

SEAL  
13-May-25

Vancouver  
REGISTRY



Court File No. **VLC-S-S-253663**

NO.  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:



PLAINTIFF

AND:

VOLKSWAGEN GROUP OF CANADA INC.

DEFENDANT

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

**NOTICE OF CIVIL CLAIM**

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

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

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

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

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

**TIME FOR RESPONSE TO CIVIL CLAIM**

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

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

CLAIM OF THE PLAINTIFF(S)

**Part 1: STATEMENT OF FACTS**

**A. Nature of Claim**

1. The within proposed automobile defect multi-jurisdictional class proceeding involves certain model year Audi-branded vehicles, defined below as **"Affected Class Vehicles"**, marketed, advertised, distributed, supplied, leased and/or sold by the Defendant, Volkswagen Group of Canada Inc. (**"VWGoC"**), in Canada, including the Province of British Columbia, equipped with a gateway control module (**"GCM"**) located in an unsealed compartment under the rear bench seats of the vehicles. In particular, the placement of the GCM in an unsealed compartment allows ambient moisture infiltration, liquid infiltration from liquid spills on the rear bench seats and/or water ingress from rainwater through insufficient underbody seam causing a short circuit in the GCM such that the vehicle enters emergency mode and suddenly loses motive power, all of which poses a real, substantial and imminent risk of harm or injury to vehicle occupants (the **"GCM Defect"**).
2. "Affected Class Vehicles" refers to the following model year Audi-branded vehicles marketed, advertised, distributed, supplied, leased and/or sold by the Defendant, VWGoC, in Canada, including the Province of British Columbia, with the GCM Defect:

MODEL	MODEL YEARS
Audi A6 Allroad	2020-2022
Audi A6 Sedan	2019-2022
Audi A7	2019-2022
Audi RS6 Avant	2021-2022

MODEL	MODEL YEARS
Audi RS7	2021-2022
Audi S6 Sedan	2020-2022
Audi S7	2020-2022
Audi Q5	2018-2022
Audi SQ5	2018-2022
Audi Q5 Sportback	2022
Audi SQ5 Sportback	2022

The Plaintiff reserves the right to amend or add to the vehicle models included in the definition of Affected Class Vehicles.

3. A gateway module is one of the central control units in any modern vehicle. It functions as the relay through which different control modules communicate, including the modules responsible for controlling a vehicle's drivetrain and the airbags. For example, if the Audi lane change assist control module, responsible for recognizing the possibility of a collision to the vehicle, identifies a possible collision situation, it forwards that information to the gateway module. The gateway module, in turn, sends that information to the airbag control module, which identifies actuators to activate.
4. The proper functioning of the GCM is essential in the Affected Class Vehicles. As a result, if the GCM is damaged, the vehicle immediately displays several warnings and shuts down even if it is currently being driven. Often, a driver will be unable to turn the vehicle back on.
5. The GCM Defect allows both minute amounts of liquid spilled inside the vehicle and rainwater that splashes up from the road from outside the vehicle to access the GCM. As a result, the GCM fails and immediately shuts down the vehicle. Owing to the GCM Defect, the Plaintiff and putative class members incur out-of-pocket costs to repair or replace the damaged GCM as the Defendant, VWGoC, denies warranty coverage for this issue. Replacement of the GCM costs between \$1,300 and \$1,800, not including any repairs to other components that also may be damaged when the GCM short-circuits.
6. While some putative class members have received a "goodwill" replacement of the GCM, they are specifically cautioned that any further damage will not be covered by goodwill. Further, putative class members have been instructed by authorized

dealerships to avoid bringing any liquids into the vehicles, for fear of spills, and to avoid driving their vehicles in the rain.

7. The Defendant, VWGoC, had prior knowledge of the GCM Defect in the Affected Class Vehicles before they were marketed, advertised, distributed, supplied, leased and/or sold to putative class members. The Defendant, VWGoC, had actual knowledge that the Affected Class Vehicles are particularly susceptible to sudden loss of motive power or ability to accelerate, maintain speed, steer and/or brake due to the GCM Defect, shortly after production of the Affected Class Vehicles commenced. Instead, the Defendant, VWGoC, placed the GCM beneath the rear bench seats, directly under cupholders, thereby encouraging passengers to bring their beverages in close proximity to this critical and sensitive electrical component, increasing the chance of damage and short-circuiting. Moreover, the Defendant, VWGoC, failed to adequately seal the underbody seam of the Affected Class Vehicles, thereby introducing rainwater into the compartment housing the GCM. Despite creating these risks, the Defendant, VWGoC, failed to put in liquid-proof shielding or an adequate protective cover around the GCM to avoid such calamity.
8. Prior to selling and/or leasing the Affected Class Vehicles the Defendant, VWGoC, knew, or ought to have known, that the Affected Class Vehicles were defective, yet omitted and kept this material fact from the Plaintiff and putative class members. The Defendant, VWGoC, was sufficiently aware of the GCM Defect from: pre-production testing; design failure mode analysis; customers' requests for warranty coverage; warranty information and reimbursement requests provided by its agent dealers; aggregate purchases of replacement GCMs; calls to its customer service hotline; and customer complaints made directly to its agent dealers.
9. Further, in August 2020, the National Highway Traffic and Safety Administration ("**NHTSA**"), the government vehicle safety regulator in the United States, contacted Volkswagen Group of America, Inc. ("**VWGoA**"), a related corporate entity and/or affiliate of the Defendant, VWGoC, regarding reports of certain Audi vehicle failures due to liquid intrusion into the GCM which prompted VWGoA to begin an immediate investigation. This knowledge and information was in the possession of the Defendant, VWGoC, and its network of dealers, who are the Defendant's, VWGoC's, agents for repairs. Such information, however, was unavailable to the Plaintiff and putative class members.



10. Further, the Defendant, VWGoC, acknowledged the GCM Defect in the Affected Class Vehicles in a series of Technical Service Bulletins (“TSBs”) and other such service publications, which described the issue to its exclusive network of authorized dealerships, beginning in or around December 2021.
11. Information about the GCM Defect was wrongfully and intentionally concealed from the Plaintiff and putative class members.
12. In marketing, advertising, distributing, supplying, leasing and/or selling the Affected Class Vehicles, the Defendant, VWGoC, engaged in unfair, deceptive, and/or misleading consumer practices, and further breached its express and/or implied warranties.
13. The GCM Defect poses a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road, as it can impair the driver’s ability to control the Affected Class Vehicle, and though consumers have complained about it, the Defendant, VWGoC, has failed and/or refused to adequately address, remedy and/or fix the GCM Defect.
14. As a result of the alleged misconduct of the Defendant, VWGoC, 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 GCM Defect been disclosed.
15. The Plaintiff and putative class members also suffered damages in the form of, *inter alia*, out-of-pocket costs of repair and/or replacement, rental car costs, towing costs, overpayment, and/or diminished value of the Affected Class Vehicles.
16. No reasonable consumer would have purchased and/or leased an Affected Class Vehicle had the Defendant, VWGoC, made full and complete disclosure of the GCM Defect, or would have paid a lesser price. The Defendant, VWGoC’s, failure to disclose, at the time of purchase and/or lease the GCM compartment’s vulnerability to liquid or water infiltration is material as no reasonable consumer expects that their vehicle will be

unable to be driven in the rain or be so vulnerable as to make bringing a bottle of water in the rear bench seat an unacceptable risk.

17. The Plaintiff and putative class members expected that the Defendant, VWGoC, would disclose, and not actively conceal material facts about the safety of its Affected Class Vehicles and the existence of any defect that will result in expensive and non-ordinary repairs. The Defendant, VWGoC, failed to do so.
18. The Plaintiff seeks relief for all other current and/or former owners and/or lessees of the Affected Class Vehicles with the GCM Defect, including, *inter alia*, recovery of damages 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 remedying and/or repairing of the GCM Defect in the Affected Class Vehicles.

## **B. The Parties**

### **i. Representative Plaintiff**

19. The Plaintiff, [REDACTED] has an address for service c/o 210 – 4603 Kingsway, Burnaby, British Columbia, V5H 4M4, Canada.
20. In 2023, the Plaintiff purchased a certified pre-owned 2021 Audi SQ5 (“**SQ5**”) for approximately \$79,000 from an authorized Audi dealership located in Langley, British Columbia, Canada.
21. The Plaintiff purchased the SQ5 primarily for personal, family, or household use.
22. Safety, reliability and performance were important factors in the Plaintiff’s consideration for purchasing the SQ5.
23. Prior to purchasing the SQ5, the Plaintiff relied on the Defendant, VWGoC’s, website, archived articles and/or webpages, brochures of the vehicle, Google and YouTube searches and/or reviews, and other promotional materials, to determine the safety, reliability and level of performance of the SQ5.
24. In all of those promotional materials, the Plaintiff came across no representation by the Defendant, VWGoC, that the SQ5 suffers from the GCM Defect, and that the GCM

Defect would prevent him from using rear bench seat cupholders and from driving his SQ5 in the rain.

25. As a result of the GCM Defect, the Plaintiff has lost confidence in the reliability and safety of the SQ5, and its ability to perform as marketed and advertised.
26. At all times, the Plaintiff, like all putative class members, has driven his SQ5 in a manner both foreseeable and in which it was intended to be used.

