



NO. Court File No. **VLC-S-S-250317**
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:



PLAINTIFF

AND:

AUDI CANADA INC. and
VOLKSWAGEN GROUP CANADA INC.

DEFENDANTS

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

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.
If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

A. Nature of Claim - Overview

1. The within proposed automobile product liability multi-jurisdictional class proceeding involves certain model year 2019-2024 Audi e-tron electric vehicles ("EVs"), defined below as "Affected Class Vehicles", engineered, designed, manufactured, assembled, tested, marketed, distributed, supplied, leased and/or sold by the Defendants, AUDI CANADA INC. ("**Audi Canada**") and VOLKSWAGEN GROUP CANADA INC. ("**VWGC**"), in Canada, including the Province of British Columbia, equipped with a defective lithium-ion battery which overheats when charged to full, or nearly full, capacity causing the Affected Class Vehicles to suddenly lose complete motive power, short circuit and create a risk of fire (hereinafter, "**Battery Defect**"). The Battery Defect poses a real, substantial and/or imminent danger of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves.
2. In an EV, the electric battery is the most important component because it stores the chemical energy and converts it to electricity to power the motor and propel the vehicle. The battery also powers the vehicle's electrical systems when it is not in operation, such as the central locking system, the alarm, and other security features. The battery also powers the vehicle's onboard computer and diagnostic systems.

3. The amount of electrical energy a battery can store is referred to as “capacity”, which is measured in kilowatt-hours (“kWh”). The battery's design influences how fast it can be recharged, and its size and capacity impacts how far the vehicle can travel on a single charge (called “range”).
4. Most batteries in EVs are lithium-ion, which allows for higher energy density, meaning that the lithium-ion battery can store a lot of energy in a small mass. Lithium-ion batteries also have long cycle life, meaning that the battery can perform through numerous charge and discharge cycles before it no longer holds a charge.
5. Lithium-ion batteries, however, have disadvantages. EV manufacturers are aware that lithium-ion batteries have a long history of fire issues. As lithium-ion batteries can store significant amounts of energy, they can overheat when charged to full or nearly full capacity, putting the battery at risk of exploding or catching fire. This is called “thermal runaway”: when the battery's temperature rapidly and uncontrollably rises, leading to a fire. Overheating can result from short circuiting in a battery cell within the lithium-ion battery's module. External short circuiting occurs when there is unintended direct contact between the positive and negative terminals, thereby allowing energy to flow unimpeded, while internal short circuiting can occur within a single cell due to a manufacturing defect. The lithium-ion batteries in the Affected Class Vehicles are particularly prone to this problem as they are built on high-voltage technology.
6. The Battery Defect in the Affected Class Vehicles causes a short circuit in the lithium-ion battery module, resulting in a sudden and complete loss of motive power while in operation and further, increases the risk of a fire, or thermal event, even when the vehicle is parked and in the off position.
7. “Affected Class Vehicles” refers to the following model year Audi e-tron EVs engineered, designed, manufactured, assembled, tested, marketed, distributed, supplied, leased and/or sold by the Defendants, Audi Canada and VWGC, in Canada, including the Province of British Columbia, equipped with a defective lithium-ion battery:

MODEL	MODEL YEARS
e-tron	2019-2022
e-tron GT	2022-2024
RS e-tron GT	2022-2023

The Plaintiff reserves the right to amend or add to the Audi-branded EV models included in the definition of Affected Class Vehicles.

8. The Defendants, Audi Canada and/or VWGC, have not sufficiently and adequately remedied or fixed the Battery Defect. Piecemeal recalls of the Affected Class Vehicles began in the United States and Canada in December 2023 of certain model year Affected Class Vehicles, and culminating in the most recent recall in September 2024 of 6,499 Affected Class Vehicles in the United States and 702 Affected Class Vehicles in Canada. However, the recalls do not address the root cause of the Battery Defect, and the Defendants, Audi Canada and/or VWGC, have not agreed to affirmatively repair or replace all the defective lithium-ion batteries equipped in the Affected Class Vehicles. Rather than identifying a repair or replacement of all the defective lithium-ion batteries equipped in the Affected Class Vehicles, the recalls instruct owners and/or lessees of the Affected Class Vehicles to limit charging to 80% of the lithium-ion battery's actual capacity, resulting in a reduction of the advertised range that owners and/or lessees paid for and further, requiring owners and/or lessees to charge the Affected Class Vehicles more frequently.
9. As a supposed final remedy, the Defendants, Audi Canada and/or VWGC, propose to have their authorized dealers install a diagnostic software update. However, that software update will not be available until sometime during the first quarter of 2025. No exact date has been provided by the Defendants, Audi Canada and/or VWGC. The software update will purportedly allow the Defendants, Audi Canada and/or VWGC, to monitor data from the Affected Class Vehicles for anomalies in the lithium-ion battery, and if one is detected, the vehicle dashboard will display a warning message and limit the charging capacity of the lithium-ion battery until it can be inspected and repaired if necessary. Apart from the failure to address the serious risk of fire posed by the Battery Defect *now*, inspecting and repairing the lithium-ion batteries can take months and further, there is no certainty as to when the

diagnostic software update will be available and whether it will be sufficient or adequate to remedy or fix the Battery Defect in the Affected Class Vehicles.

10. But even if the software update can successfully discover all data anomalies and predict a problem—which is an open question that will be answered, at best, for months—the Defendants, Audi Canada and/or VWGC, acknowledge and/or admit that the lithium-ion batteries in the Affected Class Vehicles may have problems in the future. Further, owners and/or lessees of the Affected Class Vehicles who do not have the software update receive no warnings if the lithium-ion battery modules experience a short circuit.
11. Ultimately, a software fix cannot solve the defect in the Affected Class Vehicles lithium-ion battery that leads to thermal runaway and fire and explosion of the battery cells. Merely reducing the maximum charging capacity does not resolve the underlying flaw in the lithium-ion batteries, and as continuing fire incidents demonstrate, diagnostic software capable of warning of a thermal runaway event can merely inform that a catastrophic runaway event is already underway and that a fire is inevitable within seconds.
12. The Defendants, Audi Canada and/or VWGC, have left the Plaintiff and putative class members with two unreasonable choices: an owner and/or lessee can decide to stop driving their Affected Class Vehicle for which they paid \$100,000 or more, or they can continue driving the Affected Class Vehicle at the risk of losing complete motive power while driving on a highway or experiencing a fire. To date, the Defendants, Audi Canada and/or VWGC, have been unable to develop, implement, or deliver an adequate repair or fix to fully address the Battery Defect in all the Affected Class Vehicles. The software update fix is clearly inadequate and only a buyback of all Affected Class Vehicles, or at the very least, replacement of all Affected Class Vehicle lithium-ion batteries with non-defective ones, could possibly solve the problem.
13. Apart from failing to offer a concrete time-line for addressing the Battery Defect in all the Affected Class Vehicles, the Defendants, Audi Canada and/or VWGC, have not offered to provide any compensation for the significant limitations placed on the Affected Class Vehicles, and in fact, it is unclear if the purported remedy will fully remedy or fix the Battery Defect. The Plaintiff and putative class members are left with Affected Class Vehicles that

cannot function as advertised; cannot be charged to the advertised range; require more frequent and less convenient charging times and locations; and that may spontaneously lose complete motive power while driving, or spontaneously catch fire, all of which poses a real, substantial and/or imminent danger of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves.

14. In engineering, designing, manufacturing, assembling, testing, marketing, distributing, supplying, leasing and/or selling the Affected Class Vehicles, the Defendants, Audi Canada and/or VWGC, have engaged in unfair, deceptive, and/or misleading consumer practices, and further have breached their express and/or implied warranties.
15. Prior to selling and/or leasing the Affected Class Vehicles, the Defendants, Audi Canada and/or VWGC, knew that the Affected Class Vehicles were defective, yet omitted and kept this material fact from the Plaintiff and putative class members. Rigorous pre-release durability testing made the Defendants, Audi Canada and/or VWGC, aware of the Battery Defect. The Battery Defect is also widely discussed and complained about on internet forums and message boards devoted to the Affected Class Vehicles and in complaints made directly to government vehicle safety regulators, Transport Canada and/or the United States National Highway Traffic Safety Administration ("NHTSA"), all of which the Defendants, Audi Canada and/or VWGC, review and monitor. The Defendants, Audi Canada and/or VWGC, also knew about the Battery Defect from fire incidents that occurred in high-voltage electric batteries equipped in Porsche Taycan EVs. The Defendants, Audi Canada and/or VWGC, have failed, neglected and/or refused to adequately and sufficiently remedy or fix the Battery Defect.
16. As a result of the alleged misconduct of the Defendants, Audi Canada and/or VWGC, the Plaintiff and putative class members were harmed and suffered actual damages. The Plaintiff and putative class members did not receive the benefit of their bargain; rather, they purchased and/or leased vehicles that are of a lesser standard, grade and quality than represented, and they did not receive vehicles that met ordinary and reasonable consumer expectations regarding safe and reliable operation. Purchasers and/or lessees of the Affected Class Vehicles paid more, either through a higher purchase price or lease payments, than they would have had the Battery Defect been disclosed. The Plaintiff and

putative class members were deprived of having a safe, defect-free lithium-ion battery in their Affected Class Vehicles, and the Defendants, Audi Canada and/or VWGC, have unjustly benefitted from the higher price paid by consumers for the Affected Class Vehicles.

17. The Plaintiff and putative class members also suffered damages in the form of, *inter alia*, out-of-pocket costs of repair, rental car costs, towing costs and/or diminished value of the Affected Class Vehicles.
18. No reasonable consumer would have purchased and/or leased an Affected Class Vehicle had the Defendants, Audi Canada and/or VWGC, made full and complete disclosure of the Battery Defect, or would have paid a lesser price.
19. The Plaintiff and putative class members expected that the Defendants, Audi Canada and/or VWGC, would disclose material facts about the safety of their Affected Class Vehicles and the existence of any defect that will result in expensive and non-ordinary repairs. The Defendants, Audi Canada and/or VWGC, failed to do so.
20. The Plaintiff seeks relief for all other current and/or former owners and/or lessees of the Affected Class Vehicles equipped with the defective lithium-ion battery, including, *inter alia*, recovery of damages, buyback of the Affected Class Vehicles and/or repair under provincial consumer protection legislation, breach of express warranty, breach of implied warranty of merchantability and reimbursement of all expenses associated with the repair and/or recall of the Battery Defect in the Affected Class Vehicles.

B. The Parties

i. Representative Plaintiff

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

22. [REDACTED]

23. On or about April 12, 2021 the Plaintiff entered into a motor vehicle purchase agreement for a 2022 Audi RS e-tron GT quattro ("Audi RS e-tron") containing the Battery Defect, an Affected Class Vehicle, from an Audi dealership in Victoria, British Columbia, Canada for \$197,714.00 plus tax. Mr. Rai, on behalf of the Plaintiff, executed the motor vehicle purchase agreement and further, was a personal guarantor pursuant to a financing agreement to purchase the vehicle. At no time did the said Audi dealership or the Defendants, Audi Canada and/or VWGC, advise or warn the Plaintiff or Mr. Rai of the Battery Defect in the Audi RS e-tron prior to, or at the time of purchase, or thereafter.
24. In or about January 2022 the said Audi dealership delivered to the Plaintiff the Audi RS e-tron. At no time at delivery, or thereafter, did the said Audi dealership or the Defendants, Audi Canada and/or VWGC, advise or warn the Plaintiff or Mr. Rai of the Battery Defect in the Audi RS e-tron.
25. On November 4, 2022 Mr. Rai attended the said Audi dealership and had a 12 Volt battery control module software update performed on the Audi RS e-tron. At no time did the said Audi dealership or the Defendants, Audi Canada and/or VWGC, advise or warn the Plaintiff or Mr. Rai of the Battery Defect in the Audi RS e-tron.
26. On or about May 11, 2023 Mr. Rai attended the said Audi dealership and advised that the battery charger for the Audi RS e-tron was not functioning so as to charge the electric vehicle. A 12 Volt battery control module software update was performed. At the time, the Audi RS e-tron had 32,266 kilometers on it. Later that evening, around 8:30 p.m., Mr. Rai was unable to drive the Audi RS e-tron as it entered limp mode and various warning signals illuminated on the vehicle's dashboard or instrument cluster panel, including "Safety system: malfunction! See owner's manual"; "Stabilization control (ESC): malfunction! See Owner's manual"; "Driver assistance systems: currently limited. Affected systems will be continuously updated in message memory"; "Drive system: warning! Limited performance"; "Drive system: malfunction! Please contact Service"; "All-wheel drive: malfunction! Limited stability. Please contact Service"; "Drive system: malfunction! Safely stop vehicle". At no time did the said Audi dealership or the Defendants, Audi Canada and/or VWGC, advise or warn the Plaintiff or Mr. Rai of the Battery Defect in the Audi RS e-tron. The Plaintiff continues to experience performance problems in his Audi RS e-tron.

