

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

AUG 08 2017



S - 177374

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:



PLAINTIFF

AND:

HONDA CANADA INC.

DEFENDANT

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. Acura is the luxury vehicle marque of the Japanese automaker, Honda Motor Company Ltd. ("HMC"), which operates in Canada as the Defendant, HONDA CANADA INC., and in the United States of America as American Honda Motor Company, Inc. ("AHMC").
2. A necessary feature for luxury vehicles by the mid-2000s was hands-free calling, where owners pair cellular phones with the vehicle using Bluetooth technology. HMC, AHMC and/or the Defendant were in the lead of this cutting edge technology, being the first to offer in North America hands-free calling with its HandsFreeLink ("HFL") system or unit starting with 2004 model year Acura vehicles ("Affected Class Vehicles").
3. In its effort to beat out the competition, HMC, AHMC and/or the Defendant failed to develop the most basic feature for any electrical device like the HFL system or unit - reliably switching off when not in use. The HFL system or unit will get stuck "on" even if not in use

and even after the vehicle's ignition switch is turned off. Once stuck "on", the HFL system or unit creates a constant and substantial parasitic electric drain on the electrical system, leading to drained and dead batteries, recurring battery replacement and premature failure of other essential electrical components such as alternators. Owners and/or lessees of the Affected Class Vehicles with the defective HFL system or unit find themselves with vehicles that will not start after a short period of non-use due to a dead battery and/or alternator and malfunctioning of electrical systems causing the vehicle to stall while in operation (hereinafter the "Defect").

4. Owners and/or lessees of the Affected Class Vehicles are faced with the choice of expensive replacement of the defective HFL system or unit (in excess of \$1,000.00), with no promise that the replacement also will not get stuck "on", or disabling the defective HFL system or unit by disconnecting it from the vehicle, thereby foreclosing their ability to use the feature for which they originally paid. Despite knowing about the Defect with its HFL system or unit since at least 2005, HMC, AHMC and/or the Defendant have merely issued internal technical service bulletins to its dealers over the years, notifying only the dealers about the problem, but offering no meaningful solution, warranty coverage or recall.
5. The Plaintiff seeks relief for all other owners and/or lessees of the Affected Class Vehicles with the defective HFL system or unit to redress the harm they have suffered as a result of the Defect.

B. The Parties

The Representative Plaintiff

6. [REDACTED]
7. On or about June 28, 2015 the Plaintiff purchased a pre-owned 2008 Acura TSX from Brian Jessel BMW, a private car dealership, in Vancouver, British Columbia.
8. The Plaintiff's 2008 Acura TSX included the defective HFL system or unit.

9. The Plaintiff based her decision to purchase the 2008 Acura TSX in reliance on the features offered by the vehicle including the HFL system or unit and the Defendant's reputation and statements about the safety, reliability, luxury and quality of Acura vehicles. She wanted a reliable vehicle with the kinds of features offered only with luxury vehicles like an Acura. The Plaintiff believed her vehicle would be a good value because of its reputation for luxury, safety and convenience, consistent with her review of the Defendant's advertising messaging regarding luxury, safety and convenience.
10. The Plaintiff still owns her 2008 Acura TSX and has paired her HFL system or unit with multiple Apple smartphones since her purchase of the vehicle.
11. Unbeknownst to the Plaintiff at the time she purchased her 2008 Acura TSX, it was equipped with an HFL system or unit that is defectively designed. The defect allows the HFL system or unit to continue to drain the battery even after the vehicle is turned off.
12. Shortly after her purchase of the 2008 Acura TSX, the Plaintiff began to experience problems with the vehicle's electrical system and battery. On numerous occasions while driving her vehicle it would begin to jerk, cut out, lose power on acceleration, stall and stop operating. The vehicle's dashboard lights would flash or flicker on and off, the radio would turn on and off and electrical coded messages were displayed on the vehicle's instrument control lamp panel indicating a malfunction. The Plaintiff also had to jump start her vehicle on numerous occasions due to a dead battery and alternator.
13. In or about 2016 the Plaintiff took her 2008 Acura TSX to Pro-Tech Auto Repair Shop Ltd. ("Pro-Tech") at #103 - 7945- 132 Street, Surrey, British Columbia and advised them about her vehicle losing power on acceleration, jerking, cutting out, stalling and the dashboard light and radio problems of flickering and cutting out. Pro-Tech was unable to detect and fix any loss of acceleration and electrical problems with the Plaintiff's vehicle given that she had lost any onboard diagnosis when she started her car after it had stalled and stopped operating. Pro-Tech advised the Plaintiff that the problem was intermittent.
14. On or about June 10, 2016 the Plaintiff brought her 2008 Acura TSX back to Pro-Tech advising them that she was continuing to have the same problems with her vehicle as to

loss of power on acceleration and the radio cutting on and off while crossing a bridge on a particular occasion. Pro-Tech replaced the accelerator pedal position sensor on the vehicle at a cost of \$312.47.

15. On or about October 27, 2016 the Plaintiff brought her 2008 Acura TSX back to Pro-Tech for a third time after her vehicle again experienced a loss of power on acceleration, stalled and stopped operating. Pro-Tech was again unable to diagnose the loss of acceleration power and electrical problems being experienced by the Plaintiff's vehicle.
16. In or about December 2016 the Plaintiff's 2008 Acura TSX again stalled and stopped operating while crossing a bridge. She had to have her vehicle towed home.
17. On or about December 15, 2016 the Plaintiff brought her 2008 Acura TSX to Fast Service Auto Repairs Ltd. ("Fast Service") at #3 - 12772 - 82 Avenue, Surrey, British Columbia for service relating to the loss of acceleration power and electrical malfunction problems relating to the dashboard lights and radio. Fast Service replaced the vehicle's battery at a cost of \$149.97.
18. On or about July 26, 2017 the Plaintiff had difficulty starting her 2008 Acura TSX. The vehicle's instrument control lamp panel indicated a malfunction message to check the charging system and the battery symbol was illuminated. The Plaintiff was eventually able to drive her vehicle home. Arriving at home the Plaintiff turned her vehicle off and then tried starting it. Her vehicle would not start and she had to jump start it.
19. On or about July 27, 2017 the Plaintiff was unable to start her 2008 Acura TSX due to either a dead battery and/or alternator. She tried jump starting the vehicle but was unable to do so. The Plaintiff had her vehicle towed to Fast Service at a cost of \$52.00 and who replaced the alternator at a cost of \$346.08.
20. The Plaintiff continues to experience, *inter alia*, battery, electrical component and starting problems with her 2008 Acura TSX as a result of the Defect and has ceased using her smartphone with the vehicle's defective HFL system or unit.