**ii. The Defendant**

27. The Defendant, VWGoC, 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.
28. The Defendant, VWGoC, is a wholly owned Canadian subsidiary, affiliate, agent and/or operating unit of Volkswagen Aktiengesellschaft ("**VWAG**"), a German corporation. The Defendant, VWGoC, engages in business activities in furtherance of the interests of VWAG and Audi Aktiengesellschaft ("**Audi AG**"), including the advertising, marketing, distribution, supplying, leasing and/or sale of Audi vehicles, including the Affected Class Vehicles in Canada. The Defendant, VWGoC, also acts as the warrantor of Audi vehicles in Canada, distributes Audi replacement parts and disseminates service publications, including TSBs, and other similar service publications, together with other service documents, including workshop and parts manuals.
29. VWGoA is a wholly owned American subsidiary, affiliate, agent and/or operating unit of VWAG. VWGoA similarly engages in business activities in furtherance of the interests of VWAG and Audi AG, including the advertising, marketing, distribution, supplying, leasing and/or sale of Audi vehicles, including parallel Affected Class Vehicles in the United States. VWGoA also acts as the warrantor of Audi vehicles in the United States, distributes Audi replacement parts and disseminates service publications, including TSBs, and other similar service publications, together with other service documents, including workshop and parts manuals.
30. VWAG is one of the largest vehicle manufacturers in the world with its principal place of

business in Wolfsburg, Germany and is in the business of engineering, designing, developing, testing, manufacturing, assembling and/or selling automobiles, including the Affected Class Vehicles. VWAG is the parent corporation of the Defendant, VWGoC, Audi AG, VWGoA, Audi of America, Inc. ("**Audi America**") and Audi Canada Inc. ("**Audi Canada**").

31. Audi AG is a German corporation with its principal place of business in Ingolstadt, Germany and is a wholly owned subsidiary, affiliate and/or operating unit of VWAG. Audi AG designs, develops, manufactures, and sells luxury automobiles under the Audi brand name, including certain Affected Class Vehicles.
32. Audi Canada is an operating unit of the Defendant, VWGoC. Audi Canada engages in the business of advertising, marketing, distribution, supplying, leasing and/or sale of Audi vehicles in Canada, including the Affected Class Vehicles, on behalf of the Defendant, VWGoC.
33. Audi America is an operating unit of VWGoA. Audi America engages in the business of advertising, marketing, distribution, supplying, leasing and/or sale of Audi vehicles, including parallel Affected Class Vehicles, in the United States on behalf of VWGoA.
34. At all material times to the cause of action herein, the Defendant, VWGoC, and Audi Canada acted as authorized agents, representatives, servants, employees and/or alter egos of VWAG and Audi AG while performing various activities including, but not limited to, marketing, advertising, administering warranties and warranty repairs at authorized Audi dealerships, dissemination of technical information and monitoring the performance of Audi vehicles in Canada, including the Affected Class Vehicles. The Defendant, VWGoC, VWAG, Audi AG and Audi Canada have overlapping corporate management boards and cooperate to engineer, design, manufacture, test, assemble and/or sell Audi vehicles in Canada, including the Affected Class Vehicles. They share employees, Affected Class Vehicle parts (which are often stamped with Audi logos) and technical knowledge, including design patents.
35. At all material times to the cause of action herein, VWAG and Audi AG cooperated in engineering, designing, manufacturing, testing and/or assembling of the Affected Class Vehicles, including the component parts of the Affected Class Vehicles such as the GCM. VWAG and Audi AG also cooperated in the design of the compartment housing

location for the placement of the GCM in the Affected Class Vehicles. The Defendant, VWGoC, and its operating unit Audi Canada, marketed, advertised, distributed, sold, and warranted the Affected Class Vehicles throughout Canada through its authorized dealers. The Defendant, VWGoC, and Audi Canada in cooperation with VWAG and Audi AG published and disseminated the Owner's Manuals, warranty booklets, warranty and maintenance schedules, advertisements, and other promotional materials relating to the Affected Class Vehicles.

36. At all material times to the cause of action herein, the Defendant, VWGoC, VWAG, Audi AG and Audi Canada shared the common purpose of, *inter alia*, designing, developing, manufacturing, testing, assembling, marketing, distributing, supplying, leasing and/or selling Audi vehicles, including the Affected Class Vehicles, as averred to in paragraph two herein, containing the GCM in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendant, VWGoC, VWAG, Audi AG and Audi Canada are inextricably interwoven with that of the other as to the GCM Defect in the Affected Class Vehicles, as averred to in paragraph two herein, such that each is the agent or alter ego of the other.

**C. The Class**

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

**D. Factual Allegations**

**i. GCM Defect in the Affected Class Vehicles**

38. VWAG and Audi AG manufacture vehicles sold under the Audi brand throughout Canada. VWAG and Audi AG engineered, designed, tested, manufactured and/or assembled the Affected Class Vehicles. The Defendant, VWGoC, imported, distributed, advertised, marketed, leased and/or sold the Affected Class Vehicles in Canada through

Audi Canada. The Defendant, VWGoC, provided service, repair and maintenance for the Affected Class Vehicles through its extensive network of authorized Audi dealers and service providers in Canada.

39. Beginning with the Audi vehicle model year 2018, VWAG and Audi AG, made the decision to move the GCM from behind the dashboard, near the steering column, to under the rear bench seat in the Affected Class Vehicles.
40. The GCM, also called a Data Bus on Board Diagnostic Interface and designated as “J533” by VWAG and Audi AG, acts as a central communication hub or a “gateway”, enabling data exchange between the Affected Class Vehicles’ various and integral electronic control units and sensors, is the diagnostics master for the Affected Class Vehicles and the energy manager for both the low-voltage and medium-voltage electrical systems within the vehicle. In particular, the GCM facilitates communications for the instrument panel, the diagnostics systems, the infotainment system (including back-up cameras), and the comfort and convenience systems of the Affected Class Vehicles.
41. The GCM is a critical device that sits in a compartment directly below the cushioning of the rear bench seats. There is no material to shield or adequately protect the GCM from any liquid that may be spilled above.
42. Similarly, the unsealed compartment in which the GCM sits has an insufficient underbody seam, such that rainwater could enter the compartment if the vehicle travels over a puddle or otherwise if water splashes up from the road while traveling. This configuration also allows ambient moisture to infiltrate the compartment during periods of high humidity.
43. Moreover, the GCM can be rendered inoperable by even minute amounts of liquid. A milliliter or two of water can completely disable the GCM, and immediately thereafter, the entire vehicle. As a result, even the use of waterproof coverings may not prevent minute traces of liquid from entering the compartment in which the GCM is situated.
44. Furthermore, when the GCM gets wet, it may also short out related components, including fuses and the battery. When such problems occur, all of these components must also be replaced as well, with additional labor costs.

45. Despite the GCM Defect and the devastating effect of the GCM getting wet, the Defendant, VWGoC, does not warn consumers that the GCM is unprotected from liquid intrusion from above or about the insufficient seam in the underbody of the Affected Class Vehicles. Instead, the Defendant, VWGoC, encourages consumers to bring liquids into the backseat of the Affected Class Vehicles given the installation of multiple cupholders within the rear bench seats. For example, in the Audi Q5 and SQ5 model vehicles, the cupholders are directly over the compartment in which the GCM is situated.
46. The decision to put the GCM in an unprotected and unsealed compartment is also improper because many of the Affected Class Vehicles have sunroofs directly over the vulnerable area. If a sunroof is open during a sudden downpour or leaks as a result of a clogged drain, a common occurrence in the Affected Class Vehicles, water can easily get through to the rear seat and into the GCM compartment.

**ii. Defendant's, VWGoC's, superior and exclusive knowledge of the GCM Defect**

47. Since 2017, the Defendant, VWGoC, has marketed, advertised, distributed, supplied distributed, sold, and/or leased the Affected Class Vehicles with the GCM Defect.
48. The Defendant, VWGoC, had superior and exclusive knowledge of the GCM Defect and knew, or ought to have known, that the GCM Defect was not known or reasonably discoverable by the Plaintiff and Class Members before they purchased and/or leased the Affected Class Vehicles.
49. Well before the Plaintiff and Class Members purchased and/or leased their Affected Class Vehicles, the Defendant, VWGoC, knew, or ought to have known, about the GCM Defect through sources not available to consumers, including pre-release testing data; early consumer complaints to the Defendant, VWGoC, and its dealers; testing conducted in response to those consumer complaints; high failure rates of the GCMs; the data demonstrating the inordinately high volume of replacement part sales; other aggregate data from the Defendant's, VWGoC's, dealers about the problem; complaints made to NHTSA and/or Transport Canada; communications from NHTSA and/or Transport Canada about the GCM's vulnerability, and VWAG's and Audi AG's own internal investigations as a result of these complaints and communications.
50. As experienced vehicle manufacturers, VWAG and Audi AG, conduct extensive tests,

including pre-sale durability testing, on incoming vehicle components as well as on its own assembly processes to verify the vehicles are free from defect and align with VWAG and Audi AG's, specifications. Thus, the Defendant, VWGoC, being a wholly-owned Canadian subsidiary, affiliate, agent and/or operating unit of VWAG and Audi AG, knew, or ought to have known, that the GCM Defect posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road.

51. VWAG and Audi AG's pre-production testing includes extensive road testing at its proving grounds in Ehra-Lessien, Germany. Such testing includes materials testing as well as rigorous review of its assembly procedures. VWAG and Audi AG are known to spend more on research and development than any other major vehicle manufacturer in the world and produce far more pre-production vehicles. The pre-production testing and quality control audits on the 2018 Audi Q5 and SQ5 model vehicles revealed the GCM Defect to VWAG, Audi AG and the Defendant, VWGoC.
52. Additionally, the Defendant's, VWGoC's, customer relations department, which interacts with individual Audi dealerships to identify potential common defects, received numerous reports regarding the GCM Defect. Moreover, the Defendant's, VWGoC's, customer relations department also collects and analyzes field data including, but not limited to, repair requests made at Audi dealerships, technical reports prepared by VWAG and Audi AG engineers who have reviewed vehicles for which warranty coverage is being requested, parts sales reports, and warranty claims data. The Defendant, VWGoC, would have learned of the GCM Defect from the avalanche of reports received from Audi dealerships, and the information collected by its customer relations department.
53. The Defendant's, VWGoC's, warranty department similarly analyzes and collects data submitted by its Audi dealerships to identify warranty trends in its vehicles. It is the Defendant's, VWGoC's, policy that the Audi dealership must provide the Defendant, VWGoC, with detailed documentation of the problem and a complete disclosure of the repairs employed to correct it when a repair is made under warranty. The Defendant's, VWGoC's, Audi dealerships have an incentive to provide detailed information to the Defendant's, VWGoC's, because they will not be reimbursed for any repairs unless the justification for reimbursement is sufficiently detailed. As a result of analyzing the requests for warranty repairs, the Defendant, VWGoC, would have learned about the ongoing nature of the GCM Defect.



