Fuel Pump Defect is installed in the Affected Class Vehicles and to fully reimburse and make whole all Class Members for all costs and economic losses associated therewith;
- (g) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("*CPA*") directing an aggregate assessment of damages;
- (h) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;
- (i) general damages including actual, compensatory, incidental, statutory and consequential damages;
- (j) special damages;
- (k) punitive damages;
- (l) costs of investigation pursuant to section 36 of the *Competition Act*;
- (m) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*,

R.S.B.C. 1996, c. 79; and

- (n) such further and other relief as to this Honourable Court may seem just.

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

#### **Jurisdiction**

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

(e)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia;

(e)(iii)(a) & (b) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;

(f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;

(g) concerns a tort committed in British Columbia;

(h) concerns a business carried on in British Columbia; and

(i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

## **Causes of Action**

### **Negligence - Products Liability**

**Defendant, DENSO**

1. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
2. The Defendant, DENSO, negligently designed, engineered, tested, validated, manufactured and/or placed in the stream of commerce the unreasonably dangerous Fuel Pump, which it knew or ought to have known could cause the Affected Class Vehicles to suddenly stall, lose engine power and/or shutdown while in operation, posing a serious risk of bodily injury or harm to vehicle occupants.
3. The Defendant, DENSO, failed in its duty to timely recall and/or refrain from manufacturing distributing and/or supplying the Fuel Pump which it knew or ought to have known was defective.
4. The Defendant, DENSO, failed in its duty to warn or adequately warn owners and/or lessees of the Affected Class Vehicles of the Fuel Pump Defect, specifically, of the danger of sudden vehicle stalling, loss of engine power and/or shutdown while in operation, thereby causing foreseeable injury and damage to vehicle occupants and others on the road.
5. The Affected Class Vehicles equipped with the defective Fuel Pump are being used in an intended and/or foreseeable manner. The Plaintiff and Class Members have not misused or materially altered the Fuel Pump in the Affected Class Vehicles. The Fuel Pump is in the same or substantially similar condition as it was at the time of its installation in the Affected Class Vehicles.
6. The Affected Class Vehicles equipped with the Fuel Pump are unreasonably dangerous and defective because they were designed, manufactured, assembled, marketed,

distributed, leased, sold and/or placed in the stream of commerce with a defect that can cause the Affected Class Vehicles to suddenly and unexpectedly stall, lose engine power and/or shutdown while in operation.

7. The Fuel Pump Defect causes an unreasonably dangerous condition when Affected Class Vehicles are used for their intended and foreseeable purpose of providing safe and dependable transportation and places the Plaintiff, Class Members and others on the road at an unreasonable and substantial risk for bodily injury or harm.
8. The Defendant, DENSO, was aware of feasible alternative designs which would minimize and/or eliminate the Fuel Pump Defect and the safety risk it poses. Such alternative designs were known and available when the Fuel Pump was designed, engineered, tested, validated, manufactured and/or placed in the stream of commerce.
9. The Defendant, DENSO, failed to design, test, validate and/or manufacture, and place in the stream of commerce, a fuel pump that is free from a defect and the unreasonable safety risks it poses.
10. The Defendant, DENSO, failed in its duty to comply with the standards of skill and care in matters of design, materials, workmanship and quality of product which would be reasonably expected of it as an original equipment manufacturer of automotive components or parts such as the Fuel Pump.
11. The Defendant, DENSO, failed in its duty to warn or to adequately warn owners and/or lessees of the Affected Class Vehicles of the Fuel Pump Defect and its associated dangers.
12. As a direct and proximate result of Defendant, DENSO's, negligence as averred to herein, the Plaintiff and Class Members have suffered loss and damage to be proven at trial.



