NO. S-228539
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

[redacted]

PLAINTIFFS

AND:

FORD MOTOR COMPANY and
FORD MOTOR COMPANY OF CANADA, LIMITED/
FORD DU CANADA LIMITEE

DEFENDANTS

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

NOTICE OF CIVIL CLAIM

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

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

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

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

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

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

TIME FOR RESPONSE TO CIVIL CLAIM

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

(a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

A. Introduction

1. The within proposed consumer product liability multi-jurisdictional class proceeding involves certain Affected Class Vehicles, which include model year 1999 to 2016 Ford Super Duty F-Series trucks, as defined below, designed, manufactured, assembled, tested, marketed, advertised, distributed, supplied, sold and/or leased by the Defendants, FORD MOTOR COMPANY ("FORD US") and FORD MOTOR COMPANY OF CANADA, LIMITED/FORD DU CANADA LIMITEE ("FORD CANADA"), in Canada, including the Province of British Columbia, that contain insufficient and weak roof structures or components that are highly susceptible to collapse in a rollover accident. Specifically, the Affected Class Vehicles suffer from an inherent design defect wherein the truck cab roof construction lacks the structural integrity or frame strength to support the weight of the vehicle in a rollover accident which crushes the roof down to the level of the vehicle's body ("Roof Crush Defect") and poses

an imminent, substantial and/or grave risk of harm, injury and/or death to vehicle occupants.

2. A vehicle's body shell is the structure that surrounds the occupants of the vehicle, including the doors, roof, pillars, roof rails, windshield header, rear header and rear windows.

3. The weakness in the Affected Class Vehicles' roof structures or components is the result of the Defendants, FORD US and FORD CANADA, pursuit to reduce costs at the expense of vehicle occupant safety. From the time the Defendants, FORD US and/or FORD CANADA, first designed, developed and manufactured the Affected Class Vehicles and continuing through production of the Affected Class Vehicles, the Defendants, FORD US and/or FORD CANADA, continued to reduce the strength of the Affected Class Vehicles' roof structures or components for the sake of maximizing profits.

4. The Affected Class Vehicles include the F-250, F-350, F-450 and F-550 Super Duty trucks which contain the PHN-131 design platform that is available in three cab configurations: (1) two-door Regular Cab; (2) four-door Super Cab; and (3) four-door Super Crew Cab. The Super Cab design consists of two doors on each side that latch to one another when closed, sometimes referred to as "clam-shell doors", as detailed below.

5. The Defendants, FORD US and/or FORD CANADA, downgaged and reduced the strength of various roof structural components found in the Affected Class Vehicles, without conducting any physical roof crush test to determine whether such changes would impact vehicle occupant safety. Rather, the Defendants, FORD US and/or FORD CANADA, were solely focused on extracting additional profits from the Affected Class Vehicles. The Defendants', FORD US and/or FORD CANADA, efforts to reduce their cost to manufacture and produce an Affected Class Vehicle by approximately $28 USD created the Roof Crush Defect, which has resulted in harm, injury and/or death to vehicle occupants.

6. The existence of the Roof Crush Defect was well known to the Defendants, FORD US and/or FORD CANADA, for years through, *inter alia*, pre-production testing, design failure mode analysis, internal investigations and studies, warranty claims, parts orders, consumer reports and/or settling products liability, personal injury and/or wrongful death accident lawsuits with secrecy clauses that hid the dangerous nature of the Roof Crush Defect. In

or about 2005, the Defendants, FORD US and/or FORD CANADA, designed a passenger cab roof for their Super Duty F-Series trucks to withstand more weight and provide significantly increased roof crush resistence, however, they did not implement the design into their manufacturing process until 2017 but rather continued to sell and/or lease the Affected Class Vehicles with the Roof Crush Defect.

7. The Defendants, FORD US and/or FORD CANADA, continue to deny the existence of the Roof Crush Defect and have failed to warn, or disclose to, owners and/or lessees of the Affected Class Vehicles that their trucks pose a substantial and real danger of harm, injury and/or death in the event of a rollover accident as a result of the Roof Crush Defect. Nor have, the Defendants, FORD US and/or FORD CANADA, issued a recall, offered any repair for the Roof Crush Defect or offered owners and/or lessees of the Affected Class Vehicles reimbursement for out-of-pocket expenses, loss of use, and loss of value as a result of the Roof Crush Defect. Rather, the Defendants, FORD US and/or FORD CANADA, have actively concealed the Roof Crush Defect from owners and/or lessees of the Affected Class Vehicles.

8. The Defendants', FORD US and/or FORD CANADA, marketing of their Super Duty F-Series trucks as safe, dependable and reliable is pervasive across North America as characterized by their longstanding ubiquitous slogan: "Built Ford Tough".

9. No reasonable consumer expects to purchase a vehicle with a concealed defect that presents a substantial and real catastrophic danger to vehicle occupants. The Roof Crush Defect is material to the Plaintiffs and proposed class members because when they purchased and/or leased their Affected Class Vehicle they reasonably relied on the reasonable expectation that the Affected Class Vehicles would be free from defects and would protect them in the event of a rollover accident. Had proposed class members known of the Roof Crush Defect at the time of purchase and/or lease of the Affected Class Vehicles, they would not have purchased and/or leased the Affected Class Vehicles or would have paid substantially less for them.

10. The Defendants, FORD US and/or FORD CANADA, knowingly omitted, concealed and/or

suppressed material facts regarding the Roof Crush Defect, and misrepresented the safety standard, quality, or grade of the Affected Class Vehicles, all at the time of purchase and/or lease or otherwise, which directly caused harm or loss to the Plaintiffs and proposed class members. As a direct result of the Defendants', FORD US and/or FORD CANADA, unfair, deceptive and/or fraudulent business practices and wrongful conduct, the Plaintiffs and proposed class members have suffered ascertainable losses or damages, including, *inter alia*: (1) out-of-pocket expenses for repair of the Roof Crush Defect; (2) costs for future repairs; (3) sale of their vehicles at a loss; and/or (4) diminished value of their vehicles.

11. The Plaintiffs seek relief for all other owners and/or lessees of the Affected Class Vehicles with the Roof Crush Defect, including, *inter alia*, recovery of damages and/or repair under various provincial consumer protection legislation, breach of implied warranty or condition of merchantability, statutory and equitable claims and reimbursement of all expenses associated with the repair and/or replacement of the Affected Class Vehicles.

B. The Parties

The Representative Plaintiffs

12. [redacted]

13. [redacted]

14. [redacted]

15. In or about 2016, the Plaintiff, [redacted] purchased a 2007 Ford Super Duty F-350 Crew Cab truck, ("F-350") containing the Roof Crush Defect, an Affected Class Vehicle, primarily for personal, family or household use, from a private seller in British Columbia, Canada.

16. In or about September 2020 the Plaintiff, [redacted] transferred legal title and ownership to his F-350 to the Plaintiff, [redacted] and continues to drive the F-350.

17. Prior to purchasing his F-350, the Plaintiff, [redacted] reviewed the Defendants, FORD US and/or FORD CANADA, specifications for the F-350 posted on the Defendants, FORD US and/or FORD CANADA, website, third-party websites, and located at Ford dealerships in British Columbia—each of which failed to disclose the presence of the Roof Crush Defect in the F-350.

18. The Plaintiff, [redacted] was aware of the Defendants', FORD US and/or FORD CANADA, uniform and nationwide marketing message that their vehicles were "Built Ford Tough", safe, dependable and reliable, which was material to his decision to purchase his F-350. When he purchased his F-350, he believed, based on the Defendants', FORD US and/or FORD CANADA, marketing message, that he would be in a safe, dependable and reliable vehicle, one that is safer than a vehicle that is not marketed as safe, dependable and reliable. At no point before the Plaintiff, [redacted] purchased his vehicle did the Defendants, FORD US and/or FORD CANADA, disclose to him that his vehicle was not safe, dependable or reliable, or that it suffered from the Roof Crush Defect, which creates serious safety risks.