54. Vehicle manufacturers have a legal obligation to identify and report emerging safety-related defects to NHTSA and Transport Canada. Moreover, vehicle manufacturers monitor the databases of such regulatory authorities for consumer complaints regarding their vehicles as part of their ongoing obligation to identify potential defects in their vehicles, including those which are safety related. As such, the Defendant, VWGoC, knew, or ought to have known, of the many complaints about the GCM Defect lodged by consumers. The content, consistency, and disproportionate number of those complaints alerted, or ought to have alerted, the Defendant, VWGoC, to the GCM Defect as early as 2018.
55. The Defendant, VWGoC, was also made aware of the GCM Defect due to previous investigations in response to problems with the GCM. First, earlier models of Audi vehicles in the 2000s had the GCM on the floor of vehicle in the front. When the drains from the air conditioning unit or the sunroofs in these vehicles became clogged, the front floor of the vehicle would flood causing liquid and moisture to infiltrate the GCM, thereby short-circuiting it. As a result, VWAG and Audi AG changed the design so that the GCM would be higher up in the dashboard, closer to the steering column.
56. Second, the Defendant, VWGoC, issued a TSB on June 15, 2020, to address connectivity issues with the GCM. This TSB described a condition in which drivers were unable to start their vehicle after resetting the GCM, which would occur after the installation of a new GCM. The investigation that led to the issuance of this TSB was prompted in part by the many GCMs that had to be reset or replaced due to the GCM Defect.
57. A significant portion of the Defendant's, VWGoC's, technical instructions to Audi dealerships are only available on proprietary software and systems of the Defendant, VWGoC. Audi dealership technicians are instructed by the Defendant, VWGoC, on how to use this software, which provides guided, step-by-step instructions on diagnosing, repairing, and communicating with consumers about problems with their vehicles. Audi dealerships are also routinely instructed to open Technical Assistance Center ("**TAC**") cases with the Defendant, VWGoC, regarding complex technical issues and to follow the instructions given by the Defendant, VWGoC, in the resolution of such issues. As a result, the Defendant, VWGoC, had numerous cases in its records showing consumer and Audi dealer complaints about the GCM failures due to moisture. Indeed, the GCM

Defect is a well-known problem with the Affected Class Vehicles at Audi dealerships and frequently discussed by Audi technicians.

NHTSA Recall of Affected Class Vehicles

58. In December 2021, VWGoA announced the recall of 288,991 Audi vehicles of certain models and model years with the GCM Defect in the United States. Then in November 2022, VWGoA announced a further recall of an additional 50,883 Audi vehicles with the GCM Defect. Despite its knowledge about the GCM Defect, VWGoA slow-rolled the recall of the Audi vehicles with the GCM Defect in the United States.
59. According to an amended chronology for Audi Recall 90S9 filed by VWGoA as part of NHTSA's investigation into the GCM Defect (the "**Chronology**"), VWAG and Audi AG were contacted by Chinese automobile safety regulators in August 2020 regarding numerous reports of the GCM failure due to moisture. VWAG and Audi AG immediately began an investigation.
60. VWGoA's submission to NHTSA, however, downplayed the seriousness of the GCM Defect, as indicated in the Chronology :

The analysis revealed that in case of a liquid ingress, the gateway control module goes into a failsafe mode as part of the safety concept in order to avoid unwanted vehicle reactions. Audi performed a safety assessment to evaluate the potential conditions and consequences that could result from a power shutdown of the gateway control module due to liquid ingress. As part of the investigation, a potential solution for the field and in production was tasked, developed and tested. Audi also conducted a risk assessment which indicated that the risk of a liquid spill leading to a failure of the gateway control module is very low and rare over the lifetime of the vehicle. This was confirmed by the field situation at the time. At the time there were only isolated cases in the North American region and all of them happened after an outside influence, mostly after a beverage spill. Audi continued to monitor the field worldwide regarding this topic.

61. VWAG and Audi AG describe the GCM Defect as follows in the NHTSA Part 573 Safety Recall Report ("**Part 573 Recall Report**") of December 8, 2021:

If liquid reaches and enters the gateway control module, mostly due to a liquid spill on the rear seats, it is being switched off as part of the safety concept. In very rare cases (such as when driving through heavy rain or deep water) there may also be water ingress through an insufficient

underbody seam. Water/liquid ingress into the gateway control module may lead to various internal errors due to short circuits within the control unit. The gateway control module has a safety concept in case implausible signals are detected in the control unit. If such implausible signals are detected, the gateway switches off its function in order to avoid unwanted vehicle reactions.

62. The remedy offered on the recall is described as follows in the Part 573 Recall Report:

At no cost to customers, Audi dealers will install a protective cover for the gateway control module which will protect the part from liquid ingress. In addition, on vehicles produced until end of August 2021, the dealer will also seal the insufficient underbody seam. Audi will not offer a reimbursement program under this recall.

Transport Canada Recall of Affected Class Vehicles

63. According to the Chronology, in November 2021, VWAG and Audi AG met with Transport Canada and the Defective Product Administrative Centre in China to discuss the complaints relating to the GCM Defect. Both government vehicle safety regulatory authorities voiced concerns that “a shutdown of the gateway control module due to liquid ingress may happen suddenly and the behavior may be perceived as a loss of mobility”.
64. Notwithstanding Transport Canada’s concerns about the GCM Defect, the Defendant, VWGoC, slow-rolled the recall of the Affected Class Vehicles in Canada, firstly, in December 2021, by recalling 48,146 Audi vehicles of certain models and model years with the GCM Defect (Transport Canada Recall #2021-740), and then, in November 2022, recalling an additional 3,759 Audi vehicles with the GCM Defect (Transport Canada Recall #2022-660).
65. In the Transport Canada Recall #2021-740, the details regarding the GCM Defect were described as follows:

Issue:

On certain vehicles, if you spill liquid on the rear seat, or drive through heavy rain or deep water, the gateway control module could be damaged. If this happens, the vehicle may enter emergency mode and suddenly lose power to the wheels.

Note: The power steering and braking systems will continue to work. You may also see warning messages on the instrument panel when this happens.

Safety Risk:

A sudden loss of power to the wheels may increase the risk of a crash.

Corrective Actions:

Audi will notify owners by mail and instruct you to take your vehicle to a dealer to install a protective cover on the gateway control module and seal an underbody seam, as necessary.

66. In the Transport Canada Recall #2022-660, the details regarding the GCM Defect were described as follows:

Issue:

On certain vehicles, if you spill liquid on the rear seat, the gateway control module could be damaged. If this happens, the vehicle may enter emergency mode and suddenly lose power to the wheels.

Note: The power steering and braking systems will continue to work. You may also see warning messages on the instrument panel when this happens.

Safety Risk:

A sudden loss of power to the wheels may increase the risk of a crash.

Corrective Actions:

Audi will notify owners by mail and instruct you to take your vehicle to a dealer to install a protective cover on the gateway control module.

67. Despite the fact that the Defendant, VWGoC, recognized the GCM Defect in its Transport Canada recalls, the Defendant, VWGoC, has not reimbursed Class Members for any out-of-pocket costs incurred arising from the GCM Defect.
68. Further, the "protective cover" the Defendant, VWGoC, installed on some, but not all the Affected Class Vehicles, is a plastic bag. The "protective cover" is hardly a sufficient remedy and/or fix because the plastic bag can and will allow condensation to accumulate on the interior and disrupt the functioning of the GCM, which, as averred to above, is sensitive to even minute amounts of moisture and liquids.

**iii. The Defendant, VWGoC, actively concealed the GCM Defect**

69. Despite its knowledge of the GCM Defect in the Affected Class Vehicles, the Defendant, VWGoC, actively concealed the existence and nature of the GCM Defect from the Plaintiff and Class Members. Specifically, the Defendant, VWGoC, failed to disclose, and/or actively concealed, at and after the time of purchase, lease, and/or repair:

- (a) any and all known material defects or material nonconformity of the Affected Class Vehicles, including the defects pertaining to the compartment in which the GCM is situated;
  - (b) that the Affected Class Vehicles were not in good in working order, were defective, and were not fit for their intended purposes, particularly driving in rain; and
  - (c) that the Affected Class Vehicles were defective, despite the fact that the Defendant, VWGoC, learned of the GCM Defects as early as 2017.
70. Despite knowing of the extreme vulnerability of the GCM equipped in the Affected Class Vehicles to be damaged by water, the Defendant, VWGoC, provided no warning to the Plaintiff and Class Members before or after their purchases and/or leases that the Affected Class Vehicles should not be driven during inclement weather and that no beverages of any kind should be placed anywhere in proximity to the rear bench seats. Instead, VWAG and Audi AG installed cup holders directly over the compartment in which the GCM is situated, implicitly telling the Plaintiff and Class Members that liquids could be transported safely in the rear of the Affected Class Vehicles. Indeed, no reasonable consumer believes that a minor spill of water on the back seat of their vehicle would have the capacity to completely shut down the vehicle. Similarly, no reasonable consumer would expect that a vehicle would be sold if there was a possibility that running over a shallow rain puddle would be all that is required for water to penetrate the vehicle and destroy the GCM.
71. When consumers present their Affected Class Vehicles to an authorized Audi dealership of the Defendant, VWGoC, for repairs related to the GCM getting wet, rather than repair the problem under warranty, the Audi dealerships were instructed by the Defendant, VWGoC, to inform consumers that their vehicles were damaged by the fault of the consumers and that such damage is not covered under warranty, even when the consumer did not transport any liquids in the interior of their vehicle. In this manner, the Defendant, VWGoC, avoids paying for warranty repairs and unlawfully transfers the cost of the GCM Defect to the Plaintiff and Class Members.
72. Moreover, despite receiving warranty repair requests since 2018, selling an unusual quantity of replacement GCMs, receiving unusual numbers of complaints through its

Audi dealerships, directly through customer service hotlines, and through NHTSA and/or Transport Canada, and even after VWAG and Audi AG being contacted by Canadian and Chinese vehicle safety regulators in August 2020, the Defendant, VWGoC, continued to market, advertise, distribute, supply, lease and/or sell the Affected Class Vehicles without providing any warnings as to the GCM's vulnerability to being damaged by water. The Defendant, VWGoC, continued to conceal the fact that the Affected Class Vehicles were unsafe even after VWAG, Audi AG and the Defendant, VWGoC, launched their own internal investigation.