21. Up until this time, Plaintiff did not understand that the problems she encountered with her 2008 Acura TSX could have been caused by the hidden and undisclosed Defect in the HFL system or unit.
22. The Defendant did not disclose to the Plaintiff that the HFL system or unit was the reason for the electrical component failure phenomenon and replacement of the battery and alternator. The Defect was never fixed by the automotive repair shops to which the Plaintiff took her 2008 Acura TSX.
23. The Defendant's unfair, unlawful and deceptive conduct in designing, manufacturing, marketing and/or selling the Affected Class Vehicles equipped with the defective HFL system or unit has caused the Plaintiff out-of-pocket losses, future attempted repairs and diminished value of her vehicle.
24. The Defendant knew about, manipulated or recklessly disregarded the fact that the defective HFL system or unit could lead to vehicles that do not start reliably and electrical components which might fail while the vehicle is in operation and cause it to stall.
25. As the Defendant did not disclose the Defects to the Plaintiff, she purchased her 2008 Acura TSX on the reasonable but mistaken belief that it was merchantable and safe to operate as designed. Had the Defendant disclosed that the HFL system or unit could lead to vehicles that fail to start at a much higher rate than a reasonable consumer would expect or contain electrical components which might fail while the vehicle was in operation causing it to stall, the Plaintiff would not have purchased the vehicle or would have paid less for it.

The Defendant

26. The Defendant is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0055194, and has an attorney, Donald M. Dalik, at #2900 - 550 Burrard Street, Vancouver, British Columbia, V6C 0A3.
27. At all material times to the cause of action herein, the Defendant was, and is, a wholly owned North American subsidiary of HMC, and manufactures and/or assembles Honda

vehicles, including the Affected Class Vehicles, equipped with the defective HFL system or unit in Canada at an automobile plant located in Ontario for distribution and/or sale in Canada and/or the United States of America. Further, the Defendant conducts the sale, marketing and/or operational activities for Honda vehicles, including the Affected Class Vehicles equipped with the defective HFL system or unit, in Canada, and within the Province of British Columbia.

28. At all material times to the cause of action herein, the Defendant was, and is responsible for the development, manufacture, distribution, marketing, sales and/or servicing of the Affected Class Vehicles in Canada, including all decisions regarding the marketing and sale of the defective HFL system or unit, the development of the internal technical service bulletins relating to the defective HFL system or unit and the disclosure or non-disclosure of the HFL system or unit Defect.
29. At all material times to the cause of action herein, the Affected Class Vehicles manufactured, assembled, marketed, distributed and/or sold by the Defendant in Canada, including within the Province of British Columbia, contained a defective HFL system or unit.
30. At all material times to the cause of action herein, the Defendant and HMC shared the common purpose of *inter alia*, developing, manufacturing, assembling, marketing, distributing, supplying, selling, and/or distributing the Affected Class Vehicles equipped with the defective HFL system or unit referred to herein. Further, the business and interests of the Defendant, HMC and/or AHMC are interwoven with that of the other and each is the agent of the other.

C. The Class

31. This action is brought on behalf of members of a class consisting of the Plaintiff, all British Columbia residents, and all persons who while residing in the Province of British Columbia, purchased and/or entered into a lease for a 2004 to 2017 model year Acura vehicles equipped with a defective HFL system or unit in the Province of British Columbia ("BC Class Members"), or such other class definition or class period as the Court may ultimately decide on the application for certification.

D. Factual Allegations

Defendant's HFL System or Unit

32. Beginning with the 2004 model year Affected Class Vehicles, the Defendant, HMC and/or AHMC was one of the first vehicle manufacturers to introduce Bluetooth hands-free telephone technology in Canada, calling its hands-free interface the HFL system or unit. With a hands-free interface like Defendant's HFL system or unit, drivers can use their phones without using their hands. Drivers "pair" a smartphone with the vehicle, allowing calls to be made using a microphone and the speakers in the vehicle and enabling the phone to receive voice commands through the vehicle's system to dial certain numbers or places, like by saying "call home" or "call my office."
33. Beyond mere luxury and convenience, a hands-free interface makes for safer driving, allowing a driver to make calls with both hands on the wheel and eyes on the road. Indeed, in many jurisdictions, including the Province of British Columbia, a driver is not permitted to use a cellular phone while driving unless they are making calls hands-free. Due to the Defendant's deceptive practices, BC Class Members have had to disable or cease using their defective HFL system thereby foreclosing their ability to make phone calls or play music from their phones in a legal manner while driving.
34. While the technology is now fairly ubiquitous, until recently it was an important selling point among luxury vehicle manufacturers and remains a key part of the premium price charged for these vehicles in both the new and resale car markets.
35. In a 2003 press release for the new 2004 model year Affected Class Vehicles, HMC, AHMC and/or the Defendant introduced its HFL technology, stating that Acura was again leading the way among its peers in technology, performance and safety, stating in part the following:

"This prestigious marque was created to bring stimulating performance, elegant styling, state of the art technology and engineering and an unprecedented level of customer service to the luxury import market. . .

Among many of Acura's firsts: . . . The first standard Bluetooth handsfree phone system . . .

In addition, the . . . new HandsFreeLink™ system delivers hands-free phone capabilities that allow drivers to keep their hands on the wheel while making and receiving calls from their mobile phone."