Defendants, HONDA and TOYOTA

13. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
14. At all material times to the cause of action herein, the Plaintiff and Class Members were using the Affected Class Vehicles for the purposes and manner for which they were intended.
15. The Plaintiff and Class Members had no knowledge of the Fuel Pump Defect in the Affected Class Vehicles and had no reason to suspect the Fuel Pump Defect.
16. The Defendants, HONDA and TOYOTA, knew or ought to have known that the Affected Class Vehicles contained a defect which, in the absence of reasonable care in the design, manufacture and/or assembly of the Affected Class Vehicles, presented a serious safety hazard which could cause the Affected Class Vehicles to run rough, suddenly stall and/or shutdown while in operation.
17. The defective condition of the Affected Class Vehicles consisted of a defect in the design and/or manufacture of the Fuel Pump.
18. In the alternative, the Defendants, HONDA and TOYOTA, failed to meet the reasonable standard of care expected of an automobile manufacturer in the circumstances in that:
  - (a) they knew or ought to have known about the Fuel Pump Defect in the Affected Class Vehicles and should have timely informed or warned the Plaintiff and Class Members;
  - (b) they designed, developed, tested, manufactured, assembled, marketed, advertised, distributed, leased and/or sold the Affected Class Vehicles with a defective Fuel Pump;

- (c) they failed to timely warn the Plaintiff, Class Members and/or consumers about the Fuel Pump Defect in the Affected Class Vehicles which presented a serious safety hazard;
  - (d) they failed to change the design, manufacture and/or assembly of the defective Fuel Pump in the Affected Class Vehicles in a reasonable and timely manner;
  - (e) they failed to properly test the Fuel Pump in the Affected Class Vehicles;
  - (f) they knew or ought to have known about the Fuel Pump Defect in the Affected Class Vehicles but kept it a secret;
  - (g) they failed to timely issue and implement safety, repair and/or replacement recalls of the Affected Class Vehicles equipped with a defective Fuel Pump;
  - (h) the Fuel Pump Defect presented a serious safety hazard which could cause the Affected Class Vehicles to run rough, suddenly stall and/or shutdown while in operation; and
  - (i) they failed to exercise reasonable care and judgment in matters of design, materials, workmanship and/or quality of product which would reasonably be expected of them as an automobile manufacturer.
19. As a result of the Fuel Pump Defect in the Affected Class Vehicles by reason of the Defendant, HONDA's and TOYOTA's, negligence and their failure to disclose and/or adequately warn of the Fuel Pump Defect, the Plaintiff and Class Members have suffered damages and will continue to suffer damages. The value of each of the Affected Class Vehicles is reduced. The Plaintiff and each Class Member must expend the time to have his/her vehicle repaired and be without their vehicle. The Defendants, HONDA and TOYOTA, should compensate the Plaintiff and each Class Member for their incurred out-of-pocket expenses for, *inter alia*, alternative transportation, tow charges, vehicle payments and prior repairs to the Affected Class Vehicles as a result of the Fuel Pump Defect.

**Fraud by Concealment**

20. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
21. The Defendants, DENSO, HONDA and TOYOTA, intentionally concealed, suppressed and failed to disclose the material fact that the Affected Class Vehicles were equipped with a fuel pump that had a design and/or manufacturing defect that could suddenly and unexpectedly stall, lose engine power and/or shutdown while in operation. The Defendants, DENSO, HONDA and TOYOTA, knew or should have known the true facts due to their collective involvement in the design, engineering, testing validation and/or manufacturing of the defective Fuel Pump equipped in the Affected Class Vehicles. At no time did the Defendants, DENSO, HONDA and TOYOTA, reveal the truth to the Plaintiff and Class Members. To the contrary, the Defendants, DENSO, HONDA and TOYOTA, concealed the truth, intending for the Plaintiff and Class Members to rely on these omissions. The Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles equipped with the defective Fuel Pump believing, in reliance on the Defendant, HONDA's and TOYOTA's, statements and/or omissions, them to be safe, dependable and free from major engine and/or mechanical defects.
22. A reasonable consumer would not know that the Affected Class Vehicles were equipped with a defective Fuel Pump which could suddenly and unexpectedly stall, lose engine power and/or shutdown while in operation. The Plaintiff and Class Members did not know of the facts which were concealed from them by the Defendants, DENSO, HONDA and TOYOTA. Moreover, as ordinary consumers, the Plaintiff and Class Members did not and could not unravel the deception on their own.
23. The Defendants, DENSO, HONDA and TOYOTA, had a duty to disclose the Fuel Pump Defect in the Affected Class Vehicles as the true facts were known and/or accessible only to them and because they knew these facts were not known to or reasonably discoverable by the Plaintiff and Class Members unless and until the defect manifested in their vehicle. As alleged herein, the Defendants, DENSO, HONDA and TOYOTA, denied and concealed

the Fuel Pump Defect in the face of numerous consumer complaints. The Plaintiff and Class Members did not and could not unravel the Defendant, DENSO's, HONDA's and TOYOTA's, deception on their own.