73. VWAG, Audi AG and the Defendant, VWGoC, also confined their internal investigation and subsequent recall of the vehicles to the 2018 through 2022 Audi Q5, their most popular model, in an effort to limit recall costs. Further, despite issuing notice of the recall to Audi dealerships, the Defendant, VWGoC, has not reimbursed and is not reimbursing out-of-pocket costs incurred by Class Members arising from the GCM Defect.
74. Furthermore, rather than issue a TSB that specifically addresses the GCM Defect and acknowledges that such repairs should be covered under warranty, a copy of which the Defendant, VWGoC, is required to file with Transport Canada, VWAG and Audi AG have instead kept information regarding the GCM Defect in their proprietary Offboard Diagnostic Information System ("**ODIS**").
75. ODIS, as well as other proprietary software, provides dealership technicians with guided, step-by-step instructions on diagnosis and repair. These systems contain information about the GCM Defect, or otherwise inform technicians to contact the Defendant, VWGoC, directly via TAC cases for acknowledged defects. ODIS and the other proprietary systems are not accessible to the Plaintiff, Class Members or the general public.
76. Further, the information submitted by VWAG and Audi AG to NHTSA as to the recall of Affected Class Vehicles in the United States is not entirely accurate. VWAG and Audi AG stated in the recall materials that:

The vehicle remains steerable and the brake system is fully operable. The engine goes into emergency mode and remains in operation with reduced power. Unexpected reduced engine power may create an increased risk of an accident in certain driving situations.

This is not true. VWAG and Audi AG issued a TSB entitled “No diagnostics communication to the telematics control module” on November 9, 2020 that warns that “The vehicle is not able to be moved under its own power while J533 is without power.”

77. Moreover, when the GCM gets wet, the vehicle can shut down completely, cannot be steered and the brakes may not engage or may remain engaged regardless of any commands.
78. The Defendant, VWGoC, has caused Class Members to expend money at its dealerships to diagnose, repair or replace the Affected Class Vehicles’ GCM, despite the Defendant’s, VWGoC’s, knowledge of the GCM Defect.

**iv. The GCM Defect poses a real, substantial and imminent risk of harm or injury to vehicle occupants and renders the Affected Class Vehicles *per se* defective**

79. Government regulations in Canada (*Motor Vehicle Safety Act*, R.S.C. 1993, c.16) require vehicle manufacturers to disclose to 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.
80. Furthermore, 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.

81. The Defendant, VWGoC, knew, or ought to have known, about the GCM Defect as evidenced by: (1) warranty claims, part sales, and consumer complaints lodged with the Defendant, VWGoC, directly; (2) TSBs released by the Defendant, VWGoC, in an attempt to address or remedy the GCM; and (3) the VWAG's and Audi AG's own pre-sale durability testing and post-production monitoring of the Affected Class Vehicles.
82. When the GCM Defect occurs in the Affected Class Vehicles, the vehicle has the propensity to, without warning or notice, lose motive power unexpectedly and experience an immediate loss of speed or ability to accelerate and/or maintain speed, steer or brake, placing the vehicle at a significant risk for a collision or loss of control.
83. Further, the Affected Class Vehicles also pose a safety risk to other drivers on the road who are at risk of harm or injury arising from an accident with an Affected Class Vehicle that suddenly loses motive power, is unable to maintain appropriate speed, steering or braking.
84. No reasonable consumer expects a vehicle to contain a defect in design, manufacture, materials, and/or workmanship, such as the GCM Defect, that will result in it losing motive power with little to no warning or time to take preventive measures or safely remove the vehicle from the road.

**v. Representations as to the safety, reliability and dependability of the Affected Class Vehicles**

85. The Defendant, VWGoC, advertised that the Affected Class Vehicles were reliable and dependable, touting the advanced capabilities of its driver assist systems, or the comfort and convenience of the interior and infotainment systems without ever mentioning that the proper function of these systems depends on the GCM which was left dangerously unprotected underneath the vehicle rear bench seats.
86. For example, a 2021 Audi Q5 press release advertised the following "Driver assistance features", the proper functioning of which is imperative to the safety of the vehicle occupants, without highlighting or disclosing that the vulnerability of the GCM resulting from the GCM Defect may render these safety features inoperable:



- Standard **Audi side assist** provides blind spot monitoring via LED indicators on the exterior mirror housings at speeds above 9 mph.
- Standard **Lane departure warning** helps keep the driver within the driving lane, if the lane is about to be departed, through corrective steering intervention and adjustable wheel vibration at speeds above 40 mph.
- Standard **Audi pre sense rear** (as part of Audi side assist) uses radar sensors in the rear bumper to help detect an impending rear-end collision, and can initiate preventative measures.
- Standard **Parking system plus** helps make parking easier with front and rear proximity acoustic parking sensors, when the vehicle is in both reverse and drive, at speeds under 6 mph.
- Standard **Rear cross traffic assist** (as part of Audi side assist and parking system plus) supports the driver when reversing out of a perpendicular parking space. Indicator arrows in the MMI® display can help inform the driver of approaching vehicles, and in critical situations, a warning tone and brake jolt can be applied, prompting the driver to fully stop the vehicle.
- Available **Adaptive cruise control with Traffic Jam assist** (now standard on Premium Plus trim levels) assists the driver with acceleration and braking, maintaining speed and following distance between speeds of 0-95 mph and during traffic jam situations between speeds of 0-40 mph.
- Available **Top view camera system** (now standard on Premium Plus trim levels) uses four wide-angle 360-degree cameras to display the entire area surrounding, projected on the MMI® screen, allowing the driver to “see” around the vehicle to help with maneuvering in tight spaces.

87. Moreover, the same press release declared that the 2021 Audi Q5 “includes greater attention to detail.”

#### **Interior design and infotainment**

The interior of the new Q5 models includes greater attention to detail through functional refinements and additional driver focused technologies. Horizontal lines dominate the interior leading to the large 10.1 inch MMI® touchscreen (1,540 x 720 pixels) which serves as the focal point of the dashboard. This MMI® is backed by the all-new MIB 3 infotainment system which delivers drivers a better overall user experience through faster processing speeds and higher graphical resolution.

88. Similarly, brochures of the 2018 Audi Q5 discuss the capabilities of the driver assist systems without mentioning that they are dependent on the proper functioning of the GCM which is left dangerously exposed by an insufficient underbody seam and no protection from liquids from above, be they from a water bottle or a malfunctioning panoramic sunroof.

89. The Affected Class Vehicles were specifically advertised as safe and reliable. The Defendant, VWGoC, should have been aware of the risk of spills in the backseat of these vehicles and further should have: (1) warned consumers of the location and vulnerability of the GCM; and (2) provided better protection of the GCM by sealing the

compartment in which it was located.

90. Despite having ample opportunity to disclose the GCM Defect and warn consumers about the associated safety risks—in advertising, brochures, press releases, through conversations with Audi dealership personnel, among others—the Defendant, VWGoC, failed to do so.

**vi. The warranties provided by the Defendant, VWGoC, for Audi vehicles**

91. The Defendant, VWGoC, provides warranties directly to the Plaintiff and Class Members. This New Vehicle Limited Warranty (“**NVLW**”) covers “defects in manufacturer’s material and workmanship,” and is limited to “4 years or 80,000 kilometers from your vehicle’s in-service date, whichever occurs first.” This coverage includes the Affected Class Vehicles’ control modules as well as defects in the workmanship in assembling the vehicle.
92. Despite the fact that the NVLW is provided by the Defendant, VWGoC, the copyright to the warranty terms is held by VWAG and Audi AG. As such, the warranty booklets provided to the Plaintiff and Class Members by the Defendant, VWGoC, are done so with the explicit permission and direction of VWAG and Audi AG. Moreover, VWAG and Audi AG are the author of the warranty terms.
93. The Defendant, VWGoC, also provides “Audi Certified pre-owned Limited Warranty” to vehicles purchased as “certified pre-owned” from authorized Audi dealerships. This Certified Pre-Owned Warranty provides that “[i]f Audi New Vehicles Limited Warranty (NVLW) coverage remains at the time of Certified pre-owned (CPO) purchased, CPO Limited Warranty Coverage commences upon expiration of NVLW and continues until 5 years from vehicle’s original in-service date with no mileage limitation. If NVLW coverage has expired at time of CPO purchase, CPO Limited Warranty coverage continues for 12 months with no mileage limitation.”
94. The coverage terms of the CPO Limited Warranty are similar to the terms of the NVLW.
95. Unlike many vehicle manufacturers, VWAG and Audi AG do not make their Owners’ Manuals and warranty booklets available online prior to purchase. In order to access such materials on the Defendant’s, VWGoC’s, websites, a consumer needs a Vehicle Identification Number. As such, the full warranty terms were only presented to the

Plaintiff and Class Members after the purchase and/or lease of the Affected Class Vehicles, on a take-it-or-leave-it basis.