36. HMC, AHMC and/or the Defendant announced in another 2003 press release that the 2004 Acura was the "First North American Vehicle to Feature a Standard HandsFree Phone System", stating the following:

"The 2004 Acura TL performance luxury sedan will feature a Bluetooth hands-free phone system as standard equipment when it goes on sale in October at Acura dealers nationwide. The HandsFreeLink™ system enables a Bluetooth wireless connection between compatible mobile phones and the TL, allowing hands-free calls to be made and received from the car. With legislation pending in many states to ban the use of hand-held mobile phones while driving, the HandsFreeLink system is a timely addition to the TL's already considerable list of standard luxury features. "We think the HandsFreeLink system is the most effective, most convenient hands-free vehicle phone system available," said Tom Elliott, Executive Vice President, Auto Operations. "And we are proud to offer it as standard equipment on all TLs."

37. Following these early marketing statements, HMC, AHMC and/or the Defendant would repeat, time and again, how the hands-free HFL system or unit embodied the luxury, convenience and safety of Affected Class Vehicles. For example, in one of the first commercials about the HFL system or unit, a sequence of people are driving their Acuras through a variety of roads and weather patterns (sun, rain and snow) with both hands confidently on the wheel while speaking aloud commands to the car, including commands to make calls home, to the office or a restaurant to make reservations.
38. Through to the present, the HFL system or unit remains one of the key features emphasized by HMC, AHMC and/or the Defendant in its Acura marketing materials:

"The [Acura] offers a formidable list of standard equipment including items such as a leather trimmed interior, power moon roof, power windows, leather-wrapped multi-function steering wheel with racing inspired paddle shifters, an auto-dimming rearview mirror with integrated rear view camera and a tri-zone climate control system with humidity control. Also included are numerous high-tech features such as Bluetooth® HandsFreeLink™ wireless telephone interface, a Multiinformation Display (MID) that allows access to multiple electronic functions and LED backlit instrumentation."

The Defective HFL System or Unit Strains and Drains the Affected Class Vehicles Electrical System

39. The Defendant, however, never publicly disclosed or warned that the HFL system or unit has an internal problem which creates a "parasitic current draw" that continues even after the car is turned off. This parasitic drain strains the electrical system of the Affected Class Vehicles, hastening failure of the battery and other essential components in the electrical system, particularly the alternator. As a result of this Defect, owners and/or lessees of the Affected Class Vehicles are left with cars that do not start reliably, failed electrical components requiring expensive repairs and replacements, compromised electrical components that can fail even when the vehicles are in operation and stalling of vehicles. In other words, this safety feature created unsafe conditions for the owners and/or lessees and this feature of convenience and luxury generated expensive maintenance costs.
40. The Defendant, HMC and/or AHMC admitted as early as June 29, 2005 in an internal technical service bulletin ("TSB") distributed only to Acura dealers for the 2004 model year that the HFL system or unit did not work. Entitled "TSB 05-020 HandsFreeLink (HFL) System Does Not Work" therein the Defendant admitted that the HFL system or unit will get locked up in an "on" position. The Defendant stated in the said TSB that the HFL "system staying on may cause a dead or low battery while the vehicle's ignition switch is off." The Defendant provided no special warranty coverage for replacement of the defective HFL system or unit and directed Acura dealers to use the same type of HFL system or unit for replacement.

41. Compounding the problem is that the Defect effectively eludes diagnosis. Once the HFL system or unit Defect compromises the battery, the system can reset, hiding the problem until the system or unit gets stuck again. As the Defendant stated in that same June 2005 TSB, "If the battery's state of charge goes low enough, or if the battery cables are removed, the system may reset, causing the problem to appear intermittent". Accordingly, the symptoms of the Defect (failed components in the electrical system, like batteries and alternators) are usually mistaken to be the only problem - a bad battery or alternator needing replacement.
42. The Defendant, HMC and/or AHMC then proceeded to issue four more internal TSBs over a span of 10 years. None of these TSBs repaired the HFL system or unit Defect.
43. On or about December 6, 2008, the Defendant, HMC and/or AHMC issued an internal TSB entitled, "TSB-08-057 HandsFreeLink (HFL) Doesn't Work" which was again distributed only to Acura dealers. Therein the Defendant admitted that other more recent models had the same defect in their HFL systems or units. The Defendant stated that the HFL "control unit has an internal problem, which creates a parasitic current draw of 250mA". One of the symptoms for the problem was that the battery would be so drained it could not start the vehicle. The corrective action was to use the same type of HFL system or unit for replacement.
44. On or about July 14, 2012, the Defendant, HMC and/or AHMC updated TSB-08-057. It also renamed the TSB "HandsFreeLink (HFL) Doesn't Work, or Battery is Too Low to Start the Engine". Even four years later, the Defendant continued to admit that "the HFL control unit has an internal problem, which created a parasitic current draw of 250 mA" and instructs technicians to use a type of HFL system or unit for replacement.
45. The HFL system or unit does not even have to be used by an owner - ever - to get stuck "on". The Defect is inherent in every HFL system or unit that it is always operational and always draws a parasitic battery drain.
46. Modern vehicles include many components that will continue to draw power from the battery even when a car is off - for example to save preset radio stations, power security devices

and run clocks. However, the draw for these ordinary purposes is minimal, typically amounting to no more than a total trickle of 25 to 40 milliamperes (mA). Such devices are, for example, short-range wireless receivers to unlock the doors. With such ordinary and expected draw, a battery will last weeks or months without ever being recharged and the regular life and operation of the battery and wider electrical system are not compromised. The parasitic draw of 250mA created in an Acura vehicle by the defective HFL system or unit, however, places upwards of ten times the drain and strain on the electrical system than experienced by all other devices combined.