27. In or about November 2024, the Plaintiff received a recall notice from the Defendant, Audi Canada, with regards to the high voltage battery in its Audi RS e-tron. The recall notice advised, *inter alia*, of the following:
- i. certain high-voltage batteries may experience short circuits within the battery modules, which can increase the risk of fire;
 - ii. a recall remedy is not yet available and the Defendant, Audi Canada, expects the remedy to be available by the end of the 1st quarter of 2025;
 - iii. in the interim, the Defendant, Audi Canada, would do a high-voltage battery module inspection until the recall remedy becomes available, which inspection would take four days to complete; and
 - iv. as a precaution the Defendant, Audi Canada, recommends that owners of the affected e-tron vehicles set the maximum battery charge to 80% until the remedy is available.
28. At the time of purchase the Plaintiff or Mr. Rai did not know that the Audi RS e-tron was equipped with the defective lithium-ion battery as alleged herein. Had the Plaintiff known of the lithium-ion battery defect prior to purchase, it would not have purchased the Audi RS e-tron, or would not have paid less for it. As a result, the Plaintiff did not receive the benefit of its bargain.

ii. The Defendants

29. The Defendant, Audi, Canada, is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0070488, and has a registered agent, LML & S Services Inc. at 1500 Royal Centre, PO Box 11117, 1055 West Georgia Street, Vancouver, British Columbia, V6E 4N7, Canada.
30. The Defendant, VWGC, is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0005636, and has a registered agent,

LML & S Services Inc. at 1500 Royal Centre, PO Box 11117, 1055 West Georgia Street, Vancouver, British Columbia, V6E 4N7, Canada.

31. At all material times to the cause of action herein, the Defendant, Audi Canada, was, and is, a wholly-owned subsidiary, affiliate, agent and/or a operating or organizational unit of the Defendant, VWGC, that marketed, advertised, distributed, sold and/or leased Audi vehicles, including the Affected Class Vehicles, as averred to in paragraph seven herein, containing the Battery Defect in Canada, and within the Province of British Columbia, on behalf of the Defendant, VWGC, and Audi AG, through authorized dealerships and/or independent retailers.
32. Audi AG, is a company duly incorporated pursuant to the laws of the Federal Republic of Germany, who engineers, designs, manufacturers, assembles, exports, markets, advertises, distributes, sells and/or leases Audi vehicles worldwide, including the Affected Class Vehicles, as averred to in paragraph seven herein, containing the Battery Defect, through its related subsidiaries, affiliates, agents and/or operating or organizational units, including, *inter alia*, the Defendants, Audi Canada and VWGC, and authorized dealerships and/or independent retailers in North America.
33. At all material times to the cause of action herein, the Defendant, VWGC, imports, markets, advertises, distributes, leases and/or sells Audi vehicles, including the Affected Class Vehicles, as averred to in paragraph seven herein, containing the Battery Defect in Canada, and within the Province of British Columbia, pursuant to a general distributor agreement with Audi AG. The Defendant, VWGC, is Audi AG's Canadian distribution, marketing and/or sales arm of Audi vehicles and part of the Audi Group of Companies, which Audi AG exercises, direct and/or indirect, control over, including, *inter alia*, management policies, information governance policies, pricing and warranty terms.
34. At all material times to the cause of action herein, the Defendants, Audi Canada and VWGC, were, and are, responsible for the distribution, sale, service and/or repair of the Affected Class Vehicles in Canada and further, as subsidiaries, affiliates, agents and/or operating or organizational units were, and are, directly and/or indirectly involved with Audi AG in the engineering, design, development, manufacture, assembly and/or testing of Audi

vehicles, including the Affected Class Vehicles, as averred to in paragraph seven herein, containing the Battery Defect.

35. At all material times to the cause of action herein, the Defendants, Audi Canada and VWGC, and Audi AG, shared the common purpose of, *inter alia*, engineering, designing, developing, manufacturing, assembling, marketing, distributing, supplying, leasing and/or selling Audi vehicles, including the Affected Class Vehicles, as averred to in paragraph seven herein, containing the Battery Defect in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendants, Audi Canada and VWGC, are inextricably interwoven with that of the other, and with Audi AG, as to the Battery Defect in the Affected Class Vehicles, as averred to in paragraph seven herein, such that each is the agent or alter ego of the other.
36. Hereinafter, the Defendants, Audi Canada and VWGC, are collectively, and/or interchangeably, referred to as the Defendant, **"Audi Canada"** or **"Defendants"**, unless referred to individually.

C. U.S. Related Corporate Entities - Audi of America, LLC and Volkswagen Group of America, Inc.

37. Audi of America, LLC ("Audi America") is a company duly incorporated to the laws of the State of Delaware, one of the United States of America, with its principal place of business in Herndon, Virginia. Audi America is a wholly-owned subsidiary, affiliate and/or agent of the Volkswagen Group of America, Inc. ("VWGA"). Audi America is responsible for the marketing, distribution and/or sale of Audi vehicles in the United States, including Audi e-trons.
38. VWGA is a company duly incorporated to the laws of the State of Delaware, one of the United States of America, with its principal place of business in Reston, Virginia. VWGA is the parent company of Audi America and is involved in the marketing, distribution and/or

sale of Audi vehicles in the United States, including Audi e-trons.

39. VWGA is Audi AG's American marketing, distribution and/or sales arm of Audi vehicles and part of the Audi Group of Companies, which Audi AG exercises, direct and/or indirect, control over, including, *inter alia*, management policies, information governance policies, pricing and warranty terms.
40. At all material times to the cause of action herein, Audi America, VWGA and the Defendants, Audi Canada and VWGC, shared the common purpose of, *inter alia*, engineering, designing, developing, manufacturing, assembling, marketing, distributing, supplying, leasing and/or selling Audi e-tron vehicles, including the Affected Class Vehicles, in North America. Further, the business and interests of Audi America, VWGA and the Defendants, Audi Canada and VWGC, are inextricably interwoven with that of the other, and with Audi AG, as to the Battery Defect in the Affected Class Vehicles.
41. Hereinafter, Audi America and VWGA are collectively, and/or interchangeably, referred to as "**Audi America**", unless referred to individually.

D. The Class

42. This action is brought on behalf of members of a class consisting of the Plaintiff and all other persons and/or entities resident in Canada, who own, owned, lease and/or leased an Affected Class Vehicle ("**Class**" or "**Class Members**"), excluding employees, officers, directors, agents of the Defendants and their family members, class counsel, presiding judges and any person who has commenced an individual proceeding against or delivered a release to the Defendants concerning the subject of this proceeding, or such other class definition or class period as the Court may ultimately decide on the application for certification.

E. Factual Allegations

I. Audi e-tron

43. The Defendant, Audi Canada, marketed, advertised, distributed, sold and/or leased the

Audi e-tron series of vehicles, the first fully electric luxury line under the Audi brand. The Audi e-tron is available in various models: e-tron Quattro, e-tron Sportback Quattro, e-tron GT, and RS e-tron GT.

44. The Audi e-tron was originally announced as a concept car in 2009 as a plug-in hybrid vehicle. In 2019, however, when the Audi e-tron went into production, it was designed and manufactured as Audi AG's first fully electric vehicle. Over 30,000 Affected Class Vehicles have been sold and/or leased in North America between 2019 and 2024 by Audi America and the Defendant, Audi Canada.
45. The Defendant, Audi Canada, marketed, advertised, distributed, sold and/or leased the first Audi all-electric vehicle as providing characteristic performance, technology, driving dynamics and connectivity with everyday usability in the age of electric mobility.
46. When the Audi e-tron was launched, the Defendant, Audi Canada, announced that the Audi e-tron's 95-kWh lithium-ion battery would provide an estimated range of 328 kilometers. The Defendant, Audi Canada, also touted the Audi e-tron's advanced thermal management systems, and the sophisticated measures it took to protect the high-voltage battery against damage impacts, including a full clad underbody including aluminum plate to help protect the high-voltage battery.
47. In a media press release, dated September 17, 2018, Audi America also touted about the Audi e-tron's charging speed and flexibility stating the following:

"Designed for efficiency and integration, the e-tron is engineered for both AC and DC charging via the widespread SAE J1 772 and Combined Charging System (CCS) standards. In an industry first to-date, the e-tron debuts a DC fast charging capability of up to 150 kW available at select high-speed public charging stations, this capability can deliver up-to an 80 percent charge in only approximately 30 minutes. For customers' residential charging needs, a standard 9.6 kW AC capsule charger (Level 2, 240-volt/40 amps) is provided and designed to deliver a fresh charge overnight. This charger will include plugs that can utilize both a standard

120-volt household outlet (1.2 kW) as well as a fast-speed 240-volt NEMA 14-50 outlet (9.6 kW)."

48. Further, in the same media press release, Audi America stated the following as to the Audi e-tron's high-voltage battery:

"The battery system in the Audi e-tron is located beneath the cabin and is 2.28 meters (90 inches) long, 1.63 meters (63.6 inches) wide and 34 centimeters (13.4 in) high. It comprises a total of 36 cell modules in square aluminum housings, each of which is roughly the size of a shoe box. They are arranged on two levels, known as "floors" -a longer lower floor and a shorter upper one. At market launch, each module is equipped with twelve pouch cells having a flexible outer skin of aluminum-coated polymer. The battery operates with a nominal voltage of 396 volts and stores 95 kWh of energy."

49. The Defendant, Audi Canada, represented the Audi e-tron as having the following ranges:

MODEL	ESTIMATED RANGE (km/miles)
2019 e-tron quattro	328 km/204 miles
2020 e-tron Sportback quattro	350 km/218 miles
2021 e-tron quattro	357 km/222 miles
2021 e-tron Sportback quattro	350 km/218 miles
2022 e-tron quattro	357 km/222 miles
2022 e-tron Sportback quattro	350 km/218 miles
2022 e-tron GT	383 km/238 miles
2022 RS e-tron GT	373 km/232 miles

2023 e-tron GT	383 km/238 miles
2023 RS e-tron GT	373 km/232 miles
2024 e-tron GT	400 km/249 miles
2024 RS e-tron GT	400 km/249 miles

ii. Defendant, Audi Canada's knowledge of the Battery Defect in the Affected Class Vehicles

50. The Defendant, Audi Canada, knew or ought have known about the Battery Defect in the Affected Class Vehicles at least as early as April 2020, and became aware of it through a number of sources, including, *inter alia*,: (i) its own pre-sale durability testing on its vehicles and all of its components, including the high-voltage electric batteries; (ii) consumer complaints filed with Transport Canada and/or NHTSA, including consumer complaints reported directly to the Defendant, Audi Canada; (iii) warranty claims, dealership repair records, and part sales with the Defendant, Audi Canada; (iv) public reports regarding high-voltage battery issues with the Affected Class Vehicles, including reports of fires; (v) public reports regarding high-voltage battery issues, including reports of fires with Porsche Taycan EVs, which have similarly defective lithium-ion batteries supplied by the same supplier the Defendant, Audi Canada, used, LG Energy Solution Wroclaw sp. z.o.o. ("LG Energy Solution"); (vi) safety recalls and technical service bulletins issued by the Defendant, Audi Canada, regarding the Battery Defect and attempts to fix or remedy the defect and: (vii) communications and interactions with Audi America and Audi AG as to the Battery Defect in the Affected Class Vehicles.
51. As a renowned engineer, designer and manufacturer of luxury vehicles, Audi AG conducts extensive pre-sale durability testing on its vehicles and components to ensure they are free from defects and meet the company's rigorous specifications. This includes testing the lithium-ion batteries installed in the Audi e-trons, Audi AG's first consumer electric vehicle. For decades, Audi AG, has operated extensive testing facilities, and recently opened the new Audi Vehicle Safety Center in Ingolstadt, Germany. The Audi Vehicle Safety Center includes a run-up track and a mobile 100-ton crash block, with the ability to collide two cars

at a 90-degree angle, among other things.