**vii. Agency relationship between the Defendant, VWGoC, and its authorized Audi dealerships as to the Affected Class Vehicles**

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

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

- (vii) certify Audi pre-owned vehicles;
  - (viii) reporting to the Defendant, VWGoC, with respect to the vehicle delivery, including reporting customer names, addresses, preferred titles, primary and business phone numbers, e-mail addresses, vehicle identification 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
  - (ix) displaying the Defendant's, VWGoC's, logos on signs, literature, products, and brochures within Audi dealerships.
- (h) dealerships bind the Defendant, VWGoC, with respect to:
- (i) warranty repairs on the vehicles the Audi dealers sell; and
  - (ii) issuing service contracts administered by the Defendant, VWGoC,
- (i) the Defendant, VWGoC, further exercises control over its Audi 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's, VWGoC's, policies and procedures; and
  - (iv) customer satisfaction surveys, pursuant to which the Defendant, VWGoC, 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, VWGoC, pursuant to a "floor plan," and the Defendant, VWGoC, does not receive payment for its vehicles until the dealerships sell them;

- (k) dealerships bear the Defendant's, VWGoC'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's, VWGoC's, products, including the Affected Class Vehicles;
- (l) the Defendant, VWGoC, 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, VWGoC, requires its Audi 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's, VWGoC's, vehicles;
- (n) the Defendant, VWGoC, requires its Audi dealers to use service and repair forms containing its brand names and logos;
- (o) the Defendant, VWGoC, 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 them;
- (p) the Defendant, VWGoC, requires Audi dealers to use parts and tools either provided by it, or approved by it, and to inform the Defendant, VWGoC, when dealers discover that unauthorized parts have been installed on one of its vehicles;
- (q) the Defendant, VWGoC, requires Audi dealers' service and repair employees to be trained by it in the methods of repair of Audi-brand vehicles;
- (r) the Defendant, VWGoC, audit Audi dealerships' sales and service departments and directly contacts the customers of said dealers to determine their level of satisfaction with the sales and repair services provided by the dealers, who are then granted financial incentives or reprimanded depending on the level of satisfaction;
- (s) the Defendant, VWGoC, requires its Audi dealers to provide them with monthly

statements and records pertaining, in part, to dealers' sales and servicing of its vehicles;

- (t) the Defendant, VWGoC, 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, VWGoC, provides its dealers with specially trained service and repair consultants with whom dealers are required by the Defendant, VWGoC, to consult when Audi dealers are unable to correct a vehicle defect on their own;
- (v) the Defendant, VWGoC, 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, VWGoC, whenever an Audi vehicle is sold or put into warranty service.

## **Part 2: RELIEF SOUGHT**

1. The Plaintiff, on his own behalf and on behalf of Class Members, claims against the Defendant, VWGoC, as follows:
  - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the named representative;
  - (b) a declaration that Affected Class Vehicles suffer from the GCM Defect;
  - (c) a declaration that the Defendant, VWGoC, was negligent in the design, material, manufacturing and/or workmanship of the Affected Class Vehicles with the GCM Defect causing the Plaintiff and Class Members to suffer damages;
  - (d) a declaration that the Defendant, VWGoC:
    - (i) breached its 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*, R.S.A. 2000, c. S-2; sections 16(1), (2) and 52 of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; sections 16(a), (b) and 54 of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; sections 15(1), (2) and 51 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1; sections 16(a),(c) and 54 of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; sections 17(a), (b) and 54 of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; sections 20(a), (b) and 67 of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; sections 16(a), (b) and 53 of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; sections 15(a), (b) and 50 of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; sections 18(a),(b) and 60 of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and sections 18(a),(b) and 60 of *the Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2; and articles 1458, 1725 and 1730 of the *Civil Code of Québec*, C.Q.L.R., c. CCQ-1991;

- (iv) breached articles 37, 38, 40, 41, 53 and 54 of the *Consumer Protection Act*, C.Q.L.R. c P-40.1;
  - (v) breached the duty to act in good faith and with honesty in representations and in the performance of obligations, pursuant to articles 6, 7, and 1375 of the *Civil Code of Québec*, C.Q.L.R., c C.C.Q.-1991; and
  - (vi) engaged in unfair practices contrary to sections 4 and 5 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004 ("**BPCPA**"); Sections 5 and 6 of the *Consumer Protection Act*, 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*, C.C.S.M. c B120; Sections 14(1) and (2) of the *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A, and Section 10 of the *Consumer Protection Act*, SNB 2024, c 1; articles 215, 219, and 228 of the *Consumer Protection Act*, C.Q.L.R. c. P-40.1, and are consequently liable to Class Members for damages;
- (e) 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*, R.S.A. 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; and *Consumer Protection Act*, SNB 2024, c 1; *Consumer Protection Act*, C.Q.L.R. c. P-40.1 and waiving any such applicable notice provisions;

- (f) an Order for the statutory remedies available under the *BPCPA*; *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, SNB 2024, c 1; and article 272 of the *Consumer Protection Act*, C.Q.L.R. c. P-40.1, including damages, cancellation and/or rescission of the purchase and/or lease of the Affected Class Vehicles;
- (g) an order directing the Defendants, VWGoC, to advertise any adverse findings against them pursuant to section 172(3)(c) of the *BPCPA*; Section 19 of the *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; Section 93(1)(f) of *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; Section 23(2)(f) of *The Business Practices Act*, C.C.S.M. c B120; Section 18(11) of the *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A and Section 15 of the *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, SNB 2024, c 1; and *Consumer Protection Act*, C.Q.L.R. c. P-40.1;
- (h) a declaration that the Defendant, VWGoC, 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;
- (i) an order enjoining the Defendant, VWGoC, from continuing its unlawful and unfair business practices as alleged herein;
- (j) a declaration that the Defendant, VWGoC, fraudulently concealed the GCM Defect in the Affected Class Vehicles from the Plaintiff and Class Members;



- (k) injunctive and/or declaratory relief requiring the Defendant, VWGoC, to recall, repair and/or replace damaged GCMs equipped in the Affected Class Vehicles and to fully reimburse and make whole all Class Members for all costs and economic losses associated therewith;
- (l) 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;
- (m) 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*;
- (n) damages, including actual, compensatory, incidental, statutory and consequential damages;
- (o) special damages;
- (p) punitive damages;
- (q) costs of investigation pursuant to section 36 of the *Competition Act*;
- (r) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (s) such further and other relief as to this Honorable Court may seem just.

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

#### **E. Jurisdiction**

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

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

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

**F. Causes of Action**

**i. Negligence**

2. The Defendant, VWGoC, at all material times owed a duty of care to the Plaintiff and Class Members to provide a product that did not have a design, material, manufacturing, and/or workmanship defect. The Affected Class Vehicles pose a real, substantial and imminent risk of harm or injury to Class Members, and others on the road, on account of the GCM Defect.
3. The Defendant, VWGoC, as the 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 Members to ensure that the Affected Class Vehicles were reasonably safe for use.
4. At all material times, the Defendant, VWGoC, owed a duty of care to the Plaintiff and Class Members and breached that standard of care expected in the circumstances. The Defendant, VWGoC, knew that Affected Class Vehicles were defective resulting in an unexpected loss of motive power or ability to accelerate, maintain speed, steer and/or brake, placing the vehicle at an increased risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road. Despite such knowledge, the Defendant, VWGoC, continued to distribute, sell and/or lease the Affected Class Vehicles with the GCM Defect.

5. The Defendant, VWGoC, owed the Plaintiff and Class Members a duty to carefully monitor the safety and post-market performance of the Affected Class Vehicles. The Defendant, VWGoC, had a duty to warn, or promptly warn, the Plaintiff and Class Members that the Affected Class Vehicles were defective resulting in an unexpected loss of motive power or ability to accelerate, maintain speed, steer and/or brake, placing the vehicle at an increased risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road, and which it failed to do.
6. The circumstances of the Defendant, VWGoC, being in the business of distributing, selling, leasing and/or placing the Affected Class Vehicles into the Canadian stream of commerce are such that the Defendant, VWGoC, is in a position of legal proximity to the Plaintiff and Class Members, and therefore is under an obligation to be fully aware of safety when distributing and/or selling a product such as the Affected Class Vehicles.
7. It was reasonably foreseeable by the Defendant, VWGoC, that the placement of the GCM in the Affected Class Vehicles, a critical vehicle component, in an unsealed compartment which allows moisture and liquid infiltration and water ingress from rainwater through insufficient underbody seam would result in damage to the GCM thereby causing an unexpected loss of motive power or ability to accelerate, maintain speed, steer and/or brake, and as such placing the vehicle at an increased risk of a collision or loss of control.
8. The Defendant, VWGoC, through its employees, officers, directors, and agents, failed to meet the reasonable standard of care or conduct expected of a vehicle supplier, distributor and/or manufacturer in the circumstances in that:
  - (a) it knew, or ought to have known, about the GCM Defect in the Affected Class Vehicles and should have timely warned the Plaintiff and Class Members;
  - (b) it designed, developed, manufactured, tested, assembled, marketed, advertised, distributed, supplied, sold and/or leased vehicles with the GCM Defect, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road;

- (c) it failed to timely warn the Plaintiff, Class Members and/or consumers about the GCM Defect in the Affected Class Vehicles causing an unexpected loss of motive power or ability to accelerate, maintain speed, steer and/or brake, and as such placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road;
  - (d) it failed to change the design, manufacture, materials and/or assembly of the Affected Class Vehicles, including the location of the GCM and/or insufficient underbody seam, in a reasonable and timely manner;
  - (e) it failed to properly inspect and test the Affected Class Vehicles;
  - (f) it knew, or ought to have known, about the GCM Defect in the Affected Class Vehicles but failed to disclose it;
  - (g) it failed to issue timely and implement safety, repair and/or replacement recalls of the Affected Class Vehicles;
  - (h) the GCM Defect posed a serious safety hazard to vehicle occupants as the Affected Class Vehicles could unexpectedly lose motive power or ability to accelerate, maintain speed, steer and/or brake, and as such placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road;
  - (i) 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 adequately eliminate, fix or correct the GCM Defect; and
  - (j) it failed to exercise reasonable care and judgment in matters of design, manufacture, materials, workmanship, and/or quality of product which would reasonably be expected of it as a vehicle supplier, distributor and/or manufacturer.
9. As a result of the GCM Defect in the Affected Class Vehicles by reason of the Defendant, VWGoC's, negligence and its failure to disclose and/or adequately warn of the GCM Defect, the Plaintiff and Class Members have suffered damages and will

continue to suffer damages. Moreover, the value of each of the Affected Class Vehicles is reduced or diminished. The Plaintiff and each of the Class Members must expend the time to have his/her vehicle repaired and be without their vehicle. The Defendant, VWGoC, should compensate the Plaintiff and each Class Member for their incurred out-of-pocket expenses for, *inter alia*, repair, including any repairs to other components that may also be damaged when the GCM short-circuits, towing, alternative transportation and vehicle payments as a result of the GCM Defect.