19. The Plaintiff, [redacted] did not receive the benefit of his bargain when he purchased his F-350. He purchased a vehicle that is of a lesser standard, grade, and quality than represented, and he did not receive a vehicle that met ordinary and reasonable consumer expectations regarding safe and reliable operation. The Roof Crush Defect has significantly diminished the value of the F-350 as it is not safe, dependable and reliable as represented by the Defendants, FORD US and/or FORD CANADA, and poses a substantial and real danger of harm, injury and/or death in the event of a rollover accident.

20. Had the Defendants, FORD US and/or FORD CANADA, disclosed the Roof Crush Defect, the Plaintiff, [redacted] would not have purchased his F-350 when he did, or would have paid less to do so.

The Defendants

21. The Defendant, FORD US, is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, The Corporation Trust Company, at the Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, United States of America, 19801.

22. The Defendant, FORD CANADA, is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0058695, and has a attorney for service, Ian Giroday, at DuMoulin Boskovich, Mailbox 12173, Suite 1301 - 808 Nelson Street, Vancouver, British Columbia, V6Z 2H2, Canada.

23. At all material times to the cause of action herein, the Defendant, FORD US, is an American automobile manufacturer that, *inter alia*, designs, manufacturers, assembles, markets, advertises, distributes, supplies and/or sells Ford vehicles, including the Affected Class Vehicles, as averred to in paragraph three herein, containing the Roof Crush Defect, at an automobile plant located in the State of Kentucky, United States of America, for distribution and/or sale in the United States of America and Canada, including the Province of British Columbia.

24. At all material times to the cause of action herein, the Defendant, FORD US, markets, advertises, distributes, supplies and/or sells Ford vehicles, including the Affected Class Vehicles, as averred to in paragraph three herein, containing the Roof Crush Defect, through, *inter alia*, its related subsidiaries, affiliates and/or operating units, including the Defendant, FORD CANADA, independent retailers and authorized dealerships in the United States of America and Canada, and within the Province of British Columbia. The Defendant, FORD US, also provides all the technical information for the purposes of designing, manufacturing, servicing and/or repairing its Affected Class Vehicles to its subsidiaries, affiliates and/or operating units, including the Defendant, FORD CANADA.

25. At all material times to the cause of action herein, the Defendant, FORD CANADA, was, and is, a wholly owned subsidiary of the Defendant, FORD US, which, *inter alia*, markets, advertises, distributes, leases, sells, services and/or repairs Ford vehicles, including the

Affected Class Vehicles, as averred to in paragraph three herein, containing the Roof Crush Defect in Canada, and within the Province of British Columbia. The Defendant, FORD CANADA, was the sole distributor of the Affected Class Vehicles in Canada, including the Province of British Columbia. It sold and/or leased the Affected Class Vehicles through its dealer and retailer network, which were controlled by the Defendants, FORD CANADA and/or FORD US, and were their agents.

26. At all material times to the cause of action herein, the Defendants, FORD US and FORD CANADA, shared the common purpose of, *inter alia*, designing, developing, manufacturing, assembling, marketing, distributing, supplying, leasing, selling, servicing and/or repairing Ford vehicles, including the Affected Class Vehicles, as averred to in paragraph three herein, containing with Roof Crush Defect in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendants, FORD US and FORD CANADA, are inextricably interwoven with that of the other as to the Roof Crush Defect in the Affected Class Vehicles, as averred to in paragraph three herein, such that each is the agent of the other.

27. Hereinafter, the Defendants, FORD US and FORD CANADA, are collectively referred to as the Defendant, "FORD", and/or the "Defendants", unless referred to individually or otherwise.

C. The Class

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

D. Factual Allegations

i. Motor Vehicle Safety Standards

29. In Canada motor vehicle safety standards are governed by the *Motor Vehicle Safety Act*, S.C. 1993, c.16 ("*MVSA*") and the *Motor Vehicle Safety Regulations*, C.R.C., c. 1038 ("*Regulations*"). The Minister of Transport has the power and authority to verify that companies and persons comply with the *MVSA, Regulations* and vehicle safety standards. Transport Canada is delegated the authority to oversee the *MVSA* and *Regulations.* Technical Standards Documents ("TSD") are documents that reproduce an enactment of a foreign government or material produced by an international organization, such as the Federal Motor Vehicle Safety Standard ("FMVSS") published in the United States *Code of Federal Regulations*, Title 49, Part 571.These documents have adaptations or modifications for the Canadian context. TSD 216 *Roof Crush Resistence* is based on FMVSS No. 216a, *Roof Crush Resistence* published in the *Federal Register,* with an effective date of July 24, 2010 and a mandatory compliance date of September 1, 2016 in Canada. The National Highway Traffic Safety Administration ("NHTSA") oversees, *inter alia*, vehicle safety standards, such as the FMVSS, in the United States. Increasingly, the general approach to setting vehicle safety standards in Canada is to harmonize or analogize them with the FMVSS in the United States as much as possible. As such, vehicles designed or manufactured in the United States that comply with FMVSS may be imported and sold in Canada pursuant to the requirements of the *MVSA and Regulations*.

ii. Rollover accidents are a leading cause of vehicle fatalities

30. According to NHTSA rollover crashes pose a serious threat to vehicle occupants and are one of the leading causes of fatalities. From 2014 to 2018, rollover crashes accounted for approximately two percent of all vehicle crashes, yet rollover accidents were responsible for 24 percent of all fatalities in the United States. In 2017, there were a total of 23,551 passenger vehicle fatalities in the United States, of which 7,170 fatalities, over 30% of all deaths, involved rollover accidents.

31. Although multiple factors may impact a vehicle occupant's chances of survival during a

rollover accident, such as whether the seat belt is worn, NHTSA has recognized that the effectiveness of such safety features could be diminished if an vehicle occupant's survival space is not adequately maintained during a rollover. Further, NHTSA acknowledges that even if all vehicle occupants properly fasten seat belts, their chances of surviving or sustaining less severe injury in rollover crashes would be improved if their vehicles properly maintain occupant compartment integrity or sufficient strength.

32. First going into effect in 1973, FMVSS 216 applies to roof crush loads for passenger vehicles. The standard calls for passenger compartment roofs to have sufficient strength to resist deformation beyond a certain degree when a force of one and one-half times the vehicle weight is applied using a specified test device. The purpose of the standard is to reduce deaths and injuries due to the crushing of the roof into the passenger compartment in rollover accidents.

33. Although FMVSS 216 is not applicable to heavy pickups such as the Affected Class Vehicles, the Defendant, FORD, treated FMVSS 216 as a relevant standard to consider when designing its heavier pickup trucks. Despite NHTSA adopting a watered-down version of FMVSS 216, it still recognized the importance of roof strength in its rulemaking notices.

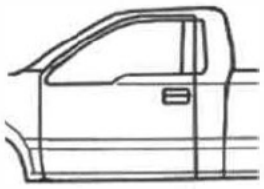
34. In addition to FMVSS 216, in or about 1995, NHTSA, as part of its rule-making authority, indicated that as to passenger vehicles weighing 10,000 pounds (4,536 kilograms) or less, the performance standards applicable to door retention components, FMVSS 206, are intended to minimize the likelihood of occupants being ejected from the vehicle in the event of a crash. FMVSS 206 requires that back door latches withstand 2,000 pounds (907 kilograms) of force.

iii. Ford's Super Duty Roof Crush Defect.