Consumer Harm as a Result of the Defective HFL System or Unit

47. The excessive and constant battery draw detailed above will drain batteries in only hours or days if the vehicle is not used rather than over the typical course of weeks or months. This constant strain compromises the battery, hastening the ultimate failure of the battery and other essential electrical components, particularly the alternator that recharges the vehicle's battery. Because of the Defect, the alternator in an Acura vehicle is pressed into extra service to compensate for the compromised battery while continuing regular operation of the electrical systems when the vehicle is in operation. Like the battery, the alternator will fail at an accelerated rate and may fail suddenly as a result of the Defect.
48. As detailed in all of the above listed internal TSBs, the only fix was a replacement of the defective HFL systems or units, in total, which may or may not solve the problem and still may result in the same problem later appearing intermittently.
49. Compounding this problem for consumers, each time the defective HFL system or unit is replaced, besides the inconvenience, lost time and often unreimbursed costs, as described in the TSBs', "[a]ll of the client's stored phone numbers will be lost when the . . . unit is replaced". In other words, another layer of grief is added on: the Plaintiff, BC Class Members and consumers must reprogram their HFL system or unit with all of their phone contacts in order for the system to retain the functionality that it did prior to the battery drain.
50. Moreover, consumers pay a premium price for high-end features like the HFL system or unit and do so for the added promise of safety and convenience. In sum, the Plaintiff, BC Class

members and consumers are stuck with not only the inconvenience of repeat auto repair service visits but they are also stuck with the bill for a laundry list of other costs, including but not limited to battery replacements, alternator and starter replacements (because of the added strain on them due to constant re-charging of the battery), the added cost of the HFL system or unit hardware itself and the time lost in reprogramming the HFL system or unit with his/her phone contacts after each ineffective replacement.

Safety Hazard of a Defective HFL System or Unit

51. The Defect in the HFL system or unit creates a safety hazard. Compromised batteries may fail to start the Affected Class Vehicles at any time and any place whether or not the owner and/or lessee is far from home or needs the car in the midst of an emergency. In addition, the compromised alternator, which needs to compensate for the compromised battery, is subject to premature and sudden failure. With a compromised battery and a failed alternator, the Affected Class Vehicles can be left suddenly without any electric power even when the vehicle is in use. At that time, a vehicle in operation will stall, lose power, including to power assisted features like brakes and steering, lose headlights, trigger multiple warning lights on the dashboard and/or otherwise operate poorly or erratically.
52. The HFL system or unit is such a crucial safety feature for the Affected Class Vehicles that the Defendant, HMC and/or AHMC created a website dedicated solely to the HFL feature. At the HFL website, the Defendant extols the virtues of its HFL technology and it explains that using it can prevent car malfunctions by allowing for remote diagnostics, potentially avoiding dangerous on-road situations.
53. Consumers visiting the Acura website today shopping for a new 2017 Acura are still told about the safety of the HFL system or unit: "Check in with the office without taking your eyes off the road. The Bluetooth® HandsFreeLink™ system works with most Bluetooth-enabled cellular phones to let you initiate and receive calls using the RDX audio system."

Defendant's Exclusive Knowledge and Concealment of the Defective HFL System or Unit

54. Without knowing about the Defect in the HFL system or unit, the Plaintiff and BC Class Members have replaced one battery after another experiencing only the symptoms of the Defect and have incurred other costs as discussed herein. As the Plaintiff and BC Class Members were and remain ignorant of the actual source of the problem, they continue to suffer ongoing harm. Without understanding why, the Plaintiff and BC Class Members incurred hundreds or thousands of dollars in costs paid for repeated jump starts for drained batteries, buying replacement electrical components including batteries and alternators, and covering other costs related to the Defect in the HFL system or unit.
55. As a consequence of the Defendant's exclusive knowledge and concealment of the Defect, Acura owners and/or lessees will not discover the real cause of the problem until after several encounters with the symptoms of the problem involving, *inter alia*, drained batteries and failing electrical components, if they discover the root cause at all. Accordingly, the Plaintiff and BC Class Members were, and are, not likely to learn about the Defect in the HFL system or unit until after the warranty coverage has passed.
56. Replacement of the defective HFL system or unit is the course of action recommended by the Defendant in its internal TSB. It offers no extended or special warranty coverage for this known Defect which will typically be diagnosed after the regular manufacturer's warranty has expired. However, the parts and labour for the replacement of the defective HFL system or unit are upwards of \$1,000.00, if not more. Moreover, the Defendant is not using different HFL systems or units, but rather the standard HFL system or unit for these replacements. The replacement HFL system or unit also gets stuck "on", causing the same harm and creating the same safety hazard. As such, once Acura owners and/or lessees discover that the HFL system or unit is at the bottom of the recurring costs and inconvenience, many simply opt to disconnect the system or unit, disabling an important feature in their luxury vehicles and rendering their Affected Class Vehicles less valuable than comparable cars with properly functioning hands-free systems. Some Acura dealerships have in fact instructed their service departments to offer this 'disabling service' where they charge an additional fee to disable the feature. Under this arrangement not only are Acura owners and/or lessees being foreclosed from using a feature they paid for, but

they must also incur additional charges for any labor and parts involved in disabling the feature at the dealership.

Exclusive Knowledge, Concealment and Safety Defect Allegations

57. Absent discovery, the Plaintiff and BC Class Members are unaware of and unable through reasonable investigation to obtain the true names and identities of those individuals associated with the Defendant and/or HMC responsible for disseminating false and misleading marketing materials regarding its Affected Class Vehicles with the defective HFL system or unit. The Defendant is necessarily in possession of all of this information.
58. The Plaintiff's and BC Class Members' claims arise out of the Defendant's exclusive knowledge of and/or concealed material information regarding the HFL system or unit Defect and the safety hazard it poses. The Plaintiff and BC Class Members allege that at all material times, specifically at the time they purchased and/or leased their Affected Class Vehicles, the Defendant knew the dangers of the HFL system or unit Defect, namely the battery drain and myriad of associated repercussions. The Defendant was under a duty to disclose the HFL system or unit Defect based upon its exclusive knowledge of and/or concealed material information regarding the HFL system or unit Defect. The Defendant failed to disclose the HFL system or unit Defect to the Plaintiff, BC Class Members and/or consumers at any time or place or in any manner such that it could, and would, have affected the Plaintiff's and BC Class Members' pre-sale decision to purchase and/or lease the Affected Class Vehicles.
59. The Plaintiff makes the following fraud allegations with as much particularity as possible absent access to the information necessarily available only to the Defendant:
 - (a) Who: the Defendant had and has exclusive knowledge of the HFL system or unit Defect and failed to disclose to Plaintiff and BC Class Members and/or concealed material information regarding the HFL system or unit Defect. The Defendant similarly failed to disclose the dangerous safety risks posed by the HFL system or unit Defect in the Affected Class Vehicles. The Plaintiff and BC Class Members were unaware of and, therefore, unable to identify the true names and identities of

those specific individuals responsible for such decisions;