**ii. Breach of Express Warranty**

10. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
11. As an express warrantor, manufacturer, distributor, supplier and/or merchant, the Defendant, VWGoC, had certain obligations to conform the Affected Class Vehicles with the GCM Defect to its express warranties.
12. The Defendant, VWGoC, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through authorized dealerships and/or independent retail dealers. Such representations formed the basis of the bargain in the Plaintiff and Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
13. The Defendant, VWGoC, provided the Plaintiff and Class Members with one or more express warranties. For illustrative purposes, the Defendant, VWGoC, provided a NVLW that includes coverage for four (4) years or 80,000 km, whichever occurs first. Under express warranties provided to Class Members, the Defendant, VWGoC, promised to repair or replace covered defective components arising out of defects in design, materials and/or workmanship, including the GCM, at no cost to owners and/or lessees of the Affected Class Vehicles. However, given the inevitable damage to the GCM resulting from the GCM Defect, the Defendant, VWGoC, concealed, or failed to disclose, the GCM Defect in an attempt to not have to deal with the repairs under warranty.
14. The Defendant, VWGoC, also marketed the Affected Class Vehicles as high quality, reliable, and safe vehicles and that the Defendant, VWGoC, would stand behind the quality of its products and promptly repair any defects. These statements helped conceal

the existence of the GCM Defect and its corresponding safety risk from the Plaintiff and Class Members in order to shift the expense of repairs to the Plaintiff and Class Members.

15. Under the express warranties provided to the Plaintiff and Class Members, the Defendant, VWGoC, promised to repair or replace covered components arising out of defects in materials and/or workmanship, including the GCM Defect, at no cost to owners and/or lessees of Affected Class Vehicles and within a reasonable time. As alleged herein, the Defendant, VWGoC, breached its express warranties.
16. The Defendant, VWGoC's, express warranties formed a basis of the bargain that was reached when the Plaintiff and Class Members purchased and/or leased their respective Affected Class Vehicles. Given the inevitability of the damage to the GCM resulting from the GCM Defect, the Defendant, VWGoC, knew, or ought to have known, that GCM failures may occur during the warranty periods, yet it actively concealed, or failed to disclose, the GCM Defect to the Plaintiff and Class Members in order to avoid paying for the repairs.
17. Class Members experienced the existence of the GCM Defect within the warranty periods but had no knowledge of the existence of the GCM Defect and corresponding safety risk, which were known and concealed by the Defendant, VWGoC. Despite the existence of the express warranties, the Defendant, VWGoC, failed to adequately inform the Plaintiff and Class Members that Affected Class Vehicles suffered from the GCM Defect and failed to provide a suitable remedy and/or fix within a reasonable time.
18. The failure to provide a suitable remedy and/or fix for the GCM Defect constitutes futility of the warranty.
19. In addition, the GCM Defect was substantially certain to cause the GCM to fail, and other components to be damaged when the GCM short-circuits.
20. The Defendant, VWGoC, breached the express warranty promising to adequately repair and correct a design and/or manufacturing defect or defect in materials or workmanship of any parts it supplied.
21. The Defendant, VWGoC, has not suitably remedied and/or fixed the GCM Defect for the Plaintiff and Class Members despite its knowledge, and the existence, of the GCM

Defect in Affected Class Vehicles at the time of sale and/or lease.

22. Affected Class Vehicles were not of merchantable quality and were unfit for the ordinary purposes for which passenger vehicles are used because of the materials, workmanship, design and/or manufacturing defects which cause damage to the GCM and/or failure to perform as warranted.
23. The Plaintiff and Class Members had sufficient direct dealings with the Defendant, VWGoC, and its agents and/or its authorized dealerships, to establish privity of contract between the Defendant, VWGoC, on the one hand, and the Plaintiff and Class Members, on the other hand. Nonetheless, privity is not required here because the Plaintiff and each Class Member are intended third-party beneficiaries of contracts between the Defendant, VWGoC, and its dealers, and specifically, of its warranties. The authorized Audi dealers were not intended to be the ultimate users of the Affected Class Vehicles and have no rights under the warranty agreements provided with the Affected Class Vehicles; the warranty agreements were designed for and intended to benefit purchasers of the Affected Class Vehicles only.
24. The Defendant, VWGoC, was provided notice of the GCM Defect by numerous consumer complaints made to its authorized Audi dealers and through testing, affording the Defendant, VWGoC, a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile here because the Defendant, VWGoC, has known of and concealed the GCM Defect and has failed to provide a suitable remedy and/or fix within a reasonable time.
25. Any attempt by the Defendant, VWGoC, to disclaim or limit recovery to the terms of the express warranties is unconscionable and unenforceable here. Specifically, the Defendant's, VWGoC's, warranty limitation is unenforceable because it knowingly sold a defective product without informing consumers of the GCM Defect. The time limits incorporated in the Defendant's, VWGoC's, warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. The Plaintiff and Class Members did not determine these time limitations, the terms of which unreasonably favored the Defendant, VWGoC. A gross disparity in bargaining power existed between the Defendant, VWGoC, and Class Members, and the Defendant, VWGoC, knew, or ought to have known, that Affected Class Vehicles were defective at the time of sale and/or lease and that the GCM Defect posed a safety risk.

26. The limited warranty promising to repair and/or correct a design and/or manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and Class Members whole because the Defendant, VWGoC, failed and/or has refused to adequately provide the promised remedies and/or fixes within a reasonable time.
27. The Defendant, VWGoC, knew that Affected Class Vehicles were inherently defective and did not conform to its warranties and the Plaintiff and Class Members were induced to purchase and/or lease Affected Class Vehicles under false and/or fraudulent pretenses.
28. Class Members experienced the existence of the GCM Defect within the warranty periods but had no knowledge of the existence of the GCM Defect, which was known and concealed by the Defendant, VWGoC. Despite the existence of express warranties, the Defendant, VWGoC, failed to inform the Plaintiff and Class Members that Affected Class Vehicles suffered from the GCM Defect during the warranty periods and wrongfully transferred the costs of repair or replacement of the GCMs and other damaged components as a result of the GCM short-circuiting to the Plaintiff and Class Members.
29. As a result of the GCM Defect Affected Class Vehicles are not reliable, and owners and/or lessees of these vehicles have lost confidence in the ability of Affected Class Vehicles to perform the function of safe and reliable transportation.
30. The Plaintiff and Class Members could not have reasonably discovered the GCM Defect.
31. As a direct and proximate result of the Defendant, VWGoC's, breach of express warranties, the Plaintiff and Class Members have suffered damages.
32. Finally, as a result of the Defendant, VWGoC's, breach of express warranty as set forth herein, the Plaintiff and Class Members assert, as additional and/or alternative remedies, the revocation of acceptance of goods and the return to the Plaintiff and Class Members the purchase price and/or lease payments of all Affected Class Vehicles currently owned and/or leased, and for such other incidental and consequential damages as allowed.



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

33. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
34. The Defendant, VWGoC, is a “seller” with respect to motor vehicles within the meaning of the *SGA, Sale of Goods Act*, R.S.A. 2000, c. S-2; *Sale of Goods Act*, R.S.S. 1978, c. S-1; *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; *Sale of Goods Act*, R.S.O. 1990, c. S.1; *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; *Sale of Goods Act*, R.S.N.S. 1989, c. 408; *Sale of Goods Act*, R.S.N.B. 2016, c. 110; *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; *Sale of Goods Act*, R.S.Y. 2002, c. 198; *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2, pursuant to its agency relationship with its authorized dealers, distributors, resellers, retailers and/or intermediaries.
35. The Defendant, VWGoC, is and was at all relevant times a seller with respect to Affected Class Vehicles with the GCM Defect. The Defendant, VWGoC, directly sold and marketed vehicles with the GCM Defect 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, VWGoC, knew that the Affected Class Vehicles with the GCM Defect would and did pass unchanged from the authorized dealers to Class Members.
36. The placement of the GCM in the Affected Class Vehicles, a critical vehicle component, in an unsealed compartment which allows moisture and liquid infiltration and water ingress from rainwater through insufficient underbody seam, results in damage to the GCM thereby causing an unexpected loss of motive power or ability to accelerate, maintain speed, steer and/or brake, and as such placing the vehicle at an increased risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road.
37. A warranty that the Affected Class Vehicles were in merchantable condition was implied by law pursuant to sections 18(a) and/or (b) of the *SGA*, sections 16(2) and/or (4) of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; sections 16(1) and (2) of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; sections 16(a) and/or (b) of *The Sale of Goods Act*, C.C.S.M. 2000,

c. S10; sections 15(1) and/or (2) of the *Sale of Goods Act*, RSO 1990, c. S.1; sections 16(a) and/or (c) of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; sections 17(a) and/or (b) of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; sections 20(a) and/or (b) of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; sections 16(a) and/or (b) of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; sections 15(a) and/or (b) of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; sections 18(a) and/or (b) of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and sections 18(a) and (b) of the *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2.