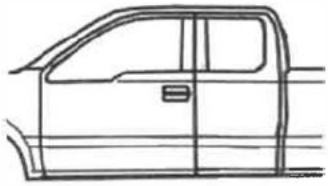
35. In the 1990s, the Defendant, FORD, divided their pickup truck business into the PN-96 and PHN-131 platforms. The PN-96 trucks have a gross vehicle weight rating ("GVRW") of 8,500 pounds (3,864 kilograms) or less. The PHN-131 trucks have a GVRW over 8,500 pounds (3,864 kilograms).

36. Each Affected Class Vehicle is part of the Defendant, FORD's, Super Duty PHN-131 platform. The Defendant, FORD, began its development of the PHN-131 in 1993, which culminated in 1999 when the first vehicle to include the platform was introduced in its 1999 model year Super Duty trucks.

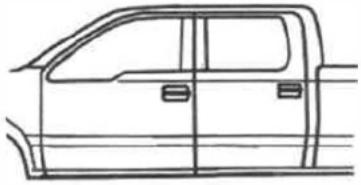
37. The PHN-131 platform includes the Defendant, FORD's, F-250, F-350, F-450 and F-550 Super Duty trucks. The platform is available in three cab configurations: (1) a two-door Regular Cab; (2) a four-door Super Cab; and (3) a traditional four-door Crew Cab (also referred to as the "Super Crew"), as illustrated below. The Super Cab design consists of two doors on each side that latch to one another when closed, sometimes referred to as "clam-shell" doors."



Regular Cab
Standard Cab



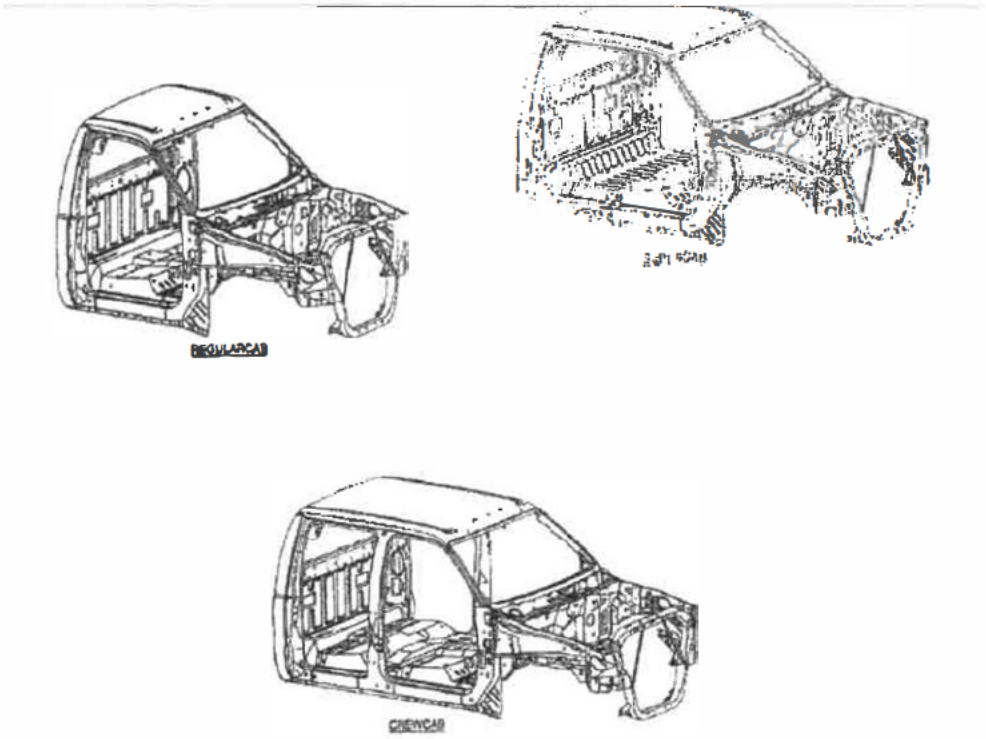
Super Cab
Extended Cab



Super Crew
Crew Cab

38. The roof of a typical automobile with both front and back seats is supported by three pillars on each side: the A pillars at the front, on each side of the windshield, the C pillars at the back of the passenger compartment behind the rear seats, and the B pillars, between the A and C pillars and behind the front door.

39. The Regular Cab has A and B pillars, the Super Cab only has A and C pillars, and the Crew Cab has A, B, and C pillars, as illustrated in the diagram below . In the Super Cab Affected Class Vehicles, the two doors on each side open in opposite directions and latch to one another when closed, and consequently, do not have a fixed frame B pillar, situated between the front and rear doors.



Regular cab (top left), Super Cab (top right), and Crew Cab (bottom)

40. B pillars are important structural components of an automobile roof. Use of a B pillar in a passenger compartment with both front and back seats serves to support the middle span of the side roof rail by joining it to the "rocker," the frame component that runs along the bottom of the frame, underneath the doors. The B pillar is the roof support pillar that is roughly in line with the back of the front seat of a typical pickup truck. It is the pillar to which the front door would normally latch upon closing. Instead of having a B pillar, the Defendant, FORD, claims that the Super Cab has a "floating B pillar." The supposed B pillar "floats" because, when the doors are open, the B pillar no longer exists. In order for the floating B pillar to lend structural support to the roof, the rear door of the Super Cab must be securely latched to the roof rail and rocker panel when it is closed. After the rear door is closed, the front door can be closed by means of a latch connecting it to the rear door.

41. In a rollover accident, the roof of the pickup truck will impact with the ground, causing a deformation of the roof rail, and increasing the risk of severe injury or death to vehicle

occupants.

42. The roof system installed in the Affected Class Vehicles is defective in that it does not possess sufficient structural integrity and strength to withstand a rollover accident. The inadequacies in the design of the PHN-131 roof system are the result of intentional decisions by the Defendant, FORD, to minimize costs—without regard to the serious safety risks identified by NHTSA decades earlier.

43. Prior to the development of the PHN-131 platform, the Defendant, FORD, tested its heavier F-Series pickup trucks against FMVSS 216, as well as other vehicles that were over the weight limit set in the standard. However, by March 1995, the Defendant, FORD, determined that the PHN-131 platform it was designing exceeded the weight threshold set in FMVSS 216 and decided that it would no longer subject its heavier trucks (such as the Affected Class Vehicles) to FMVSS 216 testing.

44. Around the same time the Defendant, FORD, decided it would no longer test its heavier trucks pursuant to FMVSS 216, it decided to implement a handful of downgrades to roof structural components found in the Affected Class Vehicles, including in the roof bows, the windshield header, the A pillar, and the B pillar.

45. Among the design changes implemented between March 31, 1994 and January 5, 1998 were: (1) downgage roof bow by 20%; (2) replace high strength steel in the Super Cab rear door vertical beam (the floating B-pillar) with mild steel (resulting in a $20.86 USD savings per vehicle); (3) deleting the front outer windshield header (resulting in a savings of $3.50 USD per vehicle); and (4) downgage A-pillar strength by 4%.

46. These "downgages" were implemented as part of the Defendant, FORD's, PHN-131 cost containment plan which reduced the company's investment in the platform by $600 million USD and were designed to improve the PHN-131 financial equation.