52. Audi AG emphasizes its long tradition of passive testing which involves all matters that reduce the consequences of an accident for vehicle occupants and other road users, including pedestrians.
53. The Defendant, Audi Canada, extensively markets and advertises the safety and performance features of the Audi e-tron. With regard to the high-voltage electric batteries, the Defendant, Audi Canada, represented that the Audi e-tron went through rigorous battery testing, the lithium-ion batteries equipped in the Audi e-tron are designed using an advanced thermal management system which allows for quick DC charging capabilities and consistent vehicle performance in both hot and cold climates.
54. The Defendant, Audi Canada, further represented that the Audi e-tron is thoroughly tested to ensure consistent performance and longevity and its engineers assess performance in extreme heat and cold temperatures-from the desert to the Arctic.
55. The Battery Defect is the type of defect that Audi AG's pre-sale durability testing would reveal because the Battery Defect is a manufacturing defect present in the vehicles before they leave the plant and are ever driven.
56. The Defendant, Audi Canada, has obligations under the *Motor Vehicle Safety Act*, R.S.C. 1993, c.16 to identify safety defects in its vehicles and determine whether a recall should be issued. Audi America has similar obligations pursuant to 49 U.S. Code 301 - Motor Vehicle Safety Act.
57. The Defendant, Audi Canada's, customer service departments, warranty departments, among other personnel, regularly monitor customer complaints posted to NHTSA's public database, including their respective websites, and the internet; regularly monitor and respond to customer calls concerning vehicle issues, including component defects; and collect and analyze field data, including but not limited to, repair requests made at Audi dealerships and service centers, technical reports prepared by its engineers and authorized technicians that have investigated vehicles for which warranty coverage is requested, and/or identified defect trends, warranty claims data, and part sales reports.

58. For warranty repairs, the Defendant, Audi Canada, requires its dealerships and service centers to provide it with detailed reports of problems and fixes that describe the complaint, cause, and correction. The Defendant, Audi Canada, also requires its dealerships and service centers to save the broken or defective part for purposes of conducting an audit on the dealership and service centers should the need arises, or otherwise confirm the warranty repair. The Defendant, Audi Canada, will not pay the dealerships and service centers for repairs if the complaint, cause, and correction are not described in detail. Accordingly, dealerships and service centers keep detailed and accurate records and information about warranty repairs.
59. The customers service departments, warranty departments, and other departments, such as engineering and safety at the Defendant, Audi Canada, interact with each other and discuss potential issues or defects in the Affected Class Vehicles because they share designs and components.
60. In April 2020, according to a letter from VWGA to NHTSA, Audi America learned of a claim outside the United States alleging that the high-voltage electric battery pack in an Audi e-tron caused a fire. Audi America along with the high-voltage battery supplier-LG Energy Solution-opened an investigation in June 2020 into the claim to determine the root cause of the fire.
61. Between mid-2020 and mid-2023, Audi America, including the Defendant, Audi Canada, learned of additional thermal event cases involving the Audi e-trons. Working in conjunction with LG Energy Solutions, Audi America conducted detailed investigations, onsite vehicle inspections, and part analyses to determine the origin of the fires, all of which the Defendant, Audi Canada, was aware of. These investigations and analyses pointed to the high-voltage electric battery's cell module controller.
62. From July to November 2023, Audi America, including the Defendant, Audi Canada, noticed an increase in field cases. VWGA and Audi America analyzed the data from those cases which again pointed to problems with the high-voltage electric battery's modules.
63. VWGA's letter to NHTSA indicated that it, including Audi America, were aware of five thermal events (fires) that occurred in the United States on July 19 and November 21, 2022,

October 27, November 5 and November 9, 2023.

64. The Defendant, Audi Canada, also knew about the Battery Defect from fire incidents that occurred in high-voltage electric batteries equipped in Porsche Taycan EVs. Volkswagen AG ("VWAG") merged with Porsche AG ("Porsche") in 2011 and is the controlling entity, with Porsche and its North American subsidiaries, operating under the VWAG umbrella, like the Defendant, Audi Canada. As part of the same corporate family, VWAG's subsidiaries, through their employees, including engineers, communicate with one another. As such, the Defendant, Audi Canada, was aware, or should have been aware, of the Battery Defect in the Affected Class Vehicles due to the similar high-voltage electric battery defects that existed in the Porsche Taycan EVs, which Porsche became aware of in February 2020.
65. The high-voltage electric batteries equipped in the Porsche Taycan EVs were either supplied by, or contained parts supplied by, LG Energy Solution, the high-voltage battery supplier for the Audi e-trons.
66. Specifically, in February 2020, shortly after Porsche launched the Taycan EV, one of the first Taycan EVs' on the North American market caught fire in a residential garage in the State of Florida, United States, causing damage to both the Taycan EV and the structure. Porsche was advised of the incident and commenced a formal investigation.
67. Further, in October 2021, a Porsche Taycan EV went up in flames in Australia. The fire was sealed in the lithium-ion battery and firefighters had difficulty extinguishing it. Porsche was advised of the incident.
68. Pursuant to a NHTSA Part 573 Safety Recall Report submitted by Porsche on March 20, 2024, it had become aware of a single vehicle battery fire that occurred shortly after charging in 2021. The NHTSA safety recall report indicates that Porsche investigated the incident and began obtaining comparable undamaged batteries from the field for analysis. The NHTSA safety recall report also indicates that in 2023 Porsche became aware of further instances of battery fires in Taycan EVs after charging.
69. In 2023, VWAG was sued in Germany based on a fire that erupted in 2022 on a massive

cargo ship-the *Felicity Ace*-near the Azores archipelago in the Atlantic Ocean. The cargo ship ultimately sank with thousands of vehicles on board. According to that lawsuit, the fire originated from the lithium-ion battery of a Porsche model. The only Porsche EV available at the time was the Taycan EV.

70. The Defendant, Audi Canada, should have also known about the Battery Defect because of the battery's defective components were supplied by LG Energy Solution, which manufactured the defective batteries at issue in Chevy Bolt electric vehicles. Consumers who bought the Chevy Bolt vehicles with defective batteries filed a class action under the style of cause: *In re Chevrolet Bolt EV Battery Litigation*, United States District Court Eastern District of Michigan Southern Division, Case No. 2:20-13256-TGB-Cl. With respect to the Chevy Bolts, the first in a series of recalls involving defective lithium-ion batteries was announced on November 13, 2020.
71. Through the channels, methods, sources and incidents described herein, the Defendant, Audi Canada, knew about the Battery Defect and its potential danger at least as early as February 2020 with respect to the Porsche Taycan EVs, or at least since April 2020 with respect to the fire incident that involved an Audi e-tron outside the United States.

iii. NHTSA and Transport Canada safety recalls of the Affected Class Vehicles

72. Audi America and the Defendant, Audi Canada, have issued several safety recalls in the United States and Canada respectively relating to the Battery Defect in the Affected Class Vehicles.
73. On June 10, 2019 Audi America announced the first recall of the Audi e-tron (Manufacturer Recall No. 93E8). Specifically, Audi America recalled 1,646 Audi e-trons due to a defect involving the battery cells that could lead to a short circuit and spark a fire. At the time, Audi America learned that globally, a "battery fault light" turned on. Audi America, however, continued to sell the Audi e-trons.
74. On June 26, 2019 Transport Canada approved a substantially similar safety recall of the Defendant, Audi Canada, of 23 Audi e-trons due to a defect involving the battery cells that

could lead to a short circuit and spark a fire.

75. On December 20, 2023 NHTSA approved an Audi America safety recall of 26,866 Affected Class Vehicles relating to the Battery Defect. The NHTSA Part 573 Safety Recall Report (23V-867) states the following:

“Description of Defect: A potentially critical self-discharge condition age exists in certain high-voltage battery modules that, in some instances, may lead to thermal overload, possibly resulting in fire.

Description of the Safety Risk: A short circuit in the battery can increase the risk of a fire.

Description of the Cause: The root cause is still under investigation, but the risk is associated with the battery modules exhibiting the potentially critical self-discharge behavior.”

76. The NHTSA safety recall report also stated that the final remedy would be the installation of an advanced onboard diagnostic software that would detect potential issues related to changes in battery module performance and warn the driver before problems could develop. The software, however, will not be available until the first quarter of 2025. Further, the NHTSA safety recall report cautioned owners to limit charging the vehicle to 80% capacity until the affected battery module could be replaced at an authorized Audi dealer.

77. The December 20, 2023 Audi America safety recall involved model year 2020-2022 Audi e-tron Sportback Quattro and 2019-2022 Audi e-tron Quattro vehicles.

78. On December 20, 2023 Transport Canada approved a substantially similar safety recall of the Defendant, Audi Canada, of 2,016 Affected Class Vehicles (#2023-686) with the Battery Defect. The Transport Canada safety recall states the following:

“Issue:

On certain vehicles, a problem with the high-voltage battery module(s) could cause

the high-voltage battery to overheat.

Safety Risk:

A high-voltage battery that overheats could create a fire risk.

Corrective Actions:

As an interim repair, a dealer will inspect and, if necessary, replace the battery modules. Once the final repair is available, you will need to return to a dealership to install a software update for the high-voltage battery. This software will monitor the high-voltage battery and warn you if it detects a problem. To reduce the safety risk, Audi recommends that you set the maximum charge setting of your vehicle at 80% until the final recall repairs are completed.”

79. The December 20, 2023 Defendant, Audi Canada, safety recall involved model year 2019-2022 Audi e-tron vehicles.

80. On March 22, 2024, NHTSA approved a further Audi America safety recall (24V-228 and 24V-229) of 1,042 Affected Class Vehicles relating to the Battery Defect. The NHTSA 573 Safety Recall Reports state the following:

“Description of the Defect: Certain e-tron GT high-voltage batteries may experience short circuits within the battery modules, which can lead to thermal events and. In some cases, fires. A short circuit in the high-voltage battery module can increase the risk of a thermal event or fire.

Description of the Cause: The root cause analysis suggests that production issues in high-voltage battery modules can increase the risk of internal short circuits.”

81. The March 22, 2024 Audi America safety recall involved model year 2022-23 Audi RS e-tron GT and 2022-23 Audi e-tron GT vehicles.

82. The NHTSA safety recall reports (24V-228 and 24V-229) further state the following:

"On December 6, 2023, Audi was informed by Porsche that a safety-related defect in HV battery modules in certain Porsche Taycan vehicles had been determined and a safety recall had been decided. Because the Audi e-tron GT is a substantially similar vehicle and uses the same HV battery modules, Audi submitted a foreign recall report under 49 CFR Part 579 and started the investigation for Audi.

December 2023-March 2024: Audi started investigating this issue together with Porsche and the battery cell/manufacturer, using in particular data analytics and hardware analyses. With this additional investigation and analyses, on March 15, 2024, Audi determined that a safety-related defect exists in vehicles identified via data analytics and hardware analyses."

83. According to the NHTSA safety recall reports (24V-228 and 24V-229), Audi America would send owner notification letters on or before May 21, 2024 advising them to limit charging to a maximum of 80% of battery capacity and that as a final remedy, the high-voltage battery modules would be replaced in the Affected Class Vehicles.

84. On March 22, 2024 Transport Canada approved a substantially similar safety recall of the Defendant, Audi Canada, of 706 Affected Class Vehicles (#2024-189) with the Battery Defect. The Transport Canada safety recall states the following:

"Issue:

On certain vehicles, there could be a problem inside the high-voltage battery. As a result the battery modules could overheat and short circuit.

Safety Risk:

A short circuit in the high-voltage battery can create a fire risk.

Corrective Actions:

Audi will notify owners by mail and advise you to take your vehicle to a dealership

to inspect and, if necessary, replace the high-voltage battery modules. To reduce the safety risk, Audi recommends that you set the maximum charge setting of your vehicle at 80% until the recall repairs are completed."

85. The March 22, 2024 Defendant, Audi Canada, safety recall involved model year 2022-2024 Audi e-tron GT vehicles.

86. On September 30, 2024, however, Audi America expanded its prior recall due to the Battery Defect and reversed course on the proposed final remedy. Instead of affirmatively replacing the high-voltage battery modules in the Affected Class Vehicles, diagnostic software would be installed in the Affected Class Vehicles. According to the NHTSA Part 573 Safety Recall Report (24V-726), new findings showed that:

"Individual cells in the modules of the HV battery can change over the course of their lifetime, which requires continuous monitoring. We are therefore adapting our previous approach accordingly."

87. The NHTSA safety recall report further stated:

"As a final remedy, an on-board diagnostic software will be installed on the vehicles to detect any future high-voltage battery module data anomalies. In case of anomalies, the affected modules in the high-voltage battery will be replaced."

88. Additionally, the NHTSA safety recall report cautioned owners to limit charging to a maximum 80% capacity for those Affected Class Vehicles where Audi America did not have access to online data, and for those vehicles where online data available to Audi America show a potentially critical battery module until the affected module can be replaced by an authorized Audi dealer. The NHTSA safety recall report indicates that the diagnostic software will not be available until the first quarter of 2025.

89. The Affected Class Vehicles subject to NHTSA Safety Recall No. 24V-726 included certain 2022-2024 Audi RS e-tron GT and 2022-2024 Audi e-tron GT vehicles. A total of 6,499 Audi

e-tron vehicles were the subject of NHTSA Safety Recall No. 24V-726.