38. The Defendant, VWGoC, marketed, distributed, leased and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles 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.
39. Affected Class Vehicles were defective at the time they left the possession of the Defendant, VWGoC. The Defendant, VWGoC, knew of the GCM Defect at the time these transactions occurred. Thus, Affected Class Vehicles, when sold and/or leased and at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.
40. The Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles from the Defendant, VWGoC, 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, VWGoC, 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, VWGoC, 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, VWGoC, and its resellers, authorized dealers and/or distributors and, specifically, of the Defendant's VWGoC's, implied warranties.
41. The Defendant, VWGoC's, resellers, authorized dealers and/or distributors are intermediaries between the Defendant, VWGoC, 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, VWGoC, with respect to the Plaintiff's and Class Members' acquisition of the Affected Class Vehicles. The Defendant, VWGoC's, warranties were designed to influence consumers who purchased and/or leased the Affected Class Vehicles.

42. The Defendant, VWGoC, knew or had reason to know of the specific use for which the Affected Class Vehicles were purchased and/or leased.
43. As a result of the GCM Defect, the Affected Class Vehicles were not in merchantable condition when sold and/or leased and are not fit for the ordinary purpose of providing safe and reliable transportation.
44. The Defendant, VWGoC, knew about the GCM Defect in the Affected Class Vehicles, allowing it to cure its breach of warranty if it chose.
45. At all times that the Defendant, VWGoC, warranted, leased and/or 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 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, VWGoC, delivered them to its resellers, authorized dealers and/or distributors which leased and/or sold the Affected Class Vehicles and the Affected Class Vehicles were, therefore, still defective when they reached Plaintiff and Class Members.
46. The Defendant, VWGoC'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, VWGoC'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 GCM Defect in the Affected Class Vehicles. The time limits contained in the Defendant, VWGoC'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, VWGoC. A gross disparity in bargaining power existed between the Defendant, VWGoC, and the Plaintiff and Class Members, and the Defendant, VWGoC, knew that the Affected Class Vehicles suffered from the GCM Defect that

causes an unexpected loss of motive power or ability to accelerate, maintain speed, steer and/or brake, and as such placing the vehicle at an increased risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants.

47. 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, VWGoC's, conduct alleged herein. Affording the Defendant, VWGoC, a reasonable opportunity to cure its breach of written warranties, therefore, would be unnecessary and futile.
48. As a direct and proximate result of the Defendant, VWGoC'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 GCM Defect in the Affected Class Vehicles pursuant to sections 56 of the SGA, section 52 of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; section 52 of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; section 54 of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; section 51 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1; section 54 of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; section 54 of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; section 67 of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; section 53 of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; section 60 of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; section 60 of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and section 60 of the *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2.

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

49. 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.
50. The Defendant, VWGoC, is in British Columbia for the purposes of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in **Schedule "A"**.
51. 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"**.

52. 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”**.
53. The purchase and/or lease of the Affected Class Vehicles by the 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”**.
54. The Defendant, VWGoC, 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, VWGoC, is the vehicle supplier and/or manufacturer of the Affected Class Vehicles and distributes, markets and/or supplies such vehicles to consumers including the Class Members in British Columbia. At all relevant times, the Defendant, VWGoC, was a supplier and/or seller of the Affected Class Vehicles as its resellers, authorized dealers and/or distributors were acting as the agents of the Defendant, VWGoC.
55. By failing to disclose and actively concealing the GCM Defect in the Affected Class Vehicles, the Defendant, VWGoC, 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, VWGoC, knew that the Affected Class Vehicles with the GCM Defect caused an unexpected loss of motive power or ability to accelerate, maintain speed, steer and/or brake, and as such placing the vehicle at an increased risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants and others on the road.
56. The Defendant, VWGoC, made misleading statements or omissions concerning the

GCM Defect, yet failed to adequately warn consumers.

57. As alleged herein, the Defendant, VWGoC, made misleading representations and omissions concerning the quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles. In particular, the Defendant, VWGoC, advertised that the Affected Class Vehicles were reliable and dependable, touting the advanced capabilities of its driver assist systems, or the comfort and convenience of the interior and infotainment systems without ever mentioning that the proper functioning of these systems, amongst others, depends on the GCM which was left unprotected and exposed in a unsealed compartment under the rear bench seats of the Affected Class Vehicles, not only from liquid spill, but from rainwater from the outside due to insufficient underbody seam.
58. The Defendant, VWGoC, emphasized the driver assistance capabilities of the Affected Class Vehicles without ever mentioning the serious vulnerability of the GCM arising from the GCM Defect, which could render such systems useless.
59. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and Class Members were deceived by the Defendant's, VWGoC's, failure to disclose its knowledge of the GCM Defect and corresponding safety risks as averred to herein.
60. In particular, the Defendant, VWGoC, engaged in a pattern of unfair or deceptive acts or practices in failing to disclose to Class Members that the Affected Class Vehicles suffered from the GCM Defect that caused an unexpected loss of motive power or ability to accelerate, maintain speed, steer and/or brake, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants and others on the road, and ending in a costly repair and/or replacement process that the Defendant, VWGoC, will not cover, as follows:
  - (a) failing to disclose that the Affected Class Vehicles were not of a particular standard, quality, or grade;
  - (b) failing to disclose before, during and/or after the time of purchase, lease and/or repair, any and all known material defects or material nonconformity of the Affected Class Vehicles, including the GCM Defect;
  - (c) failing to disclose at the time of purchase and/or lease that the Affected Class

Vehicles were not in good working order, defective, not fit for their intended, and ordinary purpose, and created a real and substantial danger or harm to occupants of the Affected Class Vehicles, and to others on the road;

- (d) failing to give adequate warnings and/or notices regarding the use, defects, and problems in the Affected Class Vehicles to consumers who purchased and/or leased the Affected Class Vehicles, even though the Defendant, VWGoC, possessed exclusive knowledge of the GCM Defect 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 Affected Class Vehicles was defective, even though the Defendant, VWGoC, knew about the GCM Defect; and
  - (f) representing that the GCM Defect in the Affected Class Vehicles would be covered under its warranty program.
61. In purchasing and/or leasing the Affected Class Vehicles, Class Members in British Columbia were deceived by the Defendant's, VWGoC's, failure to disclose its exclusive knowledge that the GCM Defect in the Affected Class Vehicles caused an unexpected loss of motive power or ability to accelerate, maintain speed, steer and/or brake, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and to others on the road.
62. By failing to disclose and actively concealing the GCM Defect, the Defendant, VWGoC, 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"**.
63. Further, as alleged herein, the Defendant, VWGoC, made misleading representations and/or omissions concerning the quality, advanced technology, reliability, durability performance and/or safety of the Affected Class Vehicles, by:
- (a) publishing owners' manuals that made materially misleading omissions as to claims of advanced technology, safety and dependability but which uniformly omitted any warning to consumers that the Affected Class Vehicles suffered from the GCM Defect, which caused an unexpected loss of motive power or

ability to accelerate, maintain speed, steer and/or brake, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and to others on the road;

- (b) advertisements which uniformly omitted any information about the GCM Defect, and which misled consumers into believing that the Affected Class Vehicles would function properly; and
- (c) emphasizing and extolling in brochures and press releases that the Affected Class Vehicles were dependable, technologically advanced, safe, of the highest quality and with exceptional capability.

64. The Defendant's, VWGoC'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 were defect-free and did not pose a safety hazard, which they were not;
- (b) representing that the Affected Class Vehicles were of a particular standard, quality or grade, when they were not;
- (c) advertising the Affected Class Vehicles with the intent not to sell them as advertised; and
- (d) representing that the Affected Class Vehicles have been supplied in accordance with a previous representation as to quality, advanced technology, reliability, durability, performance and/or safety, when they have not.

65. In purchasing and/or leasing the Affected Class Vehicles, Class Members in British Columbia were deceived by the Defendant, VWGoC's, failure to disclose its exclusive knowledge of the GCM Defect and/or its representations made as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles in its sales brochure materials, manuals, press releases and/or websites.

66. The Defendant, VWGoC, intentionally and knowingly misrepresented and omitted material facts regarding its Affected Class Vehicles, specifically regarding the GCM Defect, with an intent to mislead Class Members.



67. In purchasing and/or leasing the Affected Class Vehicles, Class Members were deceived by the Defendant, VWGoC's, failure to disclose its knowledge of the GCM Defect and corresponding safety risks.
68. Class Members had no way of knowing that the Defendant's, VWGoC's, representations were false, misleading and incomplete or knowing the true nature of the GCM Defect in the Affected Class Vehicles. As alleged herein, the Defendant, VWGoC, engaged in a pattern of deception in the face of a known manufacturing and/or design defect in the Affected Class Vehicles. Class Members did not, and could not, unravel the Defendant's, VWGoC's, deception on their own.
69. The Defendant, VWGoC, knew, or ought to have known, that its conduct violated sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in **Schedule "A"**.
70. The Defendant, VWGoC, owed Class Members a duty to disclose the truth about the GCM Defect in the Affected Class Vehicles as it created a serious safety hazard and the Defendant, VWGoC,:
  - (a) possessed exclusive knowledge of the GCM 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 suffered from the GCM Defect.
71. The Defendant, VWGoC, had a duty to disclose that the Affected Class Vehicles were fundamentally flawed as described herein because the GCM Defect created a serious safety hazard and Class Members relied on the Defendant, VWGoC's, material misrepresentations and omissions regarding the Affected Class Vehicles and the GCM Defect.
72. The Defendant, VWGoC's, conduct proximately caused injuries to Class Members that purchased and/or leased the Affected Class Vehicles and suffered harm as alleged herein.
73. Class Members were injured and suffered ascertainable loss, injury-in-fact and/or actual

damage as a proximate result of the Defendant, VWGoC's, conduct in that Class Members incurred costs related to the GCM Defect including, *inter alia*, repair, service and/or replacement costs, rental car costs and overpaid for their Affected Class Vehicles that have suffered a diminution in value.