47. Even after the PHN-131 went into production in January 1998, the Defendant, FORD, continued to weaken the strength of the roof, for the sole purpose of enhancing its profits. Among the design changes implemented between January 5, 1998 and June 28, 2000,

were the following: (1) further downgage A-pillar strength/thickness by an additional 8.3% from 2.4 mm to 2.2 mm (resulting in a $2.42 USD savings per vehicle); (2) downgage Super Cab floating B-pillar strength/thickness by 20% from 1.5 mm to 1.2 mm (resulting in a savings of $0.96 USD per vehicle); (3) downgage inner windshield header thickness by 11% from 1.2 mm to 1.07 mm (resulting in a savings of $0.17 USD per vehicle); (4) downgage roof bow thickness by 7.5% from 0.8 mm to 0.74 mm (resulting in a savings of $0.10 USD per vehicle); and (5) downgage A-pillar reinforcement by 4.8% (resulting in a savings of $0.20 USD per vehicle). As such, the Defendant, FORD, significantly weakened the PHN-131 roof structure when it deleted the front outer header, replaced the B-pillar with mild steel and downgaged the inner windshield header, roof bows, A-pillar and rear front door vertical beam thickness. In total, these design changes would provide the Defendant, FORD, with $25 million USD in profit for every 100,000 vehicles sold.

48. The Defendant, FORD, made no design changes to offset the above downgages to the Affected Class Vehicles' roof structure. Nor did the Defendant, FORD, perform any physical roof crush tests consistent with FMVSS 216's testing framework to determine what effect these changes would have on roof strength and vehicle occupant safety.

49. In or about 2003, after these changes, a roof crush test in accordance with the FMVSS 216 standard on a 2001 F-250 Super Cab pickup, which has a GVWR of 8,800 pounds (3,992 kilograms) was performed by third parties. The vehicle did not satisfy the FMVSS 216 standard and recorded a result of 9,800 pounds (4,445 kilograms).

50. For Super Cab Affected Class Vehicles, the likelihood of serious injury or death is magnified by the absence of a functioning B pillar. When a Super Cab rolls over, upon impact, the upper latch on the rear door is highly susceptible to failing and becoming separated. This separation enables a void to form between the door frame and the roof rail, meaning that the B pillar was floating rather than in position during a rollover event. As a result of the non-functional B pillar, the anterior portion of the driver's head may enter this void and be crushed between the structural components during the rollover event.

51. The upper latch used by the Defendant, FORD, to secure the top of the rear door (the floating B pillar) to the roof rail in a Super Cab is known as a D5 latch, which is far weaker

and smaller than the D21 latch used at the bottom of the rear door and used to latch the front door to the rear door.

52. At the time the Defendant, FORD, designed the Super Cab it understood that the D5 latch would fail well before the D21 latch. The Defendant, FORD, understood that strength testing on the D5 latch resulted in only 1,828 pounds (829 kilograms) of resistance, whereas FMVSS 206 calls for at least 2,000 pounds (907 kilograms).

53. In or about 2005, NHTSA proposed amending FMVSS 216 for vehicle roof strength, proposing a requirement for vehicle roofs to be able to withstand forces up to two and one-half times the weight of the vehicle.

54. In or about 2006, the Defendant, FORD, publicly stated that it would improve and enhance the roof strength of its Super Duty trucks and SUVs. The Defendant, FORD, promised to produce vehicle roofs that could support approximately three to three and one-half times the weight of the vehicle. This new design would have been an improvement over the proposed FMVSS.

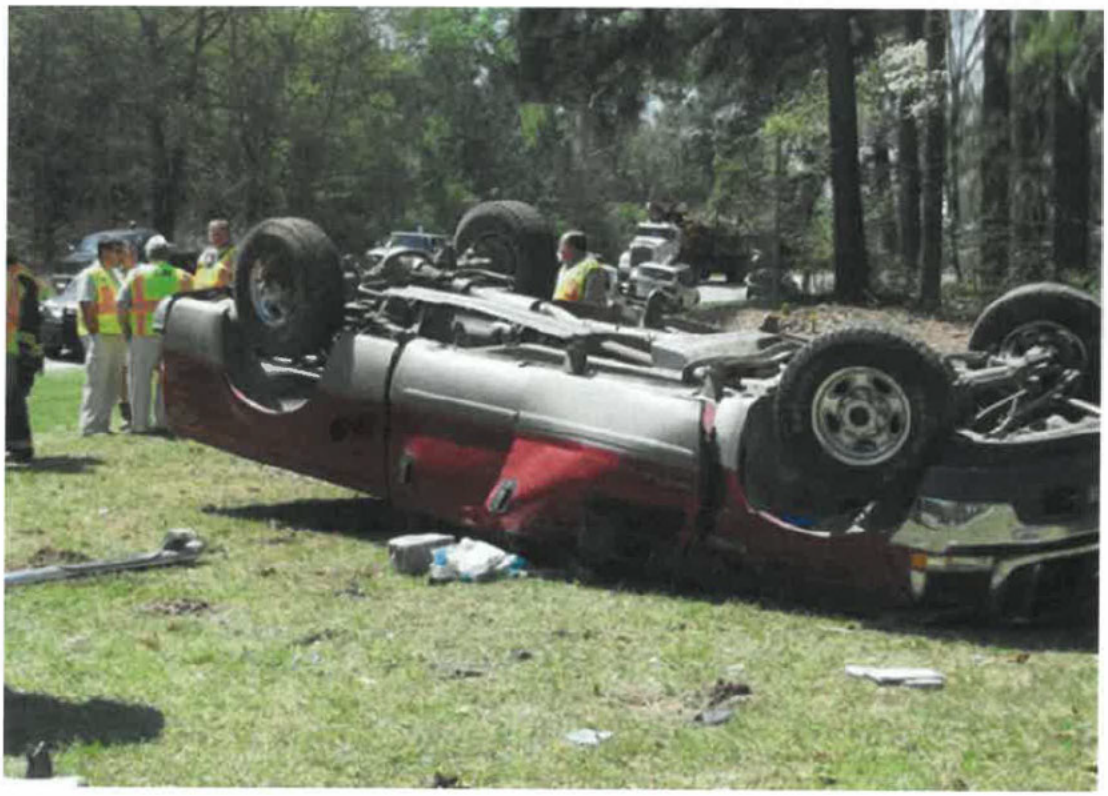
55. However, NHTSA did not implement its new FMVSS 216a for roof strength until four years later, in 2009 and which was subsequently adopted by Transport Canada in 2010. Furthermore, NHTSA carved out exceptions for vehicles weighing over 6,000 pounds (2,727 kilograms), which included all of the Affected Class Vehicles. These vehicles (and the Affected Class Vehicles) continued to follow the old roof strength standard of one and one-half times the weight of the vehicle.

56. Despite previously announcing its intent to improve and enhance roof strength, and despite the new FMVSS set out by NHTSA for lighter vehicles, the Defendant, FORD, did not make any changes to the design of Affected Class Vehicles until 2017.

57. In or about 2017, the Defendant, FORD, overhauled the design of its Super Duty trucks by replacing the steel body frame with an aluminum alloy structure, thus implementing the design improvements that it had developed over 10 years previously. This frame is lighter and stronger, and had already been implemented in the Defendant, FORD's, F-150 trucks.

While this redesign will protect occupants of newer Super Duty F-Series trucks (*i.e.*, model years 2017 and forward) into the future, it does not address the Roof Crush Defect present in the Affected Class Vehicles.