90. On September 30, 2024 Transport Canada approved a substantially similar safety recall of the Defendant, Audi Canada, of Affected Class Vehicles (#2024-573) with the Battery Defect. This safety recall replaced the earlier Transport Canada safety recall #2024-189. Affected Class Vehicles that were repaired under the earlier Transport Canada safety recall now required the repair under Transport Canada safety recall #2024-573.
91. The Affected Class Vehicles subject to Transport Canada safety recall #2024-573 included certain 2022-2023 Audi RS e-tron GT and 2022-2024 Audi e-tron GT vehicles. A total of 702 Audi e-tron vehicles were the subject of Transport Canada safety recall #2024-573.
92. The Audi e-tron safety recalls are very similar to the Porsche Taycan safety recalls in the United States and Canada (NHTSA Recall Nos. 23V84000, 24V215000, 24V217000, 24V732000 and 24V731000 and Transport Canada recalls #2022-661, #2024-180, #2024-181, #2024-581 and #2024-582). The Porsche Taycan electric batteries or components were supplied by LG Energy Solution, which also supplied the lithium-ion batteries or components in the Audi e-trons. Moreover, the Porsche Taycan safety recalls are due to a similar lithium-ion battery defect and the proposed final remedy is the same: diagnostic software that is supposed to predict problems in the battery modules.
93. The Audi e-tron safety recalls, like those in Porsche EVs, do not involve affirmatively replacing the defective lithium-ion battery or a definitive repair or replacement of battery modules in all the Affected Class Vehicles now or on a specific date. Moreover, owners are advised to only charge their vehicles to a maximum of 80% battery capacity until a software update can be installed, which is not expected until some unknown date in the first quarter of 2025. This limitation will result in a reduction of the advertised range and require owners to charge their Affected Class Vehicles more frequently at inconvenient times and locations.
94. The software update will purportedly allow the Defendant, Audi Canada, to monitor the Affected Class Vehicles for anomalies in the battery, and if one is detected, the dashboard will display a warning message and limit the charging capacity of the battery until it can be inspected and repaired if necessary. But even if the software update successfully discovers

any and all data anomalies, the batteries may have problems in the future and will require continuous monitoring. Audi e-tron owners who do not have the software update receive no warnings if the battery modules experience a short circuit.

iv. The Battery Defect poses a real, substantial and/or imminent danger to vehicle occupant safety and renders the Affected Class Vehicles per se defective

95. The Battery Defect poses a real, substantial and/or imminent danger to vehicle occupants as a result of a sudden and complete loss of motive power and the risk of fire, as described herein. Audi AG and the Defendant, Audi Canada, failed to equip the Affected Class Vehicles with a safe lithium-ion battery component part which did not cause sudden and complete loss of motive power and create an unreasonable risk of fire.
96. Government regulations in both the United States and Canada (49 U.S. Code 301- Motor Vehicle Safety Act and *Motor Vehicle Safety Act*, R.S.C. 1993, c.16) require that vehicle manufacturers to disclose to NHTSA and Transport Canada respectively of “early warning reporting” data, including claims relating to property damage received by the automotive manufacturer, warranty claims paid by the automotive manufacturer, consumer complaints, incidents involving injury or death, and field reports prepared by the automotive manufacturer’s employees or representatives concerning failure, malfunction, lack of durability, or other performance issues.
97. Further, these government regulations require immediate action when a vehicle manufacturer determines or should determine that a safety defect exists. A safety defect is defined by regulation to include any defect that creates an “unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle” or “unreasonable risk of death or injury in an accident.” Within a period of time of learning about a safety defect, a manufacturer must notify NHTSA and Transport Canada and provide a description of the vehicles potentially containing the defect, including “make, line, model year, [and] the inclusive dates (month and year) of manufacture,” a description of how these vehicles differ from similar vehicles not included in the recall, and “a summary of all warranty claims, field or service reports, and other information” that formed the basis of the determination that the defect was safety related. Then, “within a reasonable time”

after deciding that a safety issue exists, the vehicle manufacturer must notify the owners of the defective vehicles. Violating these notification requirements can result in a substantial civil penalty.

98. The Defendant, Audi Canada, knew or ought to have known about the Battery Defect as evidenced by: (1) consumer complaints lodged with NHTSA, Transport Canada and/or elsewhere online; (2) warranty claims, part sales, and consumer complaints lodged with the Defendant, Audi Canada, directly; (3) technical service bulletins issued by the Defendant, Audi, in an attempt to address the Battery Defect; and (4) its own pre-sale durability testing of the Affected Class Vehicles.
99. The internet is replete with consumer complaints about the Battery Defect in the Affected Class Vehicles alleging incidents of loss of motive power and the fire danger it poses to vehicle occupants. The Defendant, Audi Canada's, customer relations department routinely monitors the internet for customer complaints and retains the services of third parties to do the same. The Defendant, Audi Canada's, customer relations divisions regularly receive and respond to customer calls concerning, *inter alia*, product defects. Through these sources, the Defendant, Audi Canada, was made aware of the Battery Defect. Based on its commercial interests and its duty to monitor safety-related complaints or concerns, the Defendant, Audi Canada, assuredly saw scores of consumer complaints regarding lithium-ion battery failures and the potential of fire. The complaints indicate the Defendant, Audi Canada's, knowledge of the Battery Defect and its real, substantial and/or imminent danger to vehicle occupants of the Affected Class Vehicles.

v. The Defendant, Audi Canada, markets, advertises and sells the Affected Class Vehicles as technologically advanced, dependable and safe while affirmatively concealing and by omission the Battery Defect

100. The Defendant, Audi Canada, expends large sums of money on advertising and focuses that advertising intently on claims of advanced technology, safety, performance, dependability, long range and quality as to the Audi e-tron vehicles. The Defendant, Audi Canada, knows and intends that consumers, including purchasers and/or lessees of the Affected Class Vehicles, will buy and/or lease its vehicles because they believe them to be

hi-tech, safe and dependable.

101. A defective lithium-ion battery in a vehicle that causes various electrical malfunctions resulting in loss of speed, motive power and key electronic functions, become inoperable while in motion and/or fail to start, short circuit and create a risk of fire is not a safe and dependable vehicle. As such, the Defendant, Audi Canada's, marketing of the Affected Class Vehicles as technologically advanced, safe and dependable is false and/or misleading and omits facts that would be material to consumers who purchase and/or lease Affected Class Vehicles.
102. The Defendant, Audi Canada's, advertising for Affected Class Vehicles conveys a pervasive message that Audi e-tron vehicles are technologically advanced, safe and dependable. Safety and dependability are material to consumers when purchasing and/or leasing a vehicle.
103. The Defendant, Audi Canada, advertised the Affected Class Vehicles as safe and reliable, but it concealed the danger of the Battery Defect. The Defendant, Audi Canada, :
 - (a) failed to disclose, at and after the time of purchase, lease, and/or service, the Battery Defect, despite its knowledge;
 - (b) failed to disclose, at and after the time of purchase, lease, and/or service, that the lithium-ion battery equipped in the Affected Class Vehicles was defective causing various electrical malfunctions resulting in loss of speed, motive power, key electronic functions, become inoperable while in motion and/or fail to start, short circuit and create a risk of fire; and
 - (c) failed to disclose and actively concealed the existence and pervasiveness of the Battery Defect, despite its knowledge.

vi. Agency relationship between the Defendant, Audi Canada, and its authorized dealerships as to the Affected Class Vehicles

104. Audi-authorized dealerships are sales agents of the Defendant, Audi Canada, as the vehicle distributor, supplier and/or manufacturer. The dealerships have accepted that undertaking. The Defendant, Audi Canada, has the ability to control authorized Audi dealers, and acts as the principal in that relationship, as is shown by the following:

- (a) the Defendant, Audi Canada, can terminate the relationship with its dealers at will;
- (b) the relationships are indefinite;
- (c) the Defendant, Audi Canada, is in the business of selling vehicles as are its dealers;
- (d) the Defendant, Audi Canada, provides tools and resources for Audi dealers to sell vehicles;
- (e) the Defendant, Audi Canada, supervises its dealers regularly;
- (f) without the Defendant, Audi Canada, the relevant Audi dealers would not exist;
- (g) the Defendant, Audi Canada, requires the following of its dealers:
 - (i) reporting of sales;
 - (ii) computer network connection with the Defendant, Audi Canada;
 - (iii) training of dealers' sales and technical personnel;
 - (iv) use of the Defendant, Audi Canada's, computer software system;

- (v) participation in the Defendant, Audi Canada's, training programs;
 - (vi) establishment and maintenance of service departments in Audi dealerships;
 - (vii) certify Audi pre-owned vehicles;
 - (viii) reporting to the Defendant, Audi Canada, with respect to the vehicle delivery, including reporting customer names, addresses, preferred titles, primary and business phone numbers, e-mail addresses, vehicle VIN numbers, delivery date, type of sale, lease/finance terms, factory incentive coding, if applicable, vehicles' odometer readings, extended service contract sale designations, if any, and names of delivering dealership employees; and
 - (iv) displaying the Defendant, Audi Canada's, logos on signs, literature, products, and brochures within Audi dealerships.
- (h) dealerships bind the Defendant, Audi Canada, with respect to:
- (i) warranty repairs on the vehicles the dealers sell; and
 - (ii) issuing service contracts administered by the Defendant, Audi Canada.
- (i) the Defendant, Audi Canada, further exercises control over its dealers with respect to:
- (i) financial incentives given to Audi dealer employees;
 - (ii) locations of dealers;
 - (iii) testing and certification of dealership personnel to ensure compliance with the Defendant, Audi Canada's, policies and

procedures; and

- (iv) customer satisfaction surveys, pursuant to which the Defendant, Audi Canada, allocates the number of Audi cars to each dealer, thereby directly controlling dealership profits.
- (j) Audi dealers sell Audi vehicles on behalf of the Defendant, Audi Canada, pursuant to a "floor plan," and the Defendant, Audi Canada, does not receive payment for its vehicles until the dealerships sell them.
- (k) dealerships bear the Defendant, Audi Canada's, brand names, use its logos in advertising and on warranty repair orders, post Audi-brand signs for the public to see, and enjoy a franchise to sell the Defendant, Audi Canada's, products, including the Affected Class Vehicles.
- (i) the Defendant, Audi Canada, requires Audi dealers to follow its rules and policies in conducting all aspects of dealer business, including the delivery of its warranties described above, and the servicing of defective vehicles such as the Affected Class Vehicles.
- (m) the Defendant, Audi Canada, requires its dealers to post its brand names, logos, and signs at dealer locations, including dealer service departments, and to identify itself and to the public as authorized Audi dealers and servicing outlets for the Defendant, Audi Canada's, vehicles.
- (n) the Defendant, Audi Canada, requires its dealers to use service and repair forms containing its brand names and logos.
- (o) the Defendant, Audi Canada, requires Audi dealers to perform its warranty diagnoses and repairs, and to do the diagnoses and repairs according to the procedures and policies set forth in writing by it.
- (p) the Defendant, Audi Canada, requires Audi dealers to use parts and tools

either provided by it, or approved by it, and to inform the Defendant, Audi Canada, when dealers discover that unauthorized parts have been installed on one of its vehicles.

- (q) the Defendant, Audi Canada, requires dealers' service and repair employees to be trained by it in the methods of repair of Audi-brand vehicles.
- (r) the Defendant, Audi Canada, audits Audi dealerships' sales and service departments and directly contacts the customers of said dealers to determine their level of satisfaction with the sale and repair services provided by the dealers, who are then granted financial incentives or reprimanded depending on the level of satisfaction.
- (s) the Defendant, Audi Canada, requires its dealers to provide it with monthly statements and records pertaining, in part, to dealers' sales and servicing of its vehicles.
- (t) the Defendant, Audi Canada, provides technical service bulletins and messages to its dealers detailing chronic defects present in product lines, and repair procedures to be followed for chronic defects.
- (u) the Defendant, Audi Canada, provides its dealers with specially trained service and repair consultants with whom dealers are required by the Defendant, Audi Canada, to consult when dealers are unable to correct a vehicle defect on their own.
- (v) the Defendant, Audi Canada, requires Audi-brand vehicle owners and/or lessees to go to authorized Audi dealers to obtain servicing under Audi warranties; and
- (w) Audi dealers are required to notify the Defendant, Audi Canada, whenever a Audi vehicle is sold or put into warranty service.