24. By issuing recalls of certain vehicles and stating that these represented the full population of Affected Class Vehicles, the Defendants, HONDA and TOYOTA, led consumers to believe, at least for a time, that they were remedying the Fuel Pump Defect in the Affected Class Vehicles. In fact, these recalls, in addition to being unsuccessful, failed to include hundreds of thousands of additional vehicles that suffered from a similar defective fuel pump.
25. Had the material facts been timely revealed, the Plaintiff and Class Members would not have purchased and/or leased the Affected Class Vehicles or would have paid less to do so. The Affected Class Vehicles have also diminished in value as a result of Defendant, DENSO's, HONDA's, and TOYOTA's, alleged fraud.
26. The Plaintiff makes the following specific fraudulent concealment/omission-based allegations with as much specificity as possible absent access to the information necessarily available only to the Defendants, DENSO, HONDA and/or TOYOTA:
  - (a) Who: The Defendants, DENSO, HONDA and/or TOYOTA, actively concealed and omitted the Fuel Pump Defect from the Plaintiff and Class Members while simultaneously touting the safety and dependability of the Affected Class Vehicles as alleged herein. Plaintiff is unaware of and, therefore, unable to identify the true names and identities of those specific individuals at the Defendants, DENSO, HONDA and/or TOYOTA, responsible for such decisions;
  - (b) What: The Defendants, DENSO, HONDA and/or TOYOTA, knew or were reckless or negligent in not knowing that the Affected Class Vehicles contained the Fuel Pump Defect as alleged herein. The Defendants, HONDA and TOYOTA, concealed and omitted the Fuel Pump Defect while making representations about the safety, dependability and other attributes of the Affected Class Vehicles as alleged herein;

- (c) When: The Defendants, HONDA and TOYOTA, concealed and omitted material information regarding the Fuel Pump Defect at all times while making representations about the safety and dependability of the Affected Class Vehicles on an ongoing basis and continuing to this day as alleged herein. The Defendants, DENSO, HONDA and/or TOYOTA, still have not disclosed the truth about the full scope of the Fuel Pump Defect in the Affected Class Vehicles to anyone outside of their respective entities. The Defendants, DENSO, HONDA and/or TOYOTA, have never taken any action to inform consumers about the true nature of the Fuel Pump Defect in the Affected Class Vehicles. When consumers brought their vehicles to the Defendants, HONDA and TOYOTA, complaining of the Fuel Pump failures, the Defendants, HONDA and TOYOTA, denied any knowledge of or repair for the Fuel Pump Defect;
- (d) Where: The Defendants, HONDA and TOYOTA, concealed and omitted material information regarding the true nature of the Fuel Pump Defect in every communication they had with Plaintiff and Class Members and made representations about the quality, safety, and dependability of the Affected Class Vehicles. The Plaintiff is aware of no document, communication or other place or thing in which Defendants, DENSO, HONDA and/or TOYOTA, disclosed the truth about the full scope of the Fuel Pump Defect in the Affected Class Vehicles to anyone outside of their respective entities. Such information is not adequately disclosed in any sales documents, displays, advertisements, warranties, owner's manuals or on the Defendant, HONDA's and TOYOTA's, websites. There are channels through which Defendants, HONDA and TOYOTA, could have disclosed the Fuel Pump Defect including but not limited to:
- (i) point of sale communications;
  - (ii) the owner's manual; and/or
  - (iii) direct communication to Class Members through means such as Provincial vehicle registry lists;