58. On or about August 19, 2022 the existence of the Roof Crush Defect became national news in the United States when a jury in Georgia reached a verdict in a case involving a rollover of a 2014 Ford F-250 pickup truck, an Affected Class Vehicle, that left two people dead (*Hill v. Ford Motor Co.*, 16-C-04179 State Court of Georgia, Winnett County). The jury determined, *inter alia*, that the Defendant, FORD, knew that the F-250 pickup truck contained the Roof Crush Defect. Below are pictures that show the complete collapse of the F-250 pickup truck following the rollover accident:



59. Below are also pictures of other Affected Class Vehicles with the Roof Crush Defect that were involved in rollover accidents:


F250

iv. Ford's knowledge of the Roof Crush Defect in the Affected Class Vehicles and associated safety risk

60. The Defendant, FORD, has long known that roof collapse can lead to serious and even fatal injury for vehicle occupants since at least 1966. The Safety Office of the Defendant, FORD, issued a report in 1966 on roof collapse and concluded that the roofs of Ford vehicles were capable of completely crushing down in one or more areas of the vehicle compartment, which was non-survivable for vehicle occupants. The Safety Office further concluded that stronger roofs crush less and which can prevent belted vehicle occupants from being ejected through windows, windshields or doors that may have broken or opened due to the roof being deformed.

61. In or about 1987 the Defendant, FORD's, *Light Truck Safety Design Strategy* recognized in its guideline that there were a significant number of accidents resulting in roof collapse and causing injury to vehicle occupants and further, where a rollover accident is inevitable the focus should shift to the roof structure so as to minimize the risk of vehicle occupant injury.

62. At the time that the Affected Class Vehicles went into production in 1999, the Defendant, FORD, had two internal safety standards applying to vehicle roofs: (1) the roof needed a strength-to-weight ratio of 1.8 and (2) the roof needed to be able to withstand at least 10,500 pounds (4,773 kilograms) of force.

63. The Affected Class Vehicles fail to comply with either of the Defendant, FORD's, then internal roof safety standards. The Affected Class Vehicles' roofs have a strength-to-weight ratio of 1.1, below the 1.8 internal standard, and they can withstand only 8,900 pounds (4,045 kilograms) of force.

64. The Defendant, FORD's, own internal testing revealed that the Affected Class Vehicles had the least roof crush resistance, measured by the strength-to-weight ratio, of all of the Defendant, FORD's, vehicles and was below its own internal standard of a 1.8 strength-to-weight ratio.

65. In or about 2004, the Defendant, FORD, began its Enhanced Roof Strength Project ("ERSP") to design a stronger and safer roof for its Super Duty trucks. By 2005, the ERSP had designed a roof for the Affected Class Vehicles that could withstand up to 55,000

pounds (25,000 kilograms)of force. Instead of implementing the stronger roof into the Affected Class Vehicles, the Defendant, FORD, concealed its existence and continued manufacturing and selling Affected Class Vehicles with the weaker, dangerous roof design for another 12 years.

66. In or about 2009, the Defendant, FORD, began using the safer ERSP roof on its F-150 trucks, but not in the Affected Class Vehicles. Upon redesigning the F-150's roof, the Defendant, FORD, boasted about the new roof's safety benefits. For example, in its product brochure for the 2009 F-150, the Defendant, FORD, touted the F-150's high-strength safety cage structure and the fact that the redesigned F-150 was the safest F-150 yet. It was only in 2017 that the Defendant, FORD, finally strengthened the roofs of its Super Duty trucks.

67. The Defendant, FORD, had full knowledge of the existence of the Roof Crush Defect and the risk it posed to owners and/or lessees of the Affected Class Vehicles. This knowledge is based upon, *inter alia,* the following: (a) pre-sale durability testing and part sales; (b) records of customer complaints; (c) dealership repair records; (d) consumer complaints posted on the internet; (e) warranty and post-warranty claims; (f) internal investigations into the PHN-131's roof strength; and (g) product liability, wrongful death and personal injury lawsuits filed against the Defendant, FORD, related to the Roof Crush Defect in the Affected Class Vehicles.

68. The Defendant, FORD, is experienced in the design and manufacture of automobiles. As an experienced vehicle manufacturer, the Defendant, FORD, conducts tests, including pre-sale durability testing, on incoming components to verify the parts are free from defects, align with its specifications, and fit for their intended use. It conducts extensive pre-sale analysis of all aspects of its vehicles, including the roofs of the Affected Class Vehicles.

69. The Defendant, FORD, regularly reviews and inspects the quality, durability, and safety of its vehicles. For instance, the Defendant, FORD, developed a stronger roof for its Super Duty trucks in 2004 but that roof was not used in trucks sold to customers until the 2017 model year

70. The Defendant, FORD, also regularly monitors NHTSA databases for consumer complaints as part of its ongoing obligation pursuant to the TREAD Act, 49 U.S.C. §30118, to identify

potential defects in its vehicles. Owners and/or lessees of the Affected Class Vehicles have filed numerous complaints with NHTSA relating to the Roof Defect since the first sale of the Affected Class Vehicles.

71. In addition to NHTSA complaints, customer complaints of the Roof Defect in the Affected Class Vehicles can be found on various consumer websites and message boards, which the Defendant, FORD, reviews and monitors.

72. The Defendants, FORD's, customer relations department, which interacts with authorized service technicians to identify potentially widespread vehicle problems and assist in the diagnosis of vehicle issues, has received numerous reports of the Roof Crush Defect. Its customer relations department also collects and analyzes field data, including, but not limited to, incident reports, repair requests made at dealerships and service centers, technical reports prepared by engineers that have reviewed vehicles for which warranty coverage is requested, parts sales reports, and warranty claims data.

73. The Defendant, FORD's, warranty department similarly reviews and analyzes incident reports and warranty data submitted by its dealerships and authorized technicians to identify defect trends in its vehicles.

74. The Defendant, FORD, dictates that when a repair is made under warranty (or warranty coverage is requested), service centers must provide it with detailed documentation of the problem and the fix that describes the complaint, cause, and correction, and also save the broken part in case the Defendant, FORD, later determines to audit the dealership or otherwise verify the warranty repair. For their part, service centers are meticulous about providing this detailed information about in-warranty repairs to the Defendant, FORD, because it will not pay the service centers for the repair if the complaint, cause, and correction are not sufficiently described.

75. The Defendant, FORD, knew or ought to have known about the Roof Crush Defect because of the high number of replacement parts for the Affected Class Vehicles' roof system following incidents. All of the Defendant, FORD's, service centers are required to order replacement parts directly from the Defendant, FORD. Other independent vehicle repair shops that service Affected Class Vehicles also order replacement parts directly from the

Defendant, FORD.

76. The Defendant, FORD, routinely monitors part sales reports and are responsible for shipping parts requested by dealerships and technicians. As such, the Defendant, FORD, has detailed, accurate, and real-time data regarding the number and frequency of replacement part orders. The increase in orders of auto-parts necessary to fix damage caused by the Roof Crush Defect of the Affected Class Vehicles was known to the Defendant, FORD, and should have alerted it to the scope and severity of the Roof Crush Defect.

77. The Defendant, FORD's, customer relations division regularly receive and respond directly to customer calls concerning, *inter alia*, product defects. Through these sources, the Defendant, FORD, was made aware of the Roof Crush Defect in the Affected Class vehicles and had knowledge of its danger.

78. The Defendant, FORD, also would have learned of the Roof Crush Defect in the Affected Class vehicles through the scores of product liability, personal injury and wrongful death lawsuits filed against it.

79. The Defendant, FORD, conducted extensive internal investigations into the PHN-131's roof strength after learning of rollover accidents in the Affected Class Vehicles through the above sources.

v. Ford has yet to recall the Affected Class Vehicles and warn owners and/or lessees of the Affected Class Vehicles of the Roof Crush Defect

80. Vehicle manufacturers are required to file a report with NHTSA and Transport Canada within five days of identifying any safety related defects in their vehicles. The initial report is required to identify all vehicles potentially containing the defect and include a description of the vehicle manufactures' basis for its determination of the recall population and a description of how the vehicles or items of equipment to be recalled differ from similar vehicles or items of equipment that the vehicle manufacturer has not included in the recall. Further, the report must contain a description of the defect and identify and describe the risk to safety reasonably related to the defect.