Part 2: RELIEF SOUGHT

105. The Plaintiff, on its own behalf and on behalf of Class Members, claims against the Defendants, Audi Canada and VWGC, jointly and severally, as follows:

- (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the named representative;
- (b) a declaration that the Defendants, Audi Canada and VWGC, were negligent in the manufacturing of the Affected Class Vehicles equipped with a defective lithium-ion battery causing the Plaintiff and Class Members to suffer damages;
- (c) a declaration that the Defendants, Audi Canada and VWGC,:
 - (i) breached their duty of care to the Plaintiff and Class Members;
 - (ii) breached express warranties as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages;
 - (iii) breached implied warranties or conditions of merchantability as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages pursuant to sections 18(a),(b) and 56 of the *Sale of Goods Act*, R.S.B.C. 1996 ("SGA"), 410; sections 16(2), (4) and 52 of the *Sale of Goods Act*, RSA 2000, c. S-2; sections 16(1), (2) and 52 of the *Sale of Goods Act*, RSS 1978, c. S-1; sections 16(a), (b) and 54 of *The Sale of Goods Act*, CCSM 2000, c. S10; sections 15(1), (2) and 51 of the *Sale of Goods Act*, RSO 1990, c. S.1; sections 16(a),(c) and 54 of the *Sale of Goods Act*, RSNL 1990, c. S-6 ; sections 17(a),(b) and 54 of the *Sale of Goods Act*, RSNS 1989, c. 408; sections 20(a),(b) and 67 of the *Sale of Goods Act*, RSNB 2016, c. 110; sections 16(a), (b) and 53 of the *Sale of Goods Act*, RSPEI 1988, c. S-1; sections 15(a), (b) and 60 of the *Sale of Goods Act*, RSY 2002, c. 198; sections 18(a),(b) and 60 of the *Sale of Goods Act*, RSNWT 1988, c. S-2; and sections 18(a),(b) and 60 of the *Sale*

of Goods Act, RSNWT (Nu) 1988, c. S-2; and

- (iv) engaged in unfair practices contrary to sections 4 and 5 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004 ("BPCPA"); Sections 5 and 6 of the *Consumer Protection Act*, RSA 2000, c. C-26.3; Sections 6 and 7 of *The Consumer Protection and Business Practices Act*, SS, 2013, c C-30.2; Sections 2 and 3 of *The Business Practices Act*, CCSM c B120; Sections 14(1) and (2) of the *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A and Section 4 (1) of the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1, and are consequently liable to Class Members for damages;
- (d) a declaration that it is not in the interests of justice to require that notice be given, where applicable, under the *BPCPA*; *Consumer Protection Act*, RSA 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, SS, 2013, c C-30.2; *The Business Practices Act*, CCSM c B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, and SNB 1978, c C-18.1, and waiving any such applicable notice provisions;
- (e) an Order for the statutory remedies available under the *BPCPA*; *Consumer Protection Act*, RSA 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, SS, 2013, c C-30.2; *The Business Practices Act*, CCSM c B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1, including damages, cancellation and/or rescission of the purchase and/or lease of the Affected Class Vehicles;
- (f) an order directing the Defendants, Audi Canada and VWGC, to advertise any adverse findings against them pursuant to section 172(3)(c) of the *BPCPA*; Section 19 of the *Consumer Protection Act*, RSA 2000, c. C-26.3; Section 93(1)(f) of *The Consumer Protection and Business Practices Act*, SS, 2013, c C-30.2; Section 23(2)(f) of *The Business Practices Act*, CCSM c B120; Section 18(11) of the *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A and Section 15 of the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1;

- (g) a declaration that the Defendants, Audi Canada and VWGC, breached sections 36 and/or 52 of the *Competition Act*, R.S.C 1985, c. C-34 and are consequently liable to the Plaintiff and Class Members for damages;
- (h) an order enjoining the Defendants, Audi Canada and VWGC, from continuing their unlawful and unfair business practices as alleged herein;
- (i) injunctive and/or declaratory relief requiring the Defendants, Audi Canada and VWGC, to recall, repair and/or replace the defective lithium-ion battery equipped in the Affected Class Vehicles and/or buyback all Affected Class Vehicles and to fully reimburse and make whole all Class Members for all costs and economic losses associated therewith;
- (j) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("CPA") directing an aggregate assessment of damages;
- (k) 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;
- (l) damages, including actual, compensatory, incidental, statutory and consequential damages;
- (m) special damages;
- (n) punitive damages;
- (o) costs of investigation pursuant to section 36 of the *Competition Act*;
- (p) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (q) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

F. Jurisdiction

106. 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.

G. Causes of Action

i. Negligence

107. The Defendant, Audi Canada, at all material times owed a duty of care to the Plaintiff and Class to provide a product that did not have a manufacturing defect. The Affected Class

Vehicles equipped with the defective lithium-ion battery pose a real, substantial and/or imminent danger of harm or injury to Class Members, and catastrophic damage to the vehicle itself, on account of the Battery Defect.

108. The Defendant, Audi Canada, as the designer, engineer, manufacturer, promoter, marketer and/or distributor of the Affected Class Vehicles and their counterparts, intended for use by ordinary consumers, owed a duty of care to the Plaintiff and Class to ensure that the Affected Class Vehicles and their component parts, including the lithium-ion battery, were reasonably safe for use.
109. At all material times, the Defendant, Audi Canada, owed a duty of care to the Plaintiff and Class Members and breached that standard of care expected in the circumstances. It knew that its lithium-ion battery equipped in the Affected Class Vehicles was defective due to overheating when charged to full, or nearly full, capacity causing a sudden and complete loss of motive power and an unreasonable risk of fire, all of which posed a real, substantial and/or imminent danger of harm or injury to vehicle occupants, and catastrophic damage to the vehicle itself. Despite such knowledge, the Defendant, Audi Canada, continued to design, manufacture, promote, market and/or distribute the Affected Class Vehicles equipped with a defective lithium-ion battery.
110. The Defendant, Audi Canada, owed the Plaintiff and Class Members a duty to carefully monitor the safety and post-market performance of the lithium-ion battery equipped in the Affected Class Vehicles. The Defendant, Audi Canada, had a duty to warn, or promptly warn, the Plaintiff and Class Members that its lithium-ion battery equipped in the Affected Class Vehicles was defective due to overheating when charged to full, or nearly full, capacity causing a sudden and complete loss of motive power and an unreasonable risk of fire, all of which posed a real, substantial and/or imminent danger of harm or injury to vehicle occupants, and catastrophic damage to the vehicle itself and which it failed to do.
111. The circumstances of the Defendant, Audi Canada, being in the business of engineering, designing, manufacturing, distributing and placing the Affected Class Vehicles and their component parts, including the vehicle's lithium-ion battery, into the Canadian stream of commerce are such that the Defendant, Audi Canada, is in a position of legal proximity to

the Plaintiff and Class Members, and therefore are under an obligation to be fully aware of safety when engineering, designing, manufacturing, assembling, distributing and/or selling a product such as the Affected Class Vehicles equipped with the defective lithium-ion battery.

112. It was reasonably foreseeable to the Defendant, Audi Canada, that a failure to engineer, design, manufacturer and/or install a lithium-ion battery in the Affected Class Vehicles that did not overheat when charged to full, or nearly full, capacity causing a sudden and complete loss of motive power and an unreasonable risk of fire, and thereafter to monitor the performance of the lithium-ion battery following market introduction, and take corrective measures when required, would lead to vehicles becoming inoperable while in motion, creating an unreasonable risk of fire and cause harm to the Plaintiff and Class Members and catastrophic damage to the Affected Class Vehicles themselves.
113. The Defendant, Audi Canada, through its employees, officers, directors, and agents, failed to meet the reasonable standard of care or conduct expected of a vehicle manufacturer, supplier and/or distributor in the circumstances in that:
 - (a) it knew, or ought to have known, about the Battery Defect in the Affected Class Vehicles and should have timely warned the Plaintiff and Class Members;
 - (b) it engineered, designed, developed, manufactured, tested, assembled, marketed, advertised, distributed, supplied and/or sold vehicles equipped with a defective lithium-ion battery due to overheating when charged to full, or nearly full, capacity causing a sudden and complete loss of motive power and an unreasonable risk of fire, all of which posed a real, substantial and/or imminent danger of harm or injury to vehicle occupants, and catastrophic damage to the vehicle itself;
 - (c) it failed to timely warn the Plaintiff, Class Members and/or consumers about the Battery Defect in the Affected Class Vehicles causing a sudden and complete loss of motive power and an unreasonable risk of fire, all of which posed a real, substantial and imminent danger of harm or injury to vehicle occupants, and catastrophic damage to the vehicle itself;

- (d) it failed to change matters relating to the manufacture and/or assembly of the defective lithium-ion battery equipped in the Affected Class Vehicles in a reasonable and timely manner;
- (e) it failed to provide a safe lithium-ion battery equipped in the Affected Class Vehicles that did not overheat when charged to full, or nearly full, capacity causing a sudden and complete loss of motive power and an unreasonable risk of fire, all of which posed a real, substantial and/or imminent danger of harm or injury to vehicle occupants, and catastrophic damage to the vehicle itself;
- (f) it failed to properly inspect and test the lithium-ion battery equipped in the Affected Class Vehicles;
- (g) it knew, or ought to have known, about the Battery Defect in the Affected Class Vehicles but failed to disclose it;
- (h) it failed to timely issue and implement safety, repair and/or replacement recalls of the Affected Class Vehicles with a defective lithium-ion battery;
- (i) the lithium-ion battery presented a serious safety hazard to drivers and passengers as the Affected Class Vehicles could experience a sudden and complete loss of motive power and an unreasonable risk of fire due to the Battery Defect, all of which posed a real, substantial and/or imminent danger of harm or injury to vehicle occupants, and catastrophic damage to the vehicle itself;
- (j) notwithstanding that it foresaw personal injury and the loss of life and property of the drivers and passengers in the Affected Class vehicles, it failed or failed to promptly eliminate, correct, fix or remedy the Battery Defect; and
- (k) it failed to exercise reasonable care and judgment in matters of engineering, design, manufacture, materials, workmanship and/or quality of product which would reasonably be expected of it as an automobile manufacturer, supplier and/or distributor.

114. As a result of the Battery Defect in the Affected Class Vehicles by reason of the Defendant, Audi Canada's, negligence and its failure to disclose and/or adequately warn of the Battery 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 or diminished. The Plaintiff and each Class Member must expend the time to have his/her vehicle repaired and be without their vehicle. The Defendant, Audi Canada, should compensate the Plaintiff and each Class Member for their incurred out-of-pocket expenses for, *inter alia*, repair, towing, alternative transportation and vehicle payments as a result of the Battery Defect and/or buy back the Affected Class Vehicles.

ii. Breach of Express Warranty

115. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
116. As an express warrantor, manufacturer, supplier and/or merchant, the Defendant, Audi Canada, had certain obligations to conform the Affected Class Vehicles with the defective lithium-ion battery to its express warranties.
117. The Defendant, Audi Canada, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable electric vehicles equipped with a performance battery based on the latest lithium-ion technology providing high performance with long range through authorized dealerships and/or independent retail dealers. Such representations formed the basis of the bargain in the Plaintiff's and Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
118. When the Plaintiff and Class Members purchased and/or leased their Affected Class Vehicles equipped with the defective lithium-ion battery (either as new vehicles or as used vehicles with remaining warranty coverage), the Defendant, Audi Canada, expressly warranted under its warranty that it would cover all parts and labour needed to repair any item on the vehicle when it left the manufacturing plant that is defective in material, workmanship or factory preparation. The Defendant, Audi Canada, provided an express 3 year/100,000 kilometer written basic warranty on the Affected Class Vehicles it

manufactured.

119. Further, the Defendant, Audi Canada's, express warranty provides coverage on its high-performance lithium-ion battery of 8 years/160,000 kilometers. The high-voltage battery warranty provides that if there is an excessive loss of capacity the Defendant, Audi Canada, will repair or replace the lithium-ion battery.
120. The warranties of the Defendant, Audi Canada, formed a basis of the bargain that was reached when the Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles.
121. The Battery Defect at issue in this litigation was present at the time the Affected Class Vehicles were sold and/or leased to Plaintiff and Class Members.
122. The Defendant, Audi Canada, breached its express warranties (and continue to breach these express warranties) because it did not and has not corrected the Battery Defect in the Affected Class Vehicles.
123. Pursuant to its express warranties, the Defendant, Audi Canada, was obligated to correct any lithium-ion battery defect in the Affected Class Vehicles owned and/or leased by the Plaintiff and Class Members.
124. Although the Defendant, Audi Canada, was obligated to correct the Battery Defect, none of the purported, attempted fixes to the lithium-ion battery equipped in the Affected Class Vehicles are adequate under the terms of the warranty, as they did not cure the Battery Defect.
125. The Defendant, Audi Canada, has failed and/or refused to conform the Affected Class Vehicles with the defective lithium-ion battery to its express warranties. The Defendant, Audi Canada's, conduct, as averred to herein, has voided any attempt on its part to disclaim liability for its actions.
126. In particular, the Defendant, Audi Canada, breached its express warranties by:

- (a) knowingly providing the Plaintiff and Class Members with Affected Class Vehicles containing defects in material that were never disclosed to the Plaintiff and Class Members;
 - (b) failing to repair or replace the Affected Class Vehicles' lithium-ion battery at no cost with a non-defective lithium-ion battery within the warranty period;
 - (c) ignoring, delaying responses to and denying warranty claims in bad faith; and
 - (d) supplying products and materials that failed to conform to its representations.
127. The Plaintiff and Class Members have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of the Defendant, Audi Canada, or by operation of law in light of the Defendant, Audi Canada's, conduct as described herein.
128. The Plaintiff and Class Members have given the Defendant, Audi Canada, a reasonable opportunity to cure its breach of express warranties or, alternatively, were not required to do so because such an opportunity would be unnecessary and futile given that the repairs and/or replacements offered by the Defendant, Audi Canada, can neither cure the Battery Defect in the Affected Class Vehicles nor resolve the incidental and consequential damages flowing therefrom.
129. The Defendant, Audi Canada, received timely notice regarding the Battery Defect from the Plaintiff and Class Members when they brought their vehicles to their dealerships. The Defendant, Audi Canada, also received notice through complaints made by other consumers, to, *inter alia*, NHTSA and/or Transport Canada. Notwithstanding such notice, the Defendant, Audi Canada, has failed and/or refused to offer an effective fix or remedy.
130. In its capacity as a manufacturer, supplier, distributor and/or warrantor, and by the conduct described herein, any attempt by the Defendant, Audi Canada, to limit its express warranties in a manner that would enforce the warranty period limit would be unconscionable. The Defendant, Audi Canada's, warranties were adhesive, and did not

permit negotiation, or the inclusion of manufacturing defects. The Defendant, Audi Canada, possessed superior knowledge of the Battery Defect in the Affected Class Vehicles prior to offering them for sale. The Defendant, Audi Canada, concealed and did not disclose or remedy the Battery Defect prior to sale (or afterward). Any effort to otherwise limit liability for the manufacturing defect is null and void.