- (e) How: The Defendants, HONDA and TOYOTA, concealed and omitted the Fuel Pump Defect from Plaintiff and Class Members and made representations about the quality, safety and dependability of their Affected Class Vehicles. The Defendants, HONDA and TOYOTA, actively concealed and omitted the truth about the existence, scope and nature of the Fuel Pump Defect from Plaintiff and Class Members at all times even though they knew about the Fuel Pump Defect and knew that information about the Fuel Pump Defect would be important to a reasonable consumer, and the Defendants, HONDA and TOYOTA, promised in their marketing materials that Affected Class Vehicles have qualities that they do not have;
  - (f) Why: The Defendants, HONDA and TOYOTA, actively concealed and omitted material information about the Fuel Pump Defect in the Affected Class Vehicles for the purpose of inducing the Plaintiff and Class Members to purchase and/or lease the Affected Class Vehicles, rather than purchasing or leasing competitors' vehicles, and made representations about the quality, safety and dependability of the Affected Class Vehicles. Had the Defendants, HONDA and TOYOTA, disclosed the truth for example, in their advertisements or other materials or communications, the Plaintiff and Class Members would have been aware of it and would not have purchased and/or leased the Affected Class Vehicles or would not have paid as much to do so;
27. Accordingly, the Defendant, DENSO's, HONDA's and TOYOTA's, acts were committed wantonly, maliciously, oppressively, deliberately, with intent to defraud and in reckless disregard of the rights of the Plaintiff and Class Members so as to enrich themselves. Their misconduct warrants an assessment of punitive damages in addition to general damages suffered by the Plaintiff and Class Members in an amount sufficient to deter such conduct in the future, which amount shall be determined according to proof at trial.

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

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

29. As an express warrantor, manufacturer, merchant and/or seller, the Defendants, HONDA and TOYOTA, had certain obligations under the SGA and to equivalent legislative provisions in the rest of Canada as described in Schedule "A" to conform the Affected Class Vehicles to their express written warranties.
30. The Defendants, HONDA and TOYOTA, marketed, distributed, leased and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe, reliable and dependable vehicles through independent retail dealers and/or authorized dealerships. 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.
31. In connection with the purchase and/or lease of each of the Affected Class Vehicles, the Defendants, HONDA and TOYOTA, provided warranty coverage for the Affected Class Vehicles for 36 months or 36,000 miles (57,936 kilometers) covering all components (except normal wear and tear), which obliges them to repair or replace any part that is defective under normal use. The Defendants, HONDA and TOYOTA, also offered a 60 month or 60,000 mile (95,560 kilometer) powertrain warranty.
32. For the Lexus branded Affected Class Vehicles, the Defendant, TOYOTA, offered a written express limited warranty of 48 months or 50,000 miles (80,467 kilometers). The Defendant, TOYOTA, also offered a 72 month or 70,000 mile (112,654 kilometer) powertrain warranty.
33. The Defendant, HONDA's and TOYOTA's, warranties formed a basis of the bargain that was reached when the Plaintiff and Class Members purchased and/or leased their Affected Class Vehicles.
34. The Plaintiff and Class Members owned and/or leased the Affected Class Vehicles with the Fuel Pump Defect within the warranty period but had no knowledge of the existence of the Fuel Pump Defect which was known and concealed by the Defendants, HONDA and TOYOTA.
35. Despite the existence of the warranties, the Defendants, HONDA and TOYOTA, failed to

Inform the Plaintiff and Class Members that their Affected Class Vehicles contained the Fuel Pump Defect during the warranty periods.

36. The Defendants, HONDA and TOYOTA, breached their express warranties promising to repair and correct a design or manufacturing defect or defect in materials or workmanship of any parts they supplied as to their Affected Class Vehicles.
37. The Defendants, HONDA and TOYOTA, knew about the Fuel Pump Defect in their Affected Class Vehicles. However, the Defendants, HONDA and TOYOTA, concealed the Fuel Pump Defect and have neglected, failed and/or refused to repair or replace the Fuel Pump Defect despite the existence of the Fuel Pump Defect at the time of sale and/or lease of their Affected Class Vehicles.
38. The Defendants, HONDA and TOYOTA, breached their express warranty to repair defective parts in their Affected Class Vehicles. The Defendants, HONDA and TOYOTA, have not repaired the the Fuel Pump Defect in their Affected Class Vehicles.
39. The Defendants, HONDA and TOYOTA, were provided notice of the Fuel Pump Defect through numerous complaints filed against them directly and through its dealers as well as its own internal engineering knowledge. The Defendants, HONDA and TOYOTA, have not remedied their breach.
40. Further, the Defendants, HONDA and TOYOTA, have refused to provide an adequate and timely warranty repair for the Fuel Pump Defect, thus rendering the satisfaction of any notice requirement futile. Customers that have presented their vehicles for warranty repair due to Fuel Pump failure have been denied adequate repairs.
41. Further, the limited warranty promising to repair and/or correct a design and/or manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and Class Members whole as the Defendants, HONDA and TOYOTA, failed and/or have refused to adequately provide the promised remedies within a reasonable time.