81. The purposes of the *MVSA, Regulations* and FMVSS is to facilitate the notification of owners of defective and noncomplying vehicles, and the remedy of such defects and noncompliance, by equitably apportioning the responsibility for safety related defects and noncompliance with motor vehicle safety standards among vehicle manufacturers.

82. Despite having years of knowledge of rollover accidents involving the Affected Class Vehicles, the Defendant, FORD, continues to deny the existence of the Roof Crush Defect and has yet to warn owners and/or lessees of the Affected Class Vehicles of the imminent, substantial and/or grave risk of harm, injury or death arising from the Roof Crush Defect.

vi. Ford markets and touts the Affected Class Vehicles as being safe, durable and reliable

83. The Defendant, FORD, is one of the oldest and most distinguished vehicle manufacturers across the globe. It is the second largest automaker in North America and the fifth largest in the world based on annual vehicle sales.

84. The first F-series, the Ford F1, was introduced by the Defendant, FORD, in January 1948. The F-Series is now comprised of the F-150, F-250, F-350, F-450, F-550, F-650 and F-750 models.

85. The Defendant, FORD's, F-250, F-350, F-450, and F-550 models fall within its F-Series Super Duty line of heavy-duty trucks. The Super Duty line of trucks was introduced in the Defendant, FORD's, 1999 model year vehicles.

86. The Defendant, FORD's, F-Series of trucks has been the best-selling truck in North America for decades. The success of the F-Series is founded upon the Defendant, FORD's, uniform and consistent marketing messaging that its vehicles are safe, durable, of the highest quality and characterized by its ubiquitous slogan: "Built Ford Tough".

87. The Defendant, FORD, engages in direct marketing to consumers, including Plaintiffs and proposed Class Members, through television and radio commercials, print advertising, and the publication of vehicle brochures, which are distributed through its network of authorized Ford dealerships, in order to induce consumers to purchase its vehicles. This comprehensive advertising campaign is ongoing.

88. Through this direct advertising campaign, the Defendant, FORD, purports to build reliable, high quality, and safe vehicles. As stated, the Defendant, FORD's, customers are well aware of its slogan it uses to describe its vehicles—"Built Ford Tough." The Defendant, FORD, markets its brand as a tough, versatile vehicle, designed to operate safely and effectively in virtually any situation.

89. While marketing the Affected Class Vehicles in product brochures, the Defendant, FORD, repeatedly touted that the Affected Class Vehicles were "Built Ford Tough", designed to be the toughest trucks in the market, built to extremely high standards of safety, durability and reliability.

90. The Defendant, FORD, made such representations while knowing that it was selling the Affected Class Vehicles burdened with the Roof Crush Defect and associated safety risk of harm, injury and /or death in rollover accidents.

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

91. The Defendants as the vehicle manufacturers and/or distributors, impliedly or expressly acknowledged that Ford authorized dealerships are their sales agents, the dealers have accepted that undertaking, they have the ability to control authorized Ford dealers, and they act as the principal in that relationship, as is shown by the following:

(a) The Defendants can terminate the relationship with their dealers at will;

(b) The relationships are indefinite;

© The Defendants are in the business of selling vehicles as are their dealers;

(d) The Defendants provide tools and resources for Ford dealers to sell vehicles;

(e) The Defendants supervise their dealers regularly;

(f) Without the Defendants the relevant Ford dealers would not exist;

(g) The Defendants as the principal require the following of their dealers:

(I) Reporting of sales;

(ii) Computer network connection with the Defendants;

(iii) Training of dealers' sales and technical personnel;

(iv) Use of the Defendants supplied computer software;

(v) Participation in the Defendants training programs;

(vi) Establishment and maintenance of service departments in Ford dealerships;

(vii) Certification of Defendants pre-owned vehicles;

(viii) Reporting to the Defendants with respect to vehicle delivery, including reporting Plaintiffs' names, addresses, preferred titles, primary and business phone numbers, e-mail addresses, vehicle VIN numbers, delivery date, type of sale, lease/finance terms, factory incentive coding, if applicable, vehicles' odometer readings, extended service contract sale designations, if any, and names of delivering dealership employees; and

(ix) Displaying the Defendants' logos on signs, literature, products, and brochures within Ford dealerships.

(h) Dealerships bind the Defendants with respect to:

(I) Warranty repairs on the vehicles the dealers sell; and

(ii) Issuing service contracts administered by the Defendants.

(I) The Defendants further exercise control over their dealers with respect to:

(l) Financial incentives given to Ford dealer employees;

(ii) Locations of dealers;

(iii) Testing and certification of dealership personnel to ensure compliance with the Defendants policies and procedures; and

(iv) Customer satisfaction surveys, pursuant to which the Defendants allocate the number of their vehicles to each dealer, thereby directly controlling dealership profits.

(j) Ford dealers sell Defendants vehicles on the Defendants behalf, pursuant to a "floor plan," and the Defendants dos not receive payment for their vehicles until the dealerships sell them.

(k) Dealerships bear the Defendants brand names, use its logos in advertising and on warranty repair orders, post Ford brand signs for the public to see, and enjoy a franchise to sell the Defendants products, including the Affected Class Vehicles.

(l) The Defendants require Ford dealers to follow the rules and policies of the Defendants in conducting all aspects of dealer business, including the delivery of the Defendants warranties described above, and the servicing of defective vehicles such as the Affected Class Vehicles.

(m) The Defendants require their dealers to post the Defendants brand names, logos, and signs at dealer locations, including dealer service departments, and to identify themselves and to the public as authorized Ford dealers and servicing outlets for the Defendants vehicles.

(n) The Defendants require their dealers to use service and repair forms containing its brand names and logos.

(o) The Defendants require Ford dealers to perform the Defendants warranty diagnoses and repairs, and to do the diagnoses and repairs according to the procedures and

policies set forth in writing by the Defendants.

(p) The Defendants require Ford dealers to use parts and tools either provided by the Defendants or approved by Defendants and to inform the Defendants when dealers discover that unauthorized parts have been installed on one of the Defendants vehicles.

(q) The Defendants require dealers' service and repair employees to be trained by the Defendants in the methods of repair of Ford-brand vehicles.

(r) The Defendants audit Ford dealerships' sales and service departments and directly contact the customers of said dealers to determine their level of satisfaction with the sale and repair services provided by the dealers; dealers are then granted financial incentives or reprimanded depending on the level of satisfaction.

(s) The Defendants require their dealers to provide it with monthly statements and records pertaining, in part, to dealers' sales and servicing of the Defendants vehicles.

(t) The Defendants provides technical service bulletins and messages to their dealers detailing chronic defects present in product lines, and repair procedures to be followed for chronic defects.

(u) The Defendants provide their dealers with specially trained service and repair consultants with whom dealers are required by the Defendants to consult when dealers are unable to correct a vehicle defect on their own.

(v) The Defendants require Ford-brand vehicle owners to go to authorized Ford dealers to obtain servicing under the Defendants warranties.

(w) Ford dealers are required to notify the Defendants whenever a vehicle is sold or put into warranty service.