- (b) What: (i) the Defendant failed to disclose that its Affected Class Vehicles contain the HFL system or unit Defect. The Defendant has, and had, exclusive knowledge of and/or concealed material information that its Affected Class Vehicles contain the HFL system or unit Defect. Yet the Defendant failed to disclose the same in any pre-sale materials;
- (ii) the Defendant could have, but failed to, disclose to the Plaintiff, BC Class Members and/or consumers the risks of vehicles with a defective HFL system or unit. An example of a simple but effective disclosure that was omitted from any and all of its pre-sale materials is:

WARNING: This vehicle is equipped with a HandsFreeLink™ Bluetooth wireless connectivity system. Even if the engine is not started or the vehicle is not placed in accessory mode, the HandsFreeLink™ system may continue to parasitically drain the battery. If left parked, the vehicle will not start because the car battery will have drained. Even if used in an ongoing manner, the parasitic loss will result in increased load on other electrical systems in the vehicle, resulting in increased wear on electronic components. With a compromised battery and/or a failed alternator, your vehicle can be left suddenly without any electric power even when the vehicle is in use;

Acura technicians can disconnect the HandsFreeLink™ system, but you will no longer be able to take advantage of the benefits of this system, including hands-free calling and the remote vehicle diagnostics, which benefits potentially avoid dangerous on-road situations;

- (c) When: the Defendant had exclusive knowledge of and/or concealed material information regarding the HFL system or unit Defect starting no later than the date of its first internal TSB, distributed only to Acura dealers, dated June 29, 2005, but necessarily had knowledge in advance of that particular TSB;
- (d) Where: the Defendant concealed material information regarding the true nature of the HFL system or unit Defect in every pre-sale communication they had with the Plaintiff, BC Class Members and/or consumers. Despite all pre-sale marketing materials, sales brochures and other pre-sale enticements to purchase the Affected Class Vehicles, the Plaintiff and BC Class Members are aware of no document, communication or other place or thing in which the Defendant disclosed the truth about the HFL system or unit Defect to consumers;
- (e) How:
 - (i) the Defendant had exclusive knowledge of and/or concealed material information about the HFL system or unit Defect and failed to disclose the defect to the Plaintiff, BC Class Members and/or consumers in any pre-sale materials - the time at which the Plaintiff, BC Class Members and/or consumers could have acted. The Defendant had exclusive knowledge of and/or actively concealed the truth about the existence and nature of the HFL system or unit Defect from Plaintiff, BC Class Members and/or consumers at all times even though the Defendant knew about the HFL system or unit Defect and knew that information about the HFL system or unit Defect would be important to a reasonable consumer;
 - (ii) the Defendant has still failed to disclose the truth about the HFL system or unit Defect in its Affected Class Vehicles to the Plaintiff, BC Class Members and/or consumers. Thus, the Defendant has never taken any action to inform consumers about the true nature of the HFL system or unit Defect in its Affected Class Vehicles despite the fact that the Defendant has, and had, exclusive knowledge of and/or actively concealed the truth about the existence and nature of the HFL system or unit Defect;

- (iii) Instead, the Defendant stealthily issued one internal TSB after another admitting that the HFL system or unit Defect will “cause a dead or low battery while the vehicle’s ignition switch is off” and had the potential to “re-appear intermittent[ly]” later, even if the Defendant’s “fix” of replacing the HFL system or unit was implemented;
- (f) Why: the Defendant concealed and/or had exclusive knowledge of material information about the HFL system or unit Defect in its Affected Class Vehicles, yet failed to disclose the defect in order to induce the Plaintiff, BC Class Members and/or consumers to purchase and/or lease its vehicles rather than competitors’ vehicles. It wanted to be first to market with an integrated Bluetooth car-connectivity system. Had the Defendant disclosed the truth, the Plaintiff, BC Class Members and/or consumers either would have paid less for the Affected Class Vehicles by not purchasing the optional HFL system or unit technology, would not have purchased and/or leased the Affected Class Vehicles at all, or otherwise, would have paid less for the Affected Class Vehicles;
- (g) Safety Defect: the Defendant, like all vehicle manufacturers, is under a duty to disclose a known defect in a vehicle when there are safety concerns associated with the vehicle’s use. Manufacturers may be held liable for their failure to disclose a defect when such an omission pertains to a safety issue. In this action, as stated above, the Defendant knew about the HFL system or unit Defect, which poses a physical threat to the safety of Plaintiff, BC Class Members and/or consumers. Nevertheless, the Defendant failed to disclose the HFL system or unit Defect to the Plaintiff, BC Class Members and/or consumers.

Part 2: RELIEF SOUGHT

The Plaintiff, on her own behalf and on behalf of the BC Class Members, claims against the Defendant 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 hands-free link system of the Affected Class Vehicles is defective;
- (c) injunctive relief in the form of a recall or free replacement program with a hands-free link system that does not drain the batteries of the Affected Class Vehicles;
- (d) in the alternative, a declaration that the Defendant provide an accounting and disgorge, for the benefit of the Plaintiff and BC Class Members, all or part of the premium paid for the hands-free link system it received for the sale and/or lease of the Affected Class Vehicles and/or to make full restitution to the Plaintiff and BC Class Members thereof;
- (e) general damages;
- (f) special damages;
- (g) punitive damages, aggravated and/or exemplary damages;
- (h) special costs;
- (i) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (j) 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 BC 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 Defendant. 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

Fraud by Concealment

2. The Plaintiff and BC Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
3. The Defendant intentionally concealed that the HFL system or unit is defective and prone to create a parasitic electricity drain that would strain the electrical system and repeatedly deplete the Affected Class Vehicles battery, leaving owners and/or lessees with cars that would not start, premature battery death, damage to other components in the electrical

system and stalling vehicles. The Defendant concealed the fact that once the HFL system or unit Defect compromises the battery, the system “resets,” hiding the problem until the system or unit gets stuck again.