42. At the time that the Defendants, HONDA and TOYOTA, warranted and sold their Affected Class Vehicles they knew that their Affected Class Vehicles did not conform to the warranty and were inherently defective and the Defendants, HONDA and TOYOTA, improperly concealed material facts regarding their Affected Class Vehicles. As such, the Plaintiff and Class Members were induced to purchase or lease the Affected Class Vehicles under false pretenses.
43. As a direct and proximate result of the Defendant, HONDA's and TOYOTA's, breach of their express warranties, the Plaintiff and Class Members have suffered loss and damage in an amount to be determined at trial.

**Breach of the Implied Warranty or Condition of Merchantability pursuant SGA**

44. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
45. The Defendants, HONDA and TOYOTA, are a "seller" with respect to motor vehicles within the meaning of the SGA and to equivalent legislative provisions in the rest of Canada as described in Schedule "A".
46. A warranty that the Affected Class Vehicles were in merchantable condition was implied by law pursuant to the SGA and to equivalent legislative provisions in the rest of Canada as described in Schedule "A".
47. The Defendants, HONDA and TOYOTA, marketed, distributed, leased and/or sold their Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and dependable vehicles through independent retail dealers and/or authorized dealerships. 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.
48. The Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles from the Defendants, HONDA and TOYOTA, 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, HONDA and TOYOTA, were the manufacturer, distributor, warrantor and/or seller of their Affected Class Vehicles. As such, there existed privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendants, HONDA and TOYOTA, as to their respective 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, HONDA and TOYOTA, and their resellers, authorized dealers and, specifically, of the Defendant, HONDA's and TOYOTA's, implied warranties.

49. The Defendant, HONDA's and TOYOTA's, resellers, dealers and distributors are intermediaries between the Defendants, HONDA and TOYOTA, 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, HONDA and TOYOTA, with respect to the Plaintiff's and Class Members' acquisition of the Affected Class Vehicles. The Defendants, HONDA's and TOYOTA's, warranties were designed to influence consumers who purchased and/or owned the Affected Class Vehicles.
50. The Defendants, HONDA and TOYOTA, knew or had reason to know of the specific use for which their Affected Class Vehicles were purchased or leased.
51. As a result of the Fuel Pump Defect, the Affected Class Vehicles were not in merchantable condition when sold and are not fit for the ordinary purpose of providing safe and dependable transportation.
52. Further, the Defendants, HONDA and TOYOTA, have refused to provide an adequate warranty repair for the Fuel Pump Defect, thus rendering the satisfaction of any notice requirement futile. As stated above, customers that have presented their vehicles for warranty repair due to Fuel Pump failure have been denied adequate repair.

53. The Plaintiff and Class Members suffered injuries due to the defective nature of the Affected Class Vehicles and the Defendant, HONDA's and TOYOTA's, breach of the warranty of merchantability.
54. At all times that the Defendants, HONDA and TOYOTA, warranted and sold their Affected Class Vehicles, they knew or should have known that their warranties were false and yet they did not disclose the truth or stop manufacturing or selling their Affected Class Vehicles and, instead, continued to issue false warranties and continued to insist the products were safe. The Affected Class Vehicles were defective when the Defendants, HONDA and TOYOTA, delivered them to their resellers, dealers and distributors which sold the Affected Class Vehicles and the Affected Class Vehicles were, therefore, still defective when they reached Plaintiff and Class Members.
55. As a direct and proximate result of the Defendant, HONDA's and TOYOTA's, breach of implied warranties of merchantability, the Plaintiff and Class Members have suffered loss and damage.