Part 2: RELIEF SOUGHT

1. The Plaintiffs, on their own behalf and on behalf of the proposed Class Members, claim against the Defendants, FORD US and FORD CANADA, jointly and severally, as follows:

(a) an order certifying this action as a class proceeding and appointing the Plaintiffs as the named representatives;

(b) a declaration that the Affected Class Vehicles contain the Roof Crush Defect;

(c) a declaration that the Defendants, FORD US and/or FORD CANADA, were negligent in the design and/or manufacturing of the Affected Class Vehicles containing the Roof Crush Defect causing the Plaintiffs and proposed Class Members to suffer damages;

(d) a declaration that the Defendants, FORD US and/or FORD CANADA:

(i) breached their duty of care to the Plaintiffs and proposed Class Members;

(ii) breached implied warranties or conditions of merchantability as to the Affected Class Vehicles and are consequently liable to the Plaintiffs and proposed Class Members for damages pursuant to sections 18(a),(b) and 56 of the *Sale of Goods Act*, R.S.B.C. 1996 (*"SGA"*), 410; sections 16(2), (4) and 52 of the *Sale of Goods Act*, RSA 2000, c. S-2; sections 16(1), (2) and 52 of the *Sale of Goods Act*, RSS 1978, c. S-1; sections 16(a), (b) and 54 of *The Sale of Goods Act*, CCSM 2000, c. S10; sections 15(1), (2) and 51 of the *Sale of Goods Act*, RSO 1990, c. S.1; sections 16(a),© and 54 of the *Sale of Goods Act*, RSNL 1990, c. S-6 ; sections 17(a),(b) and 54 of the *Sale of Goods Act*, RSNS 1989, c. 408; sections 20(a),(b) and 67 of the *Sale of Goods* Act, RSNB 2016, c. 110; sections 16(a), (b) and 53 of the *Sale of Goods Act*, RSPEI 1988, c. S-1; sections 15(a), (b) and 60 of the *Sale of Goods Act*, RSY 2002, c. 198; sections 18(a),(b) and 60 of the *Sale of Goods Act*, RSNWT 1988, c. S-2; and sections 18(a),(b) and 60 of *the Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2; and

(iii) 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, 2014, c C-30.2; Sections 2 and 3 of *The Business Practices Act*, CCSM c B120; Sections 14(1) and (2) of the *Consumer Protection Act,* 2002, SO 2002, c 30, Sch A and Section 4 (1) of the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1, and are consequently liable to the Plaintiffs and proposed 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*, 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, and waiving any such applicable notice provisions;

(f) an Order for the statutory remedies available under the *BPCPA*; *Consumer Protection Act*, RSA 2000, c. C-26.3*; The Consumer Protection and Business Practices Act,* SS, 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*, SNB 1978, c C-18.1,including damages, cancellation and/or rescission of the purchase and/or lease of the Affected Class Vehicles;

(g) an order directing the Defendants, FORD US and/or FORD CANADA, to advertise any adverse findings against them pursuant to section 172(3)© of the *BPCPA*; Section 19 *of the Consumer Protection Act*, RSA 2000, c. C-26.3;Section 93(1)(f) *of The Consumer Protection and Business Practices Act,* SS, 2014, c C-30.2; Section 23(2)(f) of *The Business Practices Act*, CCSM c B120; Section 18(11) of the *Consumer Protection Act,* 2002, SO 2002, c 30, Sch A and Section 15 of the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1;

(h) a declaration that the Defendants, FORD US and/or FORD CANADA, breached sections 36 and/or 52 of the *Competition Act,* R.S.C 1985, c. C-34 and are

consequently liable to the Plaintiffs and proposed Class Members for damages;

(i) a declaration that the Defendants, FORD US and/or FORD CANADA, fraudulently concealed the Roof Crush Defect in the Affected Class Vehicles from the Plaintiffs and proposed Class Members;

(j) a declaration that the Defendants, FORD US and/or FORD CANADA, were unjustly enriched at the expense of the Plaintiffs and proposed Class Members;

(k) an order enjoining the Defendants, FORD US and/or FORD CANADA, from continuing the unlawful and unfair business practices as alleged herein;

(l) injunctive and/or declaratory relief requiring the Defendants, FORD US and/or FORD CANADA, to recall, repair and/or replace the roof systems in the Affected Class Vehicles containing the Roof Crush Defect and/or buy back all Affected Class Vehicles and to fully reimburse and make whole all proposed Class Members for all costs and economic losses associated therewith;

(m) 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;

(n) 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*;

(o) damages, including actual, compensatory, incidental, statutory and/or consequential damages;

(p) special damages;

(q) punitive damages;

(r) costs of investigation pursuant to section 36 of the *Competition Act*;

(s) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*,

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

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

Part 3: LEGAL BASIS

Jurisdiction

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

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

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

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

(g) concerns a tort committed in British Columbia;

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

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

Causes of Action

Negligence

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

3. At all material times to the cause of action herein, the Plaintiffs and proposed Class Members were using the Affected Class Vehicles for the purposes and manner for which they were intended. The Defendants as vehicle manufacturers and distributors, at all material times, owed a duty of care to the Plaintiffs and proposed Class Members to provide a product that did not have a design and/or manufacturing defect. The Affected Class Vehicles pose a substantial risk of harm or injury to proposed Class Members on account of the Roof Crush Defect.

4. The Defendants as the designer, engineer, manufacturer, promoter, marketer and/or distributor of the Affected Class Vehicles, intended for use by ordinary consumers, owed a duty of care to the Plaintiffs and proposed Class Members to ensure that the Affected Class Vehicles were reasonably safe for use.

5. The Defendants owed a duty of care to the proposed Class. This duty of care was breached by the Defendants' failure to design and/or manufacture a roof system in the Affected Class Vehicles which supported the weight of the vehicle in a rollover accident so as to prevent the roof from crushing down or collapsing to the level of the vehicle's body, all of which poses an imminent, substantial and/or grave risk of harm, injury and/or death to vehicle occupants.

6. At all material times, the Defendants owed a duty of care to the Plaintiffs and proposed Class Members and breached that standard of care expected in the circumstances. They knew of the Roof Crush Defect, yet they continued to manufacture, produce and/or distribute the Affected Class Vehicles containing the Roof Crush Defect.

7. The Defendants owed the Plaintiffs and proposed Class Members a duty to carefully monitor the safety and/or post-market performance of the roof structure or components in

the Affected Class Vehicles. The Defendants had a duty to warn or promptly warn the Plaintiffs and proposed Class Members of the dangers associated with the use of the Affected Class Vehicles. They failed to promptly, or at all, recall the Affected Class Vehicles from the Canadian market upon discovering the Roof Crush Defect, which could cause an imminent, substantial and/or grave risk of harm, injury and/or death to vehicle occupants, in conditions of ordinary use and which otherwise reduced the value of the Affected Class Vehicles and resulted in costs associated with the loss of use of the Affected Class Vehicles.

8. The circumstances of the Defendants being in the business of designing, manufacturing and placing the Affected Class Vehicles into the Canadian stream of commerce are such that the Defendants are in a position of legal proximity to the Plaintiffs and proposed Class Members, and therefore are under an obligation to be fully aware of safety when designing, manufacturing, assembling and selling a product such as the Affected Class Vehicles.

9. It was reasonably foreseeable that a failure by the Defendants to design and/or manufacturer a roof structure or components in the Affected Class Vehicles which supported the weight of the vehicle in a rollover accident so as to prevent the roof from crushing down or collapsing to the level of the vehicle's body, would cause harm, injury and/or death to vehicle occupants.

10. The Plaintiffs and proposed Class Members had no knowledge of the Roof Crush Defect in the Affected Class Vehicles and had no reason to suspect the Roof Crush Defect.

11. The Defendants knew or ought to have known that the Affected Class Vehicles containing the Roof Crush Defect, which, in the absence of reasonable care in the design, manufacture and/or assembly of the roof structure or components in the Affected Class Vehicles, presented a real and substantial danger of harm, injury and/or death to occupants of the Affected Class Vehicles from the roof crushing down or collapsing down to the level of the vehicle's body in a rollover accident.