4. The Defendant further affirmatively misrepresented to the Plaintiff and BC Class Members in advertising and other forms of communication including standard and uniform material provided with each car and on its website, that the Affected Class Vehicles it was selling had no significant defects, that the HFL system or unit was a safety feature, reliable, and would perform and operate properly.
5. The Defendant knew about the HFL system or unit Defect when these representations were made.
6. The Affected Class Vehicles purchased and/or leased by Plaintiff and BC Class Members contained a defective HFL system or unit.
7. The Defendant had a duty to disclose that the HFL system or unit contained a fundamental defect as alleged herein because the Defect created a safety hazard and the Plaintiff and BC Class Members relied on the Defendant’s material representations.
8. As alleged herein, at all relevant times the Defendant has held out the Affected Class Vehicles to be free from defects such as the HFL system or unit Defect. The Defendant touted and continues to tout the many benefits and advantages of the HFL system or unit but nonetheless failed to disclose important facts related to the HFL system or unit Defect. This made the Defendant’s other disclosures about the HFL system or unit deceptive.
9. The truth about the HFL system or unit Defect was known only to the Defendant. The Plaintiff and BC Class Members did not know of these facts and the Defendant actively concealed these facts from Plaintiff and BC Class Members.
10. The Plaintiff and BC Class Members reasonably relied upon the Defendant’s deception. They had no way of knowing that the Defendant’s representations were false, misleading, or incomplete. As consumers, Plaintiff and BC Class Members did not, and could not,

unravel the Defendant's deception on their own. Rather, the Defendant intended to deceive the Plaintiff and BC Class Members by concealing the true facts about the Affected Class Vehicles' HFL system or unit.

11. The Defendant's false representations and omissions were material to the Plaintiff, BC Class Members and/or consumers because they concerned qualities of the Affected Class Vehicles that played a significant role in the value of the vehicles.
12. The Defendant had a duty to disclose the HFL system or unit Defect with respect to the Affected Class Vehicles because details of the true facts were known and/or accessible only to the Defendant as it had exclusive knowledge as to such facts and because it knew these facts were not known to or reasonably discoverable by the Plaintiff or BC Class Members.
13. The Defendant also had a duty to disclose because it made general affirmative representations about the technological and safety innovations included with its Affected Class Vehicles, without telling the Plaintiff, BC Class Members and/or consumers that one of the features had a fundamental defect that would affect the safety, quality and performance of the vehicle.
14. The Defendant's disclosures were misleading, deceptive, and incomplete because they failed to inform consumers of the additional facts regarding the HFL system or unit Defect as set forth herein. These omitted and concealed facts were material because they directly impact the value of the Affected Class Vehicles purchased by the Plaintiff and BC Class Members.
15. The Defendant has still not made full and adequate disclosures and continues to defraud the Plaintiff, BC Class Members and/or consumers by concealing material information regarding the HFL system or unit Defect.
16. The Plaintiff and BC Class Members were unaware of the omitted material facts referenced herein and they would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased and/or leased or paid as much for cars with faulty technology, and/or would have taken other affirmative steps in light of the

information concealed from them. The Plaintiff's and BC Class Members' actions were justified. The Defendant was in exclusive control of the material facts and such facts were not generally known to the public, the Plaintiff or BC Class Members.

17. As a result of the concealment and/or suppression of facts, the Plaintiff and BC Class Members sustained damage because they own, owned, lease or leased Affected Class Vehicles that are diminished in value as a result of the Defendant's concealment of the true quality of those vehicles' HFL system or unit. Had the Plaintiff and BC Class Members been aware of the Defect in the HFL system or unit installed in the Affected Class Vehicles and the Defendant's disregard for the truth, the Plaintiff and BC Class Members who purchased and/or leased an Acura vehicle would have paid less for their vehicles or would not have purchased or leased them at all.
18. The value of the Affected Class Vehicles has diminished as a result of the Defendant's fraudulent concealment of the HFL system or unit Defect which has made any reasonable consumer reluctant to purchase and/or lease any of the Affected Class Vehicles, let alone pay what otherwise would have been fair market value or lease rate for the vehicles.
19. The Defendant's acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud and in reckless disregard of the Plaintiff's and BC Class Members' rights and the representations that the Defendant made to them, in order to enrich the Defendant. The Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future.

Breach of Express Warranty

20. The Plaintiff and BC Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
21. As an express warrantor, manufacturer and merchant, the Defendant had certain obligations under the *Sale of Goods Act*, R.S.B.C. 1996, c.410 ("SGA") to conform the Affected Class Vehicles to their express warranties.

22. The Defendant marketed the Affected Class Vehicles as safe and reliable luxury vehicles. Such representations formed the basis of the bargain in the Plaintiff's and BC Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
23. In connection with the purchase and/or lease of each of the Affected Class Vehicles, the Defendant provided warranty coverage for the Affected Class Vehicles for 4 years or 80,000 kilometers, which obliges the Defendant to repair or replace any part that is defective under normal use.
24. The Defendant's warranty formed a basis of the bargain that was reached when the Plaintiff and BC Class Members purchased and/or leased their Affected Class Vehicles.
25. The Plaintiff and BC Class Members owned and/or leased Affected Class Vehicles with defective HFL systems or units within the warranty period but had no knowledge of the existence of the Defect, which was known and concealed by the Defendant.
26. Despite the existence of the warranty, the Defendant failed to inform the Plaintiff and other BC Class Members that the Affected Class Vehicles contained the defective HFL systems or units during the warranty periods and thus, wrongfully transferred the costs of repair or replacement to the Plaintiff and BC Class Members.
27. The Defendant breached the express warranty promising to repair and correct a manufacturing defect or defect in materials or workmanship of any parts they supplied.
28. The Defendant knew about the Defect in the HFL system or unit, allowing it to cure their breach of its warranty if it chose.
29. However, the Defendant concealed the Defect and has neglected, failed and/or refused to repair or replace the HFL system or unit free of charge outside of the warranty periods despite the Defect's existence at the time of sale and/or lease of the Affected Class Vehicles.
30. Any attempt by the Defendant to disclaim or limit recovery to the terms of the express