131. Further, because the Defendant, Audi Canada, has not been able fix or remedy the Battery Defect, the limitation on remedies included in the warranty fails its essential purpose and is null and void.
132. The Plaintiff and Class Members have suffered damages caused by the Defendant, Audi Canada's, breach of its express warranties and are entitled to recover damages, including but not limited to, diminution of value and/or buyback of the Affected Class Vehicles..

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

133. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
134. The Defendant, Audi Canada, is a "seller" with respect to motor vehicles within the meaning of the SGA, *Sale of Goods Act*, RSA 2000, c. S-2; *Sale of Goods Act*, RSS 1978, c. S-1; *The Sale of Goods Act*, CCSM 2000, c. S10; *Sale of Goods Act*, RSO 1990, c. S.1; *Sale of Goods Act*, RSNL 1990, c. S-6 ; *Sale of Goods Act*, RSNS 1989, c. 408; *Sale of Goods Act*, RSNB 2016, c. 110; *Sale of Goods Act*, RSPEI 1988, c. S-1; *Sale of Goods Act*, RSY 2002, c. 198; *Sale of Goods Act*, RSNWT 1988, c. S-2; and *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2, pursuant to its agency relationship with its authorized dealers, distributors, resellers, retailers and/or intermediaries.
135. The Defendant, Audi Canada, is and was at all relevant times a seller with respect to Affected Class Vehicles equipped with the defective lithium-ion battery. The Defendant, Audi Canada, directly sold and marketed vehicles equipped with the defective lithium-ion battery to customers through authorized dealers, like those from whom Class Members

bought and/or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. The Defendant, Audi Canada, knew that the Affected Class Vehicles equipped with the defective lithium-ion battery would and did pass unchanged from the authorized dealers to Class Members, with no modification to the lithium-ion battery.

136. The lithium-ion battery equipped in the Affected Class Vehicles is inherently defective due to overheating when charged to full, or nearly, full capacity causing the Affected Class Vehicles to suddenly lose complete motive power, short circuit and create a risk of fire. The Battery Defect poses a real, substantial and/or imminent danger of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves.
137. A warranty that the Affected Class Vehicles were in merchantable condition was implied by law pursuant to sections 18(a) and/or (b) of the *SGA*, sections 16(2) and/or (4) of the *Sale of Goods Act*, RSA 2000, c. S-2; sections 16(1) and (2) of the *Sale of Goods Act*, RSS 1978, c. S-1; sections 16(a) and/or (b) of *The Sale of Goods Act*, CCSM 2000, c. S10; sections 15(1) and/or (2) of the *Sale of Goods Act*, RSO 1990, c. S.1; sections 16(a) and/or (c) of the *Sale of Goods Act*, RSNL 1990, c. S-6 ; sections 17(a) and/or (b) of the *Sale of Goods Act*, RSNS 1989, c. 408; sections 20(a) and/or (b) of the *Sale of Goods Act*, RSNB 2016, c. 110; sections 16(a) and/or (b) of the *Sale of Goods Act*, RSPEI 1988, c. S-1; sections 15(a) and/or (b) of the *Sale of Goods Act*, RSY 2002, c. 198; sections 18(a) and/or (b) of the *Sale of Goods Act*, RSNWT 1988, c. S-2; and sections 18(a) and (b) of the *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2.
138. The Defendant, Audi Canada, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable electric vehicles equipped with a performance battery based on the latest lithium-ion technology providing high performance with long range through authorized dealerships and/or independent retail dealers. Such representations formed the basis of the bargain in Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
139. Affected Class Vehicles equipped with the lithium-ion battery were defective at the time they left the possession of the Defendant, Audi Canada. The Defendant, Audi Canada, knew of

this defect at the time these transactions occurred. Thus, Affected Class Vehicles equipped with the defective lithium-ion battery, when sold and at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

140. The Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles from the Defendant, Audi Canada, through its 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 Defendant, Audi Canada, was the manufacturer, distributor, warrantor and/or seller of the Affected Class Vehicles. As such, there existed privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendant, Audi Canada, as to its 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 Defendant, Audi Canada, and its resellers, authorized dealers and/or distributors and, specifically, of the Defendant, Audi Canada's, implied warranties.
141. The Defendant, Audi Canada's, resellers, authorized dealers and/or distributors are intermediaries between the Defendant, Audi Canada, 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 Defendant, Audi Canada, with respect to the Plaintiff's and Class Members' acquisition of the Affected Class Vehicles. The Defendant, Audi Canada's, warranties were designed to influence consumers who purchased and/or leased the Affected Class Vehicles.
142. The Defendant, Audi Canada, knew or had reason to know of the specific use for which the Affected Class Vehicles were purchased and/or leased.
143. As a result of the Battery Defect, 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.
144. The Defendant, Audi Canada, knew about the Battery Defect in the Affected Class Vehicles,

allowing it to cure its breach of warranty if it chose.

145. At all times that the Defendant, Audi Canada, warranted and sold its Affected Class Vehicles, it knew or should have known that its warranties were false and yet it did not disclose the truth or stop manufacturing or selling its 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 Defendant, Audi Canada, delivered them to its resellers, authorized dealers and/or distributors which sold the Affected Class Vehicles and the Affected Class Vehicles were, therefore, still defective when they reached Plaintiff and Class Members.
146. The Defendant, Audi Canada's, attempt to disclaim or limit the implied warranty of merchantability vis-à-vis the Plaintiff, Class Members and/or consumers is unconscionable and unenforceable. Specifically, the Defendant, Audi Canada's, warranty limitation is unenforceable because it knowingly sold and/or leased a defective product without informing the Plaintiff, Class Members and/or consumers about the Battery Defect in the Affected Class Vehicles. The time limits contained in the Defendant, Audi Canada's, warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. Among other things, the Plaintiff and Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendant, Audi Canada. A gross disparity in bargaining power existed between the Defendant, Audi Canada, and the Plaintiff and Class Members, and the Defendant, Audi Canada, knew that the Affected Class Vehicles were equipped with a defective lithium-ion battery which overheated when charged to full, or nearly full, capacity causing the Affected Class Vehicles to suddenly lose complete motive power, short circuit and create a risk of fire. The Battery Defect poses a real, substantial and/or imminent danger of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves.
147. The Plaintiff and Class Members have complied with all obligations under the warranty or otherwise have been excused from performance of said obligations as a result of the Defendant, Audi Canada's, conduct alleged herein. Affording the Defendant, Audi Canada, a reasonable opportunity to cure its breach of written warranties, therefore, would be

unnecessary and futile as there is no adequate fix or remedy for the Battery Defect.

148. As a direct and proximate result of the Defendant, Audi Canada's, breach of implied warranties or conditions of merchantability, the Plaintiff and Class Members have suffered loss, diminution and/or damage as a result of the Battery Defect in the Affected Class Vehicles pursuant to sections 56 of the SGA, section 52 of the *Sale of Goods Act*, RSA 2000, c. S-2; section 52 of the *Sale of Goods Act*, RSS 1978, c. S-1; section 54 of *The Sale of Goods Act*, CCSM 2000, c. S10; section 51 of the *Sale of Goods Act*, RSO 1990, c. S.1; section 54 of the *Sale of Goods Act*, RSNL 1990, c. S-6 ; section 54 of the *Sale of Goods Act*, RSNS 1989, c. 408; section 67 of the *Sale of Goods Act*, RSNB 2016, c. 110; section 53 of the *Sale of Goods Act*, RSPEI 1988, c. S-1; section 60 of the *Sale of Goods Act*, RSY 2002, c. 198; section 60 of the *Sale of Goods Act*, RSNWT 1988, c. S-2; and section 60 of the *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2.

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

149. The Plaintiff and Class Members in British Columbia hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
150. The Defendant, Audi Canada, is in British Columbia for the purposes of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in Schedule "A".
151. The Affected Class Vehicles are consumer "goods" within the meaning of section 1(1) of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in Schedule "A".
152. Class Members in British Columbia who purchased and/or leased the Affected Class Vehicles primarily for personal, family or household purposes, and not for resale or for the purposes of carrying on business, are "consumers" within the meaning of section 1(1) of the *BPCPA*, and provinces with parallel consumer protection legislation, as described in Schedule "A".
153. The purchase and/or lease of the Affected Class Vehicles by Class Members in British

Columbia for personal, family or household purposes, and not for resale or for carrying on business constitutes a “consumer transaction” within the meaning of section 1(1) of the *BPCPA*, and provinces with parallel consumer protection legislation, as described in Schedule “A”.

154. The Defendant, Audi Canada, is a “supplier” within the meaning of section 1(1) of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in Schedule “A”, as it carried on business in British Columbia and who in the course of business participated in a consumer transaction by: (i) supplying goods to a consumer, or (ii) soliciting, offering, advertising or promoting with respect to a consumer transaction, whether or not privity of contract exists between that person and the consumer, and includes an assignee of, any rights or obligations of the supplier under the *BPCPA*. The Defendant, Audi Canada, distributes, markets and/or supplies the Affected Class Vehicles to consumers including Class Members in British Columbia. At all relevant times, the Defendant, Audi Canada, was a supplier and/or seller of the Affected Class Vehicles and further, its resellers, authorized dealers and/or distributors were acting as the agents of the Defendant, Audi Canada.
155. By failing to disclose and actively concealing the Battery Defect in the Affected Class Vehicles, the Defendant, Audi Canada, engaged in unfair and deceptive trade practices prohibited by sections 4 and 5 of the *BPCPA*, and provinces with parallel consumer protection legislation, as described in Schedule “A”. The Defendant, Audi Canada, knew that the Affected Class Vehicles equipped with a defective lithium-ion battery caused the Affected Class Vehicles to suddenly lose complete motive power, short circuit and create a risk of fire. The Battery Defect poses a real, substantial and/or imminent danger of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves. The Defendant, Audi Canada, made misleading statements or omissions concerning the Battery Defect, but yet failed to adequately warn consumers.
156. As alleged herein, the Defendant, Audi Canada, made misleading representations and omissions concerning the quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles, including its lithium-ion battery, as to charging

time, charging frequency and/or range.