**Violation of the BPCPA**

56. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
57. The Affected Class Vehicles are consumer "goods" within the meaning of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada as described in Schedule "B".
58. The Plaintiff and Class Members are "consumers" within the meaning of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada as described in Schedule "B".
59. The Defendants, HONDA and TOYOTA, are a "supplier" within the meaning of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada as

described in Schedule "B".

60. The purchase and/or lease of the Affected Class Vehicles by the Plaintiff and Class Members constitutes a "consumer transaction" within the meaning of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada as described in Schedule "B".
61. By failing to disclose and actively concealing the Fuel Pump Defect, the Defendants, HONDA and TOYOTA, engaged in unfair and deceptive trade practices prohibited by the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada as described in Schedule "B".
62. As alleged herein, the Defendants, HONDA and TOYOTA, made misleading representations and omissions concerning the safety and dependability of their Affected Class Vehicles.
63. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and Class Members were deceived by the Defendant, HONDA's and TOYOTA's, failure to disclose their knowledge of the Fuel Pump Defect.
64. The Defendant, HONDA's and TOYOTA's, conduct as alleged herein was and is in violation of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada as described in Schedule "B", in particular by:
  - (a) representing that goods have sponsorship, approval, characteristics, uses, benefits or quantities that they do not have;
  - (b) representing that goods are of a particular standard, quality or grade if they are of another;
  - (c) advertising goods with intent not to sell them as advertised; and

- (d) representing that goods have been supplied in accordance with a previous representation when they have not.

- 65. The Defendants, HONDA and TOYOTA, intentionally and knowingly misrepresented and omitted material facts regarding their respective Affected Class Vehicles, specifically, regarding the Fuel Pump Defect, with an intent to mislead the Plaintiff and Class Members.
- 66. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and Class Members were deceived by the Defendant, HONDA's and TOYOTA's, failure to disclose their knowledge of the Fuel Pump Defect.
- 67. The Plaintiff and Class Members had no way of knowing of the Defendant, HONDA's and TOYOTA's, representations were false, misleading and incomplete or knowing the true nature of the Fuel Pump Defect in the Affected Class Vehicles. As alleged herein, the Defendants, HONDA and TOYOTA, engaged in a pattern of deception in the face of a known Fuel Pump Defect in their Affected Class Vehicles. The Plaintiff and Class Members did not and could not unravel the Defendant, HONDA's and TOYOTA's, deception on their own.
- 68. The Defendants, HONDA and TOYOTA, knew or should have known their conduct violated the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada as described in Schedule "B".
- 69. The Defendants, HONDA and TOYOTA, owed the Plaintiff and Class Members a duty to disclose the truth about the Fuel Pump Defect in their Affected Class Vehicles as it created a serious safety hazard and the Defendants, HONDA and TOYOTA:
  - (a) possessed exclusive knowledge of the Fuel Pump Defect in their Affected Class Vehicles;
  - (b) intentionally concealed the foregoing from the Plaintiff and Class Members; and/or

(c) failed to warn consumers or to publicly admit that their Affected Class Vehicles had a Fuel Pump failure.

70. The Defendants, HONDA and TOYOTA, had a duty to disclose the Fuel Pump Defect in their Affected Class Vehicles was fundamentally flawed as described herein because it created a safety risk of bodily injury or harm and the Plaintiff and Class Members relied on the Defendant, HONDA's and TOYOTA'S, material misrepresentations and omissions regarding the Affected Class Vehicles and the Fuel Pump Defect at the time of purchase and/or lease.
71. The Defendant, HONDA's and TOYOTA's, conduct proximately caused injuries to the Plaintiff and Class Members that purchased and/or leased their Affected Class Vehicles and suffered loss or damage as alleged herein.
72. The Plaintiff and Class Members suffered an ascertainable loss and/or actual damage as a proximate result of the Defendant, HONDA's and TOYOTA's, conduct in that Plaintiff and Class Members incurred costs related the Fuel Pump Defect including repair, service and/or replacement costs, rental car costs and towing charges, and overpaid for their Affected Class Vehicles that have suffered a diminution in value.
73. The Defendant, HONDA's and TOYOTA's, violations cause continuing damage to the Plaintiff and Class Members. The Defendant, HONDA's and TOYOTA's, unlawful acts and practices complained of herein affect the public interest.
74. The Defendants, HONDA and TOYOTA, knew of the Fuel Pump Defect and that their Affected Class Vehicles were materially compromised by the Fuel Pump Defect.
75. The facts concealed and omitted by the Defendants, HONDA and TOYOTA, from the Plaintiff and Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase and/or lease a Honda or Toyota vehicle or pay a lower price to do so. Had the Plaintiff and Class Members known about the Fuel Pump failure of the Affected Class Vehicles, they would not have purchased