warranties is unconscionable and unenforceable. Specifically, the Defendant's warranty limitation is unenforceable because it knowingly sold or leased a defective product without informing the Plaintiff, BC Class Members and/or consumers about the Defect. The time limits contained in the Defendant's warranty periods were also unconscionable and inadequate to protect the Plaintiff and BC Class Members. Among other things, the Plaintiff and BC Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendant. A gross disparity in bargaining power existed between the Defendant and BC Class Members and the Defendant knew that the HFL systems or units were defective at the time of sale.

31. Further, the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and BC Class Members whole because the replacement part used by the Defendant contains the same defect. Affording the Defendant a reasonable opportunity to cure the breach of written warranties, therefore, would be unnecessary and futile.

Breach of the Implied Warranty or Condition of Merchantability pursuant SGA

32. The Plaintiff and BC Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
33. The Defendant is a "seller" with respect to motor vehicles within the meaning of the SGA.
34. A warranty that the Affected Class Vehicles were in merchantable condition was implied by law in pursuant to the SGA.
35. The Defendant marketed the Affected Class Vehicles as safe and reliable luxury vehicles. Such representations formed the basis of the bargain in the Plaintiff's and BC Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
36. The Plaintiff and BC Class Members purchased and/or leased the Affected Class Vehicles from the Defendant through its 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 or leased from a third party. At all relevant times, the Defendant was the manufacturer, distributor, warrantor and/or seller of the Affected Class Vehicles.

37. The Defendant knew or had reason to know of the specific use for which the Affected Class Vehicles were purchased or leased.
38. As a result of the Defect in the HFL system or unit, the Affected Class Vehicles were not in merchantable condition when sold and are not fit for the ordinary purpose of providing safe and reliable transportation.
39. The Defendant knew about the Defect in the HFL system or unit, allowing it to cure their breach of its warranty if it chose.
40. The Defendant's attempt to disclaim or limit the implied warranty of merchantability vis-à-vis the Plaintiff, BC Class Members and/or consumers is unconscionable and unenforceable here. Specifically, the Defendant's warranty limitation is unenforceable because it knowingly sold or leased a defective product without informing the Plaintiff, BC Class Members and/or consumers about the Defect. The time limits contained in the Defendant's warranty periods were also unconscionable and inadequate to protect the Plaintiff and BC Class Members. Among other things, the Plaintiff and BC Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendant. A gross disparity in bargaining power existed between the Defendant and the Plaintiff and BC Class Members, and the Defendant knew of the Defect at the time of sale.
41. The Plaintiff and BC Class Members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of the Defendant's conduct alleged herein. Affording the Defendant a reasonable opportunity to cure the breach of written warranties, therefore, would be unnecessary and futile.

Violation of the Business Practices and Consumer Protection Act, S.B.C. 2004 (the "BPCPA")

42. The Plaintiff and BC Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
43. The Affected Class Vehicles are consumer "goods" within the meaning of the *BPCPA*.
44. The Plaintiff and BC Class Members are "consumers" within the meaning of the *BPCPA*.
45. The Defendant is a "supplier" within the meaning of the *BPCPA*.
46. The purchase and/or lease of the Affected Class Vehicles by the Plaintiff and BC Class Members constitutes a "consumer transaction" within the meaning of the *BPCPA*.
47. By failing to disclose and actively concealing the HFL Defect, the Defendant engaged in unfair and deceptive trade practices prohibited by the *BPCPA*.
48. As alleged herein, the Defendant made misleading representations and omissions concerning the benefits, performance, and safety of the Affected Class Vehicles including the HFL system or unit.
49. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and BC Class Members were deceived by the Defendant's failure to disclose its knowledge of the Defect in its HFL system or unit, which caused a parasitic electrical drain even when the vehicle's ignition switch is off. The Defendant further concealed the hidden nature of the problem with the HFL system or unit, causing the problem to appear intermittent and unrelated to any defect in the HFL system or unit.
50. The Defendant's conduct as alleged herein was, and is, in violation of the *BPCPA*, 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.

51. The Defendant intentionally and knowingly misrepresented and omitted material facts regarding the Affected Class Vehicles, specifically regarding the HFL system or unit, with an intent to mislead the Plaintiff and BC Class Members.
52. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and BC Class Members were deceived by the Defendant's failure to disclose its knowledge of the Defect in its HFL system or unit.
53. The Plaintiff and BC Class Members had no way of knowing of the Defendant's representations were false, misleading and incomplete or knowing the true nature of the HFL system or unit. As alleged herein, the Defendant engaged in a pattern of deception and public silence in the face of a known defect with its HFL system or unit. The Plaintiff and BC Class Members did not, and could not, unravel the Defendant's deception on their own.
54. The Defendant knew or should have known its conduct violated the *BPCPA*.
55. The Defendant owed the Plaintiff and BC Class Members a duty to disclose the truth about its defective HFL system or unit because the Defect created a safety hazard and the Defendant:
 - (a) possessed exclusive knowledge of the Defect in the HFL system or unit, which caused parasitic electricity drain that would repeatedly deplete the Affected Class

Vehicles' battery;