157. In purchasing and/or leasing the Affected Class Vehicles, Class Members were deceived by the Defendant, Audi Canada's, failure to disclose its knowledge of the Battery Defect and associated safety risk.
158. The Defendant, Audi Canada, engaged in a pattern of unfair or deceptive acts or practices in failing to disclose to Class Members that the Affected Class Vehicles were equipped with a defective lithium-ion battery which overheated when charged to full, or nearly full capacity causing the Affected Class Vehicles to suddenly lose complete motive power, short circuit and create a risk of fire. In particular, the Defendant, Audi Canada, engaged in the following unfair or deceptive acts:
 - (a) failing to disclose that the Affected Class Vehicles equipped with the defective lithium-ion battery were not of a particular standard, quality, or grade;
 - (b) failing to disclose before, during and/or after the time of purchase, lease and/or repair, any and all known material defects or material nonconformity of the Affected Class Vehicles, including the Battery Defect;
 - (c) failing to disclose at the time of purchase and/or lease that the Affected Class Vehicles, including the defective lithium-ion battery, were not in good working order, defective, not fit for their intended, and ordinary purpose, and created a real, substantial and/or imminent danger or harm to occupants of the Affected Class Vehicles, and damage to the vehicle itself;
 - (d) failing to give adequate warnings and/or notices regarding the use, defects, and problems with the defective lithium-ion battery equipped in the Affected Class Vehicles to consumers who purchased and/or leased the Affected Class Vehicles, even though the Defendant, Audi Canada, possessed exclusive knowledge of the inherent defect in the lithium-ion battery equipped in the Affected Class Vehicles before and at the time of purchase and/or lease;
 - (e) failing to disclose, either through warnings and/or recall notices, and/or actively

concealing, the fact that the lithium-ion battery equipped in the Affected Class Vehicles was defective, even though the Defendant, Audi Canada, knew about the Battery Defect; and

- (f) representing that the Battery Defect in the Affected Class Vehicles would be covered under its warranty program.
159. In purchasing and/or leasing the Affected Class Vehicles, Class Members in British Columbia were deceived by the Defendant, Audi Canada's, failure to disclose its exclusive knowledge that the defective lithium-ion battery equipped in the Affected Class Vehicles was subject to overheating when charged to full, or nearly full, capacity causing the Affected Class Vehicles to suddenly lose complete motive power, short circuit and create a risk of fire, all of which posed a real, substantial and/or imminent danger of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves.
160. By failing to disclose and actively concealing the Battery Defect, the Defendant, Audi Canada, engaged in unfair or deceptive acts or practices prohibited by sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A".
161. Further, as alleged herein, the Defendant, Audi Canada, made misleading representations and/or omissions concerning the quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles equipped with the defective lithium-ion battery, by:
- (a) publishing owners' manuals that made materially misleading omissions as to claims of advanced technology, battery charging time, charging frequency and/or range, safety and dependability but which uniformly omitted any warning to consumers that the Affected Class Vehicles were equipped with a defective lithium-ion battery which was subject to overheating when charged to full, or nearly full, capacity causing the Affected Class Vehicles to suddenly lose complete motive power, short circuit and create a risk of fire, all of which posed a real, substantial and/or imminent

danger of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves;

- (b) advertisements which uniformly omitted any information about the Battery Defect and which misled consumers into believing that the lithium-ion battery would function properly; and
- (c) emphasizing and extolling in brochures and press releases that the Affected Class Vehicles equipped with the defective lithium-ion battery were dependable, technologically advanced, safe, of the highest quality and with exceptional capability as to battery charging time and/or range.

162. The Defendant, Audi Canada's, conduct as alleged herein was, and is, in violation of sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A", in particular, by:

- (a) representing that the Affected Class Vehicles, including its lithium-ion battery, were defect-free and did not pose a safety hazard, which it did not;
- (b) representing that the Affected Class Vehicles, including its lithium-ion battery, were of a particular standard, quality or grade, when they were not;
- (c) advertising the Affected Class Vehicles, including its lithium-ion battery, with the intent not to sell them as advertised; and
- (d) representing that the Affected Class Vehicles, including its lithium-ion battery, have been supplied in accordance with a previous representation as to quality, advanced technology, reliability, durability, performance, battery charging time and/or range and/or safety, when they have not.

163. In purchasing and/or leasing the Affected Class Vehicles, Class Members in British Columbia were deceived by the Defendant, Audi Canada's, failure to disclose its exclusive knowledge of the Battery Defect and/or its representations made as to quality, advanced

technology, reliability, durability, battery charging time, charging frequency, high performance with long range and/or safety of the Affected Class Vehicles in its sales brochure materials, manuals, press releases and/or websites.

164. The Defendant, Audi Canada, intentionally and knowingly misrepresented and omitted material facts regarding its Affected Class Vehicles, specifically regarding the Battery Defect, with an intent to mislead Class Members.
165. In purchasing and/or leasing the Affected Class Vehicles, Class Members were deceived by the Defendant, Audi Canada's, failure to disclose its knowledge of the Battery Defect and associated safety risk.
166. Class Members had no way of knowing of the Defendant, Audi Canada's, representations were false, misleading and incomplete or knowing the true nature of the Battery Defect in the Affected Class Vehicles. As alleged herein, the Defendant, Audi Canada, engaged in a pattern of deception in the face of a known lithium-ion battery defect in the Affected Class Vehicles. Class Members did not, and could not, unravel the Defendant, Audi Canada's, deception on their own.
167. The Defendant, Audi Canada, knew, or should have known, that its conduct violated sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A".
168. The Defendant, Audi Canada, owed Class Members a duty to disclose the truth about the Battery Defect in the Affected Class Vehicles as it created a serious safety hazard and the Defendant, Audi Canada:
 - (a) possessed exclusive knowledge of the Battery Defect in the Affected Class Vehicles;
 - (b) intentionally concealed the foregoing from Class Members; and/or
 - (c) failed to warn consumers or to publicly admit that the Affected Class Vehicles had

a lithium-ion battery defect.

169. The Defendant, Audi Canada, had a duty to disclose that the lithium-ion battery equipped in the Affected Class Vehicles was fundamentally flawed, as described herein, because it created a serious safety hazard due to overheating when charged to full, or nearly full, capacity and which Class Members relied on the Defendant, Audi Canada's, material misrepresentations and omissions regarding the Affected Class Vehicles and the Battery Defect.
170. The Defendant, Audi Canada's, conduct proximately caused injuries to Class Members that purchased and/or leased the Affected Class Vehicles and suffered harm as alleged herein.
171. Class Members were injured and suffered ascertainable loss, injury-in-fact and/or actual damage as a proximate result of the Defendant, Audi Canada's, conduct in that Class Members incurred costs related the Battery Defect including, *inter alia*, repair, service and/or replacement costs, rental car and towing costs and overpaid for their Affected Class Vehicles that have suffered a diminution in value.
172. The Defendant, Audi Canada's, violations cause continuing injuries to Class Members. The Defendant, Audi Canada's, unlawful acts and practices complained of herein affect the public interest.
173. The Defendant, Audi Canada, knew of the defective lithium-ion battery equipped in the Affected Class Vehicles and which were materially compromised by the Battery Defect.
174. The facts concealed and omitted by the Defendant, Audi Canada, from Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase an Affected Class Vehicle or pay a lower price. Had Class Members known about the defective nature of the lithium-ion battery equipped in 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.
175. Class Members' injuries were directly or proximately caused by the Defendant, Audi

Canada's, unlawful and deceptive business practices.

176. As a result of the Defendant, Audi Canada's conduct as alleged herein, Class Members in British Columbia are entitled to a declaration under section 172(1)(a) of the *BPCPA* that an act or practice engaged in by the Defendant, Audi Canada, in respect to the purchase and/or lease of the Affected Class Vehicles contravenes the *BPCPA*, an injunction under section 172(1)(b) of the *BPCPA* to restrain such conduct and/or damages under section 171 of the *BPCPA*, and to such remedies under parallel provincial consumer protection legislation, as described in Schedule "A".
177. Class Members in British Columbia are entitled, to the extent necessary, a waiver of any notice requirements under section 173(1) the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A", as a result of the Defendant, Audi Canada's, failure to disclose and/or actively conceal the Battery Defect from Class Members in British Columbia and its misrepresentations as to quality, advanced technology, reliability, durability, battery charging time, charging frequency, high performance with long range and/or safety of the Affected Class Vehicles.

v. Breach of the *Competition Act*

178. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
179. By making representations to the public as to quality, advanced technology, reliability, durability, battery charging time, charging frequency, high performance with long range and/or safety of the Affected Class Vehicles, the Defendant, Audi Canada, breached sections 36 and/or 52 of the *Competition Act*, in that its representations:
- (a) were made to the public in the form of advertising brochures, manuals, statements and/or other standardized statements as to quality, advanced technology, reliability, durability, battery charging time, charging frequency, high performance with long range and/or safety of the Affected Class Vehicles;

- (b) were made to promote the supply or use of a product or for the purpose of promoting its business interests;
 - (c) stated safety of the Affected Class Vehicles; and
 - (d) were false and misleading in a material respect.
180. At all relevant times, the Defendant, Audi Canada, was the seller and/or supplier of the Affected Class Vehicles. As such, there existed contractual privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendant, Audi Canada, as to the Affected Class Vehicles and further, its resellers, authorized dealers and/or distributors at all material times were acting as the agents of the Defendant, Audi Canada.
181. The Defendant, Audi Canada, engaged in unfair competition and unfair or unlawful business practices through the conduct, statements and omissions described herein and by knowingly and intentionally concealing the Battery Defect in the Affected Class Vehicles from the Plaintiff and Class Members, along with concealing the safety risks, costs, and monetary damage resulting from the Battery Defect. The Defendant, Audi Canada, should have disclosed this information because it was in a superior position to know the true facts related to the Battery Defect and the Plaintiff and Class Members could not reasonably be expected to learn or discover the true facts related to the Battery Defect.
182. The Battery Defect in the Affected Class Vehicles constitutes a serious safety issue. The Defendant, Audi Canada, knew that the Affected Class Vehicles equipped with the defective lithium-ion battery which overheated when charged to full capacity, or nearly full, capacity causing the Affected Class Vehicles to suddenly lose complete motive power, short circuit and create a risk of fire, all of which posed a real, substantial and/or imminent danger of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves, and which triggered the Defendant's, Audi Canada's, duty to disclose the safety issue to consumers.
183. These acts and practices have deceived the Plaintiff and Class Members. In failing to disclose the Battery Defect and suppressing other material facts from the Plaintiff and

Class Members, the Defendant, Audi Canada, breached its duty to disclose these facts, violated the *Competition Act* and caused damage to the Plaintiff and Class Members. The Defendant, Audi Canada'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.

184. Further, the Plaintiff and Class Members relied upon the Defendant, Audi Canada's, misrepresentations as to quality, advanced technology, reliability, durability, battery charging time, charging frequency, high performance with long range and/or safety 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.
185. The Plaintiff and Class Members have, therefore, suffered damages and are entitled to recover damages pursuant to section 36(1) and/or 52 of the *Competition Act*.

vi. Fraudulent Concealment and Omission

186. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
187. The Plaintiff and Class Members claim for fraudulent concealment and omission arises from Defendant, Audi Canada's, affirmative representations about the safety, reliability, durability, battery charge time, charging frequency, high performance with long range and quality of the Affected Class Vehicles, and simultaneous concealment and omission of the Battery Defect, as more specifically outlined herein and described more fully throughout this Notice of Civil Claim.
188. **What and When.** In its advertisements and other marketing materials about the Affected Class Vehicles, public statements about the Affected Class Vehicles, representations about the Affected Class Vehicles during the purchase or leasing process, and representations at the point of sale (including warranties), the Defendant, Audi Canada, made representations about the safety, reliability, durability, battery charge time, charging frequency, high performance with long range and quality, and other attributes of the

Affected Class Vehicles and the lithium-ion batteries in those vehicles to the Plaintiff and Class Members.

189. In these advertisements and other marketing materials about the Affected Class Vehicles, public statements about the Affected Class Vehicles, representations about the Affected Class Vehicles during the purchase or leasing process, representations at the point of sale (including warranties), and in all other communications made to the public, Plaintiff, and Class Members regarding the Affected Class Vehicles, the Defendant, Audi Canada, actively concealed and omitted mention of material information about the Battery Defect to the Plaintiff and Class Members.
190. The Defendant, Audi Canada, was aware of the Battery Defect, the safety risks posed by the Battery Defect, actual fire incidents that had already occurred as a result of the Battery Defect, and the affect the Battery Defect would have on the value and safety of the Affected Class Vehicles, yet it actively concealed and failed to disclose that information to the Plaintiff and Class Members.
191. The Defendant, Audi Canada, had a duty to disclose to the Plaintiff and Class Members information about the Battery Defect, which posed a serious safety risk to them and their property, which the Defendant, Audi Canada, had superior knowledge regarding, and which related to intrinsic qualities of the Affected Class Vehicles (namely, the lithium-ion batteries of these electrical vehicles) and which could not have been discovered by the exercise of ordinary prudence and caution.
192. The Defendant, Audi Canada's, omission of, failure to disclose, and active concealment of material information about the Battery Defect was uniform with respect to the Plaintiff and Class Members, and the information the Defendant, Audi Canada, withheld went to the central aspect of the Affected Class Vehicles.
193. The Defendant, Audi Canada, concealed and omitted this material information regarding the Battery Defect at all times and on an ongoing basis-from at least 2020 and continuing to the present. To this day, the Defendant, Audi Canada, still has not fully disclosed the truth about or the full scope of the Battery Defect in the Affected Class Vehicles. And when consumers

brought their vehicles to Audi dealerships (which information was conveyed to the Defendant, Audi Canada) or called the Defendant, Audi Canada's, customer service and warranty departments complaining or inquiring about the Battery Defect, the Defendant, Audi Canada, and its authorized dealerships denied any knowledge about the Battery Defect or of any adequate repair that would correct the Battery Defect.