and/or leased the Affected Class Vehicles or would not have paid the prices they paid.

76. The Plaintiff and Class Members relied upon the Defendant, HONDA's and TOYOTA's, misrepresentations as to the safety and dependability of the Affected Class Vehicles to their detriment in purchasing and/or leasing the Affected Class Vehicles so as to cause loss and/or damage to the Plaintiff and Class Members.
77. The loss and/or damage suffered by the Plaintiff and Class Members was directly or proximately caused by the Defendant, HONDA's and TOYOTA's, unlawful and deceptive business practices as alleged herein.

**Breach of the *Competition Act***

78. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
79. By making representations to the public as to the quality, character, reliability, durability and safety of their Affected Class Vehicles, the Defendants, HONDA and TOYOTA, breached sections 36 and/or 52 of the *Competition Act*, in that their representations:
  - (a) were made to the public in the form of advertising brochures, statements and/or other standardized statements claiming the safety and dependability of the Affected Class Vehicles;
  - (b) were made to promote the supply or use of a product or for the purpose of promoting their business interests;
  - (c) stated a level of performance and safety of the Affected Class Vehicles; and
  - (d) were false and misleading in a material respect.
80. The Defendants, HONDA and TOYOTA, engaged in unfair competition and unfair, unlawful



or fraudulent business practices through the conduct, statements and omissions described herein, and by knowingly and intentionally concealing the Fuel Pump Defect in their Affected Class Vehicles from the Plaintiff and Class Members, along with concealing the risks, costs and monetary damage resulting from the Fuel Pump Defect. The Defendants, HONDA and TOYOTA, should have disclosed this information because they were in a superior position to know the true facts related to the Fuel Pump Defect and the Plaintiff and Class Members could not reasonably be expected to learn or discover the true facts related to the Fuel Pump Defect.

81. The Fuel Pump Defect causing Affected Class Vehicles to stall, lose power and/or shutdown while in operation poses a safety issue that triggered Defendant, HONDA's and TOYOTA's, duty to disclose the safety issue to consumers.
82. These acts and practices have deceived the Plaintiff and Class Members. In failing to disclose the Fuel Pump Defect and suppressing other material facts from the Plaintiff and Class Members, the Defendants, HONDA and TOYOTA, breached their duties to disclose these facts, violated the *Competition Act* and caused injuries to the Plaintiff and Class Members. The Defendant, HONDA's and TOYOTA's, omissions and concealment pertained to information that was material to the Plaintiff and Class Members as it would have been to all reasonable consumers.
83. Further, the Plaintiff and Class Members relied upon the Defendant, HONDA's and TOYOTA's, misrepresentations as to the safety and dependability of the Affected Class Vehicles to their detriment in purchasing and/or leasing the Affected Class Vehicles so as to cause loss and/or damage to the Plaintiff and Class Members.
84. The Plaintiff and Class Members have therefore suffered damages and are entitled to recover such damages pursuant to sections 36(1) and/or 52 of the *Competition Act*.

#### **Unjust Enrichment**

85. The Plaintiff and Class Members hereby incorporate by reference the allegations contained



in the preceding paragraphs of this Notice of Civil Claim.