74. The Defendant's, VWGoC's, violations cause continuing injuries to Class Members. The Defendant's, VWGoC's, unlawful acts and practices complained of herein affect the public interest.
75. The Defendant, VWGoC, knew, or ought to have known, that the Affected Class Vehicles were materially compromised by the GCM Defect.
76. The facts concealed and omitted by the Defendant, VWGoC, 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 GCM Defect 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.
77. Class Members' injuries were directly or proximately caused by the Defendant's, VWGoC's, unlawful and deceptive business practices.
78. As a result of the Defendant's, VWGoC'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, VWGoC, 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"**.
79. 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, VWGoC's, failure to disclose and/or actively conceal the GCM Defect from Class Members in British Columbia and its misrepresentations as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class

Vehicles.

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

80. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
81. By making representations to the public as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles, the Defendant, VWGoC, 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, performance 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.
82. At all relevant times, the Defendant, VWGoC, 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, VWGoC, as to the Affected Class Vehicles as its resellers, authorized dealers and/or distributors at all material times were acting as the agents of the Defendant, VWGoC.
83. The Defendant, VWGoC, 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 GCM Defect in the Affected Class Vehicles from Plaintiff and Class Members, along with concealing the safety risks, costs, and monetary damage resulting from the GCM Defect. The Defendant, VWGoC, should have disclosed this information because it was in a superior position to know the true facts related to the GCM Defect and Plaintiff and Class Members could not reasonably be expected to learn or discover the true facts related to the GCM Defect.

84. The GCM Defect in the Affected Class Vehicles constitutes a serious safety issue. The Defendant, VWGoC, knew that the GCM Defect in the Affected Class Vehicles caused an unexpected loss of motive power or ability to accelerate, maintain speed, steer and/or brake, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and to others on the road, which triggered the Defendant's, VWGoC's, duty to disclose the safety issue to consumers.
85. These acts and practices have deceived the Plaintiff and Class Members. In failing to disclose the GCM Defect and suppressing other material facts from the Plaintiff and Class Members, the Defendant, VWGoC, breached its duty to disclose these facts, violated the *Competition Act* and caused damage to the Plaintiff and Class Members. The Defendant, VWGoC'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.
86. Further, the Plaintiff and Class Members relied upon the Defendant's, VWGoC's, misrepresentations as to quality, advanced technology, reliability, durability, performance 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.
87. 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**

88. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
89. The Defendant, VWGoC, intentionally and knowingly concealed, suppressed, and/or omitted material facts including the standard, quality, or grade of class vehicles and the fact that Affected Class Vehicles contain a defect and corresponding safety risk, with the intent that the Plaintiff and Class Members rely on these omissions. As a direct result of this fraudulent conduct, the Plaintiff Class Members have suffered actual damages.
90. The Defendant, VWGoC, knew (at the time of sale and thereafter) as a result of pre-

release testing that Affected Class Vehicles incorporated the GCM Defect, concealed the GCM Defect and never intended to repair or replace the Affected Class Vehicles during the warranty periods. To date, the Defendant, VWGoC, has not provided Class Members with adequate or complete repair, remedy and/or fix for the GCM Defect.

91. The Defendant, VWGoC, owed a duty to disclose the GCM Defect and its corresponding safety risks to the Plaintiff and Class Members because the Defendant, VWGoC, possessed superior and exclusive knowledge concerning the GCM Defect. The Defendant, VWGoC, had a duty to disclose any information relating to the safety, quality, functionality, and reliability of Affected Class Vehicles because it consistently marketed Affected Class Vehicles as safe.
92. As the Defendant, VWGoC, made representations to the public concerning Affected Class Vehicle safety, quality, functionality, and reliability, it was under a duty to disclose the omitted facts as to the GCM Defect. Rather than disclose the GCM Defect, the Defendant, VWGoC, intentionally and knowingly concealed, suppressed, and/or omitted material facts including the standard, quality, or grade of the Affected Class Vehicles and the presence of the GCM Defect and corresponding safety risks, to sell additional Affected Class Vehicles and avoid the cost of repair or replacement of the GCM resulting from the GCM Defect.
93. No reasonable consumer expects a vehicle to contain a concealed defect in design, manufacture, materials, or workmanship, such as the GCM Defect, that will cause an unexpected loss of motive power or ability to accelerate, maintain speed, steer and/or brake and lead to thousands of dollars in repair or replacement costs
94. The Defendant, VWGoC, intended to conceal the material facts concerning the GCM Defect with the intent to deceive. This intent was manifested by the Defendant, VWGoC, concealing the GCM Defect from prospective purchasers, owners and/or lessees during the warranty period while issuing TSBs to its dealers. The Defendant, VWGoC, benefitted by concealing the defect in that it could charge a higher price premium for the Affected Class vehicles by concealing the information and was therefore motivated to do so.
95. The Plaintiff and Class Members would not have purchased and/or leased the Affected Class Vehicles but for the Defendant's, VWGoC's, omissions and concealment of

material facts concerning the nature and quality of Affected Class Vehicles and existence of the GCM Defect and corresponding safety risks, or would have paid less for the Affected Class Vehicles. The Defendant, VWGoC, knew its concealment and suppression of material facts was false and misleading and knew the effect of concealing those material facts. The Defendant, VWGoC, knew its concealment and suppression of the GCM Defect would sell more Affected Class Vehicles and would discourage the Plaintiff and Class Members from seeking replacement or repair of the GCM Defect during the applicable warranty periods. The Defendant, VWGoC, intended to induce the Plaintiff and Class Members into purchasing and/or leasing the Affected Class Vehicles and to discourage them from seeking replacement or repair of the GCM Defect in order to decrease costs and increase profits.

96. The Defendant, VWGoC, acted with malice, oppression and/or fraud.
97. As a direct and proximate result of the Defendant's, VWGoC's, omissions and active concealment of material facts concerning the GCM Defect and corresponding safety risk, the Plaintiff and Class Members suffered actual damages in an amount to be determined at trial.

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

98. The Plaintiff and Class Members had no way of knowing about the GCM Defect in the Affected Class Vehicles. The Defendant, VWGoC, concealed its knowledge of the GCM Defect while continuing to market, sell and/or lease, the Affected Class Vehicles with the GCM Defect.
99. 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, VWGoC, was concealing the conduct complained of herein and misrepresenting the true qualities of the Affected Class Vehicles.
100. 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 design and/ manufacturing of the Affected Class Vehicles.
101. 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.

102. Further, due to Defendant's, VWGoC's, knowledge and active concealment of the GCM 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 “B”** has been tolled.
103. Instead of publicly disclosing the GCM Defect in the Affected Class Vehicles, the Defendant, VWGoC, kept the Plaintiff and Class Members in the dark as to the GCM Defect and the serious safety hazard it presented.
104. The Defendant, VWGoC, was under a continuous duty to disclose to the Plaintiff and Class Members the existence of the GCM Defect in the Affected Class Vehicles.
105. The Defendant, VWGoC, knowingly, affirmatively and actively concealed or recklessly disregarded the true nature, quality and character of the Affected Class Vehicles.
106. As such, the Defendant, VWGoC, 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(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: May 12, 2025



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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>

Province or Territory	Legislation
New Brunswick	<p><i>Consumer Product Warranty and Liability Act</i>, SNB 1978, c. C-18.1</p> <p>“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);</p> <p><i>Consumer Protection Act</i>, SNB 2024, c1</p> <p>“Consumer” – Section 1;  “Consumer Agreement” – Section 1;  “Consumer Transaction” – Section 1; and  “Unfair Practices” – Part 2, Section 10</p>
Québec	<p><i>Consumer Protection Act</i>, CQLR c. P-40.1</p> <p>“Goods” - Article 1(d);  “Consumer” - Article 1(e);  “Manufacturer” - Article 1(g); and  “Merchant” - Article 1</p>

**Schedule “B”**

**Limitation Act Legislation Across Canada**

<b>Province or Territory</b>	<b>Legislation</b>
Alberta	<i>Limitations Act</i> , RSA 2000, c. L-12
Saskatchewan	<i>The Limitations Act</i> , SS 2004, c. L-16.1
Manitoba	<i>The Limitation of Actions Act</i> , CCSM c. L150
Ontario	<i>Limitations Act</i> , 2002, SO 2002, c. 24, Sch. B
Newfoundland and Labrador	<i>Limitations Act</i> , SNL 1995, c. L-16.1
Nova Scotia	<i>Limitation of Actions Act</i> , SNS 2014, c. 35
New Brunswick	<i>Limitation of Actions Act</i> , SNB 2009, c. L-8.5
Prince Edward Island	<i>Statute of Limitations</i> , RSPEI 1988, c. S-7
Yukon	<i>Limitation of Actions Act</i> , RSY 2002, c. 139
Northwest Territories	<i>Limitation of Actions Act</i> , RSNWT 1988, c. L-8
Nunavut	<i>Limitation of Actions Act</i> , RSNWT (Nu) 1988, c. L-8
Québec	<i>Civil Code of Québec</i> , CQLR, c. C-1991, art. 2908

## 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 (l) 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 defect multi-jurisdictional class proceeding involves certain model year Audi vehicles marketed, advertised, distributed, supplied, leased and/or sold by the Defendant, Volkswagen Group of Canada Inc., in Canada, including the Province of British Columbia, equipped with a gateway control module located in an unsealed compartment under the rear bench seats of the vehicle which allows ambient moisture infiltration, liquid infiltration from liquid spills on the rear bench seats and/or water ingress from rainwater through insufficient underbody seam, causing a short-circuit in the GCM such that the vehicle enters emergency mode and suddenly loses motive power, ability to accelerate, maintain speed, steer and/or brake. all of which poses a real, substantial and imminent risk of harm or injury to vehicle occupants and others on the road.

### 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; and *Consumer Protection Act*, CQLR c. P-40.1

5. *Motor Vehicle Safety Act* , R.S.C. 1993, c.16

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

7. *Competition Act*, R.S.C 1985, c. C-34

8. *Limitation Act*, S.B.C. 2012, c.13; *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; and *Civil Code of Quebec*, CQLR, c. C-1991, art. 2908