194. **Who.** These knowing misrepresentations and omissions and active concealment occurred as a result of actions by decision-makers at the Defendant, Audi Canada, whose identities are currently not known to the Plaintiff and Class Members and whose identities could not be discovered by the Plaintiff. These decision-makers also caused all spokespersons authorized to speak on behalf of the Defendant, Audi Canada, (including its customer service and salespersons at the Defendant, Audi Canada's, authorized dealerships and all others who participated in and facilitated the sale of any Affected Class Vehicles to the Plaintiff and Class Members) to make the misrepresentations and omissions identified above about the Affected Class Vehicles to the Plaintiff and Class Members.
195. **Where:** The Defendant, Audi Canada, concealed and omitted material information regarding the true nature of the Battery Defect in every form of communication it had with (or directed to) the Plaintiff and Class Members regarding the performance, safety, battery charging time, charging frequency high performance with long range, reliability, quality, and other attributes of the Affected Class Vehicles. Information regarding the Battery Defect is not disclosed in any sales documents, displays, advertisements, other public communications, warranties, owner's manuals, or on the Defendant, Audi Canada's, web-sites. There are many avenues through which the Defendant, Audi Canada, could have disclosed the Battery Defect, including, but not limited to: (i) point-of-sale communications and disclosure documents; (ii) the owner's manual for Affected Class Vehicles; and/or (iii) direct communications to Class Members through means such as e-mail notifications. The Defendant, Audi Canada, did not make any disclosure regarding the Battery Defect.
196. **How:** The Defendant, Audi Canada, concealed and omitted mention of the Battery Defect from the Plaintiff and Class Members and made representations about the safety, reliability, durability, battery charging time, charging frequency, high performance with long range, quality, and other attributes of the Affected Class Vehicles. The Defendant, Audi Canada,

actively concealed and omitted the truth about the existence, scope, and nature of the Battery Defect from the Plaintiff and Class Members at all times, even though the Defendant, Audi Canada, knew about the Battery Defect. The Defendant, Audi Canada, also knew that information about the Battery Defect would be important to any reasonable consumer and that the Plaintiff and Class Members would reasonably rely upon its promises in its marketing materials, sales materials, and other statements that the Affected Class Vehicles have qualities and attributes that they do not have in which the Defendant, Audi Canada, omitted, concealed, and failed to disclose the Battery Defect. Had the Defendant, Audi Canada, disclosed the Battery Defect, the Plaintiff and Class Members would have reviewed or learned about the Battery Defect, and they would not have purchased or leased the Affected Class Vehicles, or they would have paid less, and would not have paid a premium.

197. **Why:** The Defendant, Audi Canada, actively concealed and omitted material information about the Battery Defect with the intent to deceive the Plaintiff and the Class Members and with the intent to induce the Plaintiff and Class Members to buy and/or lease the Affected Class Vehicles, rather than buying or leasing competitors' vehicles or purchasing the Affected Class Vehicles for a lower price. Had the Defendant, Audi Canada, disclosed the truth, for example, in their advertisements or other materials or communications, the Plaintiff and Class Members (all reasonable consumers) would have been aware of it and would not have bought or leased the Affected Class Vehicles or would not have paid as much for them.
198. The Defendant, Audi Canada, actively concealed and suppressed these materials facts about the Battery Defect, in whole or in part, in order to maintain a market for the vehicles, to protect its profits, and to avoid costly recalls that could expose the Defendant, Audi Canada, to liability and harm the Defendant, Audi Canada's, commercial reputation. The Defendant, Audi Canada, did so at the expense of and by creating serious safety risks to the Plaintiff and Class Members.
199. The Plaintiff and Class Members did, in fact, rely on the Defendant, Audi Canada's, omissions and concealment by purchasing or leasing the Affected Class Vehicles at the prices they paid, believing that their vehicles did not have a Battery Defect that would impair

the performance, safety, range, reliability, quality, and value of the Affected Class Vehicles.

200. The Plaintiff and Class Members reasonably and justifiably relied on the Defendant, Audi Canada's, misrepresentations and omissions in deciding to purchase or lease the Affected Class Vehicles. The Defendant, Audi Canada, and its agents were the sole parties to the sales transaction that possessed knowledge about the existence and risk of the Battery Defect in its own vehicles. Any consumer, in making the decision of whether to purchase any Affected Class Vehicle, had no choice but to rely on what the Defendant, Audi Canada, communicated to them and to the public about the vehicle's performance, safety, battery charging time, range, reliability, and quality.
201. The Plaintiff and Class Members could not have discovered the truth behind the Defendant, Audi Canada's, misrepresentations and omissions through the exercise of reasonable diligence because a defect inside an electric battery is not visible to the consumer and is not detectable by a consumer. Detection of such a defect would require specialized knowledge and skill the average consumer does not have, as well as specialized and costly equipment to which the Plaintiff and Class do not have access. The Plaintiff and Class Members thus had no way of learning the facts that the Defendant, Audi Canada, concealed or failed to disclose about the Battery Defect in the Affected Class Vehicles.
202. Moreover, no reasonable consumer would have expected vehicles permissibly sold in Canada would contain a serious safety defect known to the entity that markets those vehicles that poses such a significant risk of harm to person and property.
203. The Defendant, Audi Canada's, misrepresentations and omissions proximately caused damages to the Plaintiff and Class Members.
204. The Defendant, Audi Canada's, misrepresentations and omissions proximately caused the Plaintiff and Class Members to suffer loss in at least the following ways: out of pocket losses, including but not limited to, overpayment for the Affected Class Vehicles at the point of sale; reduction in the value of the Affected Class Vehicles; complete loss of their ability to use the Affected Class Vehicle; loss of the ability to use the Affected Class Vehicle in the way, or to the extent, advertised and promised by the Defendant, Audi Canada, including

but not limited to, reduced range and the need for more frequent charging; and being subject to the risk of sudden fire, loss of power, and electrical malfunction while driving.

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

205. The Plaintiff and Class Members had no way of knowing about the Battery Defect in the Affected Class Vehicles. The Defendant, Audi Canada, concealed its knowledge of the Battery Defect while continuing to market, sell and/or lease, the Affected Class Vehicles equipped with the defective lithium-ion battery.
206. Within the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada as described in Schedule “B”, the Plaintiff and Class Members could not have discovered through the exercise of reasonable diligence that the Defendant, Audi Canada, was concealing the conduct complained of herein and misrepresenting the true qualities of the Affected Class Vehicles.
207. 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 lithium-ion battery equipped in the Affected Class Vehicles.
208. For these reasons, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada, as described in Schedule “B”, has been tolled by operation of the discovery rule with respect to the claims in this proposed class proceeding.
209. Further, due to Defendant, Audi Canada’s, knowledge and active concealment of the Battery Defect throughout the time period relevant to this proposed class proceeding, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada as described in Schedule “A” has been tolled.
210. Instead of publicly disclosing the Battery Defect in the Affected Class Vehicles, the Defendant, Audi Canada, kept the Plaintiff and Class Members in the dark as to the Battery Defect and the serious safety hazard it presented.

211. The Defendant, Audi Canada, was under a continuous duty to disclose to the Plaintiff and putative Class Members the existence of the Battery Defect in the Affected Class Vehicles.
212. The Defendant, Audi Canada, knowingly, affirmatively and actively concealed or recklessly disregarded the true nature, quality and character of the Affected Class Vehicles.
213. As such, the Defendant, Audi Canada, is estopped from relying on the *Limitation Act*, and equivalent legislative provisions in the rest of Canada as described in Schedule "B", in defense of this proposed class proceeding.

Plaintiff's address for service:

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

Fax number address for service (if any):

604-436-3302

E-mail address for service (if any):

ksgarcha@dusevicgarchalaw.ca

Place of trial:

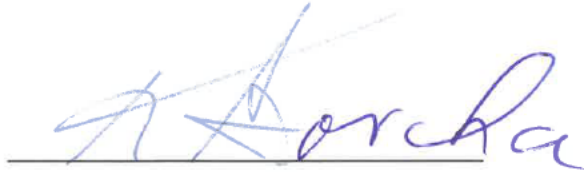
Vancouver, BC, Canada

The address of the registry is:

800 Smithe Street

Vancouver, BC V6Z 2E1
Canada

Dated: January 14, 2025



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

Schedule "A"

Consumer Protection Legislation Across Canada

Province or Territory	Legislation
Alberta	<p><i>Consumer Protection Act</i>, RSA 2000, c. C-26.3</p> <p>"Goods"- Section 1(1)(e)(i); "Consumers"- Section 1(1)(b)(i); "Consumer Transaction" - Section 1(1)(c)(i); "Supplier" - Section 1(1)(i),(ii) and/or (iii); "Unfair Practices" - Sections 5 and 6; Statutory Remedies - Sections 13(1), (2) and 142.1; and Waiver of Notice - Section 7.1(1)</p>
Saskatchewan	<p><i>The Consumer Protection and Business Practices Act</i>, SS 2014, c. C-30.2</p> <p>"Goods" - Section 2(e); "Consumer" - Section 2(b); "Supplier" - Section 2(i); "Unfair Practices" - Sections 6 and 7; and Statutory Remedies - Section 93</p>
Manitoba	<p><i>Consumer Protection Act</i>, CCSM c. C200</p> <p>"Goods" - Section 1; "Consumer" - Section 1; "Consumer Transaction" - Section 1; "Supplier" - Section 1; "Unfair Business Practices" - Sections 2(1) and (3); and Statutory Remedies - 23(2)(a) and (b)</p>
Ontario	<p><i>Consumer Protection Act</i>, 2002, SO 2002, c. 30, Sch. A</p> <p>"Goods" - Section 1; "Consumer" - Section 1; "Supplier" - Section 1; "Unfair Practices"- Sections 14(1) and (2); Statutory Remedies - Sections 18(1) and (2); and Waiver of Notice - Sections 18(3) and (15)</p>

New Brunswick	<i>Consumer Product Warranty and Liability Act, SNB 1978, c. C-18.1</i> "Consumer Product" - Section 1(1); "Buyer" - Section 1(1); "Contract for the sale or supply of a consumer product" - Section 1(1); and "Seller" - Section 1(1);
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Schedule “B”

Limitation Act Legislation Across Canada

Province or Territory	Legislation
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 automobile product liability multi-jurisdictional class proceeding involves certain model year 2019-2024 Audi e-tron electric vehicles engineered, designed, manufactured, assembled, tested, marketed, distributed, supplied, leased and/or sold by the Defendants, Audi Canada Inc. and Volkswagen Group Canada Inc., in Canada, including the Province of British Columbia, equipped with a defective lithium-ion battery which overheats when charged to full, or nearly full, capacity causing the Affected Class Vehicles to suddenly lose complete motive power, short circuit and create a risk of fire, all of which poses a real, substantial and/or imminent danger of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

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

A dispute concerning:

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

Part 3: THIS CLAIM INVOLVES:

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

Part 4:

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50
2. *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003 c. 28
3. *Business Practices and Consumer Protection Act*, S.B.C. 2004; *Consumer Protection Act*, RSA 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, SS, 2014, c C-30.2; *The Business Practices Act*, CCSM c B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, and SNB 1978, c C-18.1
4. *Sale of Goods Act*, R.S.B.C 1996, c. 410; *Sale of Goods Act*, RSA 2000, c. S-2; *Sale of Goods Act*, RSS 1978, c. S-1; *The Sale of Goods Act*, CCSM 2000, c. S10; *Sale of Goods Act*, RSO 1990, c. S.1; *Sale of Goods Act*, RSNL 1990, c. S-6 ;*Sale of Goods Act*, RSNS 1989, c. 408; *Sale of Goods Act*, RSNB 2016, c. 110; *Sale of Goods Act*, RSPEI 1988, c. S-1; *Sale of Goods Act*, RSY 2002, c. 198; *Sale of Goods Act*, RSNWT 1988, c. S-2; and *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2
5. *Motor Vehicle Safety Act* , R.S.C. 1993, c.16
6. 49 U.S. Code 301 - *Motor Vehicle Safety Act*
7. *Court Order Interest Act*, R.S.B.C., c. 79
8. *Competition Act*, R.S.C 1985, c. C-34
9. *Limitation Act*, S.B.C. 2012, c.13; *Limitations Act*, RSA 2000, c. L-12; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitation of Actions Act*, CCSM c. L150; *Limitations Act*, 2002, SO 2002, c. 24, Sch. B; *Limitations Act*, SNL 1995, c. L-16.1; *Limitation of Actions Act*, SNS 2014, c. 35; *Limitation of Actions Act*, SNB 2009, c. L-8.5; *Statute of Limitations*, RSPEI 1988, c. S-7; *Limitation of Actions Act*, RSY 2002, c. 139; *Limitation of Actions Act*, RSNWT 1988, c. L-8; *Limitation of Actions Act*, RSNWT (Nu) 1988, c. L-8