- (b) intentionally concealed the foregoing from the Plaintiff and BC Class Members; and/or
 - (c) made incomplete representations in advertisements and on its website failing to warn the public or to publicly admit that the HFL system or unit was defective.
56. The Defendant had a duty to disclose that the HFL system or unit in the Affected Class Vehicles was fundamentally flawed as described herein because the Defect created a safety hazard and the Plaintiff and BC Class Members relied on the Defendant's material misrepresentations and omissions regarding the features of the Affected Class Vehicles and HFL system or unit.
57. The Defendant's conduct proximately caused injuries to the Plaintiff and BC Class Members that purchased and/or leased the Affected Class Vehicles and suffered harm as alleged herein.
58. The Plaintiff and BC Class Members were injured and suffered ascertainable loss, injury-in-fact and/or actual damage as a proximate result of the Defendant's conduct in that Plaintiff and BC Class Members incurred costs related the parasitic drain caused by the Defect, including replacements of electrical components and service costs and overpaid for their Affected Class Vehicles that have suffered a diminution in value.
59. The Defendant's violations cause continuing injuries to the Plaintiff and BC Class Members. The Defendant's unlawful acts and practices complained of herein affect the public interest.
60. The Defendant knew of the defective design and/or manufacture of the HFL system or unit and that the Affected Class Vehicles were materially compromised by the Defect.
61. The facts concealed and omitted by the Defendant from the Plaintiff and BC Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase an Acura vehicle or pay a lower price. Had the Plaintiff and

BC Class Members known about the defective nature 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.

62. The Plaintiff's and BC Class Members' injuries were directly or proximately caused by the Defendant's unlawful and deceptive business practices.

Unjust Enrichment

63. The Plaintiff and BC Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
64. The Defendant has unjustly profited from its HFL system or unit Defect in the Affected Class Vehicles whose value was artificially inflated by its active concealment and the Plaintiff and BC Class Members have overpaid for the Affected Class Vehicles.
65. The Defendant has received and retained unjust benefits from the Plaintiff and BC Class Members and inequity has resulted. It is inequitable and unconscionable for the Defendant to retain these benefits.
66. As a result of the Defendant's fraud and/or deception, the Plaintiff and BC Class Members were not aware of the true facts concerning the HFL system or unit Defect in the Affected Class Vehicles and did not benefit from Defendant's misconduct.
67. The Defendant knowingly accepted the unjust benefits of its fraudulent conduct. There is no juristic reason why the amount of its unjust enrichment should not be disgorged and returned to the Plaintiff and BC Class Members, in an amount to be proven at Trial

Negligence

68. In the alternative, the Defendant failed to meet the reasonable standard of care expected of an automobile manufacturer in the circumstances in that:

- (a) it knew or ought to have known about the HFL system or unit Defect in the Affected Class Vehicles and should have informed or warned the Plaintiff and BC Class Members;
 - (b) it designed, developed, tested, manufactured, assembled, distributed and/or sold a defective HFL system or unit in the Affected Class Vehicles;
 - (c) it failed to timely warn the Plaintiff, BC Class Members and/or consumers about the HFL system or unit Defect in the Affected Class Vehicles;
 - (d) it failed to change the design, manufacture and/or assembly of the HFL system or unit in a reasonable and timely manner;
 - (e) it failed to properly test the HFL system or unit in the Affected Class Vehicles;
 - (f) it knew or ought to have known about the HFL system or unit Defect in the Affected Class Vehicles but kept the Defect a secret;
 - (g) it failed to timely issue and implement safety, repair and/or replacement recalls of the HFL system or unit Defect in the Affected Class Vehicles;
 - (h) the HFL Defect presented a safety hazard as drained batteries would cause the Affected Class Vehicles to stop while being driven on the road; and
 - (i) it failed to exercise reasonable care and judgment.
69. As a result of the HFL system or unit Defect in the Affected Class Vehicles and the failure of the Defendant to disclose the Defect, the Plaintiff and the BC 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 BC Class Member must expend the time to have his/her vehicle repaired and be without their vehicle. The Defendant should compensate the Plaintiff and each BC Class Member for their incurred out-of-pocket expenses for, among other things, alternative transportation, tow charges and prior repairs

to the Affected Class Vehicles as a result of the HFL system or unit Defect.

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

70. The Plaintiff and BC Class Members had no way of knowing about the hidden Defect in the HFL system or unit. The Defendant concealed its knowledge of the Defect while continuing to market and sell the HFL system or unit as a safety feature in the Affected Class Vehicles.
71. Within the *Limitation Act*, the Plaintiff and BC Class Members could not have discovered through the exercise of reasonable diligence that the Defendant was concealing the conduct complained of herein and misrepresenting the true qualities of the Affected Class Vehicles.
72. The Plaintiff and BC Class Members did not know facts that would have caused a reasonable person to suspect that there was a defect in Defendant's HFL system or unit and an ordinary person would be unable to appreciate that the HFL system or unit was defective.
73. For these reasons, the *Limitation Act* has been tolled by operation of the discovery rule with respect to the claims in this proposed class proceeding.
74. Further, due to Defendant's knowing and active concealment throughout the time period relevant to this proposed class proceeding, the *Limitation Act* has been tolled.
75. Instead of publicly disclosing the defect in the HFL system or unit, the Defendant kept the Plaintiff and BC Class Members in the dark about the failure in their electrical systems, most notably the repeated battery and alternator failures.
76. The Defendant was under a continuous duty to disclose to the Plaintiff and BC Class Members the existence of the Defect in the HFL system or unit including the related failure of the electrical systems.
77. The Defendant knowingly, affirmatively, and actively concealed or recklessly disregarded the true nature, quality and character of the HFL system or unit.

78 As such, the Defendant is estopped from relying on the *Limitation Act* in defense of this proposed class proceeding.

Plaintiff's(s') address for service:

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

Fax number address for service (if any):

604-435-4944

E-mail address for service (if any):

none


Place of trial:

Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1

Dated: August 8, 2017



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

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:

A class action involving the purchase and/or lease of 2004 to 2017 Acura vehicles containing a defective hands-free link cellular phone system causing a parasitic drain or draw on the vehicle's battery and electrical system resulting in a reduced value of the vehicle and endangering drivers by shutting down moving cars.

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* SC 1993, c.16
 6. *Court Order Interest Act*, R.S.B.C., c. 79
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