86. The Defendants, DENSO, HONDA and/or TOYOTA, have unjustly profited from the Fuel Pump Defect in the Affected Class Vehicles whose value was inflated by their active concealment and the Plaintiff and Class Members have overpaid for the Affected Class Vehicles.
87. The Defendants, DENSO, HONDA and/or TOYOTA, have received and retained unjust benefits from the Plaintiff and Class Members and an inequity has resulted. It is inequitable and unconscionable for the Defendants, DENSO, HONDA and/or TOYOTA, to retain these benefits.
88. As a result of the Defendant, DENSO's, HONDA's and/or TOYOTA's, fraud and/or deception, the Plaintiff and Class Members were not aware of the true facts concerning the Fuel Pump Defect in the Affected Class Vehicles and did not benefit from Defendant, DENSO's, HONDA's and/or TOYOTA's, misconduct.
89. The Defendants, DENSO, HONDA and/or TOYOTA, knowingly accepted the unjust benefits of their fraudulent conduct. There is no juristic reason why the amount of their unjust enrichment should not be disgorged and returned to the Plaintiff and Class Members in an amount to be proven at trial.
90. Further, the purchase of both new and/or used Affected Class Vehicles from authorized or affiliated dealerships of the Defendants, HONDA and TOYOTA, or third party sellers, conferred a benefit on the Defendant, DENSO, as such vehicles required use of its fuel pump parts as called for in the Defendant, HONDA's and TOYOTA's, recalls as to repair and/or replace the defective Fuel Pump.

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

91. The Plaintiff and Class Members had no way of knowing about the Fuel Pump Defect in the Affected Class Vehicles. The Defendants, HONDA and TOYOTA, concealed their

knowledge of the Fuel Pump Defect while continuing to market and sell their Affected Class Vehicles.

92. Within the *Limitation Act*, and equivalent legislative provisions in the rest of Canada as described in Schedule "C", the Plaintiff and Class Members could not have discovered through the exercise of reasonable diligence that the Defendants, HONDA and TOYOTA, were concealing the conduct complained of herein and misrepresenting the true qualities of their Affected Class Vehicles.
93. 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 Fuel Pump of the Affected Class Vehicles.
94. For these reasons, the *Limitation Act* and equivalent legislative provisions in the rest of Canada as described in Schedule "C", have been tolled by operation of the discovery rule with respect to the claims in this proposed class proceeding.
95. Further, due to Defendant, DENSO's, HONDA's and TOYOTA's, knowing and active concealment of the Fuel Pump Defect throughout the time period relevant to this proposed class proceeding, the *Limitation Act* and equivalent legislative provisions in the rest of Canada as described in Schedule "C", have been tolled.
96. Instead of publicly disclosing the Fuel Pump Defect in the Affected Class Vehicles, the Defendants, DENSO, HONDA and TOYOTA, kept the Plaintiff and Class Members in the dark as to the Fuel Pump Defect and the safety risk of bodily injury or harm it presented.
97. The Defendants, DENSO, HONDA and TOYOTA, were under a continuous duty to disclose to the Plaintiff and Class Members the existence of the Fuel Pump Defect in the Affected Class Vehicles.
98. The Defendants, HONDA and TOYOTA, knowingly, affirmatively and actively concealed or recklessly disregarded the true nature, quality and character of their Affected Class

**Vehicles.**

99. As such, the Defendants, DENSO, HONDA and TOYOTA, are estopped from relying on the *Limitation Act* and equivalent legislative provisions in the rest of Canada as described in Schedule "C", in defense of this proposed class proceeding.

**Plaintiff's(s') address for service:**

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

**Fax number address for service (if any):**

~~604-435-4944~~

**E-mail address for service (if any):**

none

**Place of trial:**

Vancouver, BC, Canada

**The address of the registry is:**

800 Smith Street  
Vancouver, BC V6Z 2E1  
Canada

Dated: May 27, 2020

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

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

**Schedule "A"**  
**Sale of Goods Legislation Across Canada**

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

**Schedule "B"**  
**Consumer Protection Legislation Across Canada**

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

**Schedule "C"**  
**Limitation Act Legislation Across Canada**

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

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

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

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

Appendix

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

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

The within proposed class proceeding concerns a defective fuel pump manufactured and supplied by the Defendant, DENSO, in certain Affected Class Vehicles of the Defendants, HONDA and TOYOTA, which cause the vehicles to stall, lose engine power and/or shut down while in operation, exposing vehicle occupants to serious risk of bodily injury or harm.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

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

A dispute concerning:

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

**Part 3: THIS CLAIM INVOLVES:**

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

**Part 4:**

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