12. As such, the Defendants through their employees, officers, directors, and agents, failed to meet the reasonable standard of care or conduct expected in the circumstances in that:

(a) they knew, or ought to have known, about the Roof Crush Defect in the Affected Class Vehicles and should have timely warned the Plaintiffs and proposed Class Members;

(b) they designed, developed, manufactured, tested, assembled, marketed, advertised, distributed, supplied and/or sold vehicles containing defective roofs;

(c) they failed to timely warn the Plaintiffs, proposed Class Members and/or consumers about the Roof Crush Defect in the Affected Class Vehicles, which presented a real and substantial danger of harm, injury and/or death to drivers and passengers;

(d) they failed to change the design, manufacture and/or assembly of the defective roof system in the Affected Class Vehicles containing the Roof Crush Defect in a reasonable and timely manner;

(e) they failed to properly inspect and test the roof system in the Affected Class Vehicles containing the Roof Crush Defect;

(f) they knew, or ought to have known, about the Roof Crush Defect in the Affected Class Vehicles but failed to disclose it;

(g) they failed to timely issue and implement safety, repair and/or replacement recalls of the Affected Class Vehicles containing the Roof Crush Defect;

(h) the Roof Crush Defect presented a real and substantial danger of harm, injury and/or death to drivers and passengers of the Affected Class Vehicles in the event of a rollover accident;

(i) notwithstanding that they foresaw serious personal injury to drivers and passengers of the Affected Class Vehicles, they failed or failed to promptly eliminate or correct the Roof Crush Defect in the Affected Class Vehicles; and

(j) failed to exercise reasonable care and judgment in matters of design, manufacture, materials, workmanship and/or quality of a product which would reasonably be

expected of them as an automobile manufacturer.

13. As a result of the Roof Crush Defect in the Affected Class Vehicles by reason of the Defendants' negligence and their failure to disclose and/or adequately warn of the Roof Crush Defect, the Plaintiffs and proposed Class Members have suffered damages and will continue to suffer damages. The value of each of the Affected Class Vehicles is reduced. The Plaintiffs and each proposed Class Member must expend the time to have his/her vehicle repaired and/or recalled and be without their vehicle. The Defendants should compensate the Plaintiffs and each proposed Class Member for their incurred out-of-pocket expenses for, *inter alia*, alternative transportation and/or vehicle payments as a result of the Roof Crush Defect.

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

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

15. The Defendants are a "seller" with respect to motor vehicles within the meaning of the *SGA*, *Sale of Goods Act*, RSA 2000, c. S-2; *Sale of Goods Act*, RSS 1978, c. S-1; *The Sale of Goods Act*, CCSM 2000, c. S10; *Sale of Goods Act*, RSO 1990, c. S.1; *Sale of Goods Act*, RSNL 1990, c. S-6 ; *Sale of Goods Act*, RSNS 1989, c. 408; *Sale of Goods* Act, RSNB 2016, c. 110; *Sale of Goods Act*, RSPEI 1988, c. S-1; *Sale of Goods Act*, RSY 2002, c. 198; *Sale of Goods Act*, RSNWT 1988, c. S-2; and *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2, pursuant to their agency relationship with their authorized dealers, distributors, resellers, retailers and/or intermediaries.

16. The Defendants are, and were, at all relevant times a seller with respect to Affected Class Vehicles containing the Roof Crush Defect. The Defendants directly sold and marketed vehicles with a defective roof structure or components in the Affected Class Vehicles containing the Roof Crush Defect to customers through authorized dealers, like those from whom proposed Class Members bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. The Defendants knew that the Affected Class Vehicles containing the Roof Crush Defect would and did pass unchanged from the

authorized dealers to proposed Class Members, with no modification to the roof structure or components in the Affected Class Vehicles.

17. A warranty that the Affected Class Vehicles were in merchantable condition was implied by law pursuant to sections 18(a) and/or (b) of the *SGA*, sections 16(2) and/or (4) of the *Sale of Goods Act*, RSA 2000, c. S-2; sections 16(1) and (2) of the *Sale of Goods Act*, RSS 1978, c. S-1; sections 16(a) and/or (b) of *The Sale of Goods Act*, CCSM 2000, c. S10; sections 15(1) and/or (2) of the *Sale of Goods Act*, RSO 1990, c. S.1; sections 16(a) and/or © of the *Sale of Goods Act*, RSNL 1990, c. S-6 ; sections 17(a) and/or (b) of the *Sale of Goods Act*, RSNS 1989, c. 408; sections 20(a) and/or (b) of the *Sale of Goods* Act, RSNB 2016, c. 110; sections 16(a) and/or (b) of the *Sale of Goods Act*, RSPEI 1988, c. S-1; sections 15(a) and/or (b) of the *Sale of Goods Act*, RSY 2002, c. 198; sections 18(a) and/or (b) *of the Sale of Goods Act*, RSNWT 1988, c. S-2; and sections 18(a) and (b) of the *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2,

18. The Defendants marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe, durable and reliable vehicles through independent retail dealers and/or authorized dealerships. Such representations formed the basis of the bargain in proposed Class Members' decisions to purchase and/or lease the Affected Class Vehicles.

19. Affected Class Vehicles containing the Roof Crush Defect were defective at the time they left the possession of the Defendants. The Defendants knew of this defect at the time these transactions occurred. Thus, Affected Class Vehicles containing the Roof Crush Defect, 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.

20. The Plaintiffs and proposed Class Members purchased and/or leased the Affected Class Vehicles from the Defendants through their subsidiaries, authorized agents for retail sales, through private sellers or were otherwise expected to be the eventual purchasers and/or lessees of the Affected Class Vehicles when bought and/or leased from a third party. At all relevant times, the Defendants were the manufacturers, distributors, warrantors and/or sellers of the Affected Class Vehicles. As such, there existed privity and/or vertical privity of contract between the Plaintiff and proposed Class Members and the Defendants, as to

their Affected Class Vehicles. Alternatively, privity of contract need not be established nor is it required because proposed Class Members are intended third-party beneficiaries of contracts between the Defendants and their resellers, authorized dealers and/or distributors and, specifically, of the Defendants' implied warranties.

21. The Defendants' resellers, authorized dealers and/or distributors are intermediaries between the Defendants and consumers. These intermediaries sell and/or lease the Affected Class Vehicles to consumers and are not, themselves, consumers of the Affected Class Vehicles and, therefore, have no rights against the Defendants with respect to the Plaintiffs and proposed Class Members' acquisition of the Affected Class Vehicles. The Defendants' warranties were designed to influence consumers who purchased and/or leased the Affected Class Vehicles.

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

23. As a result of the Roof Crush 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, durable and reliable transportation.

24. The Defendants knew about the Roof Crush Defect in the Affected Class Vehicles, allowing them to cure their breach of warranty if they chose.

25. At all times that the Defendants warranted and sold their Affected Class Vehicles, they knew or ought to have known that their warranties were false and yet they did not disclose the truth or stop manufacturing or selling their Affected Class Vehicles and, instead, continued to issue false warranties and continued to insist the products were safe. The Affected Class Vehicles were defective when the Defendants delivered them to their resellers, authorized dealers and/or distributors which sold the Affected Class Vehicles and the Affected Class Vehicles were, therefore, still defective when they reached proposed Class Members.

26. The Defendants' attempts to disclaim or limit the implied warranty of merchantability vis-à-vis the Plaintiffs, proposed Class Members and/or consumers is unconscionable and

unenforceable. Specifically, the Defendants' warranty limitation is unenforceable because they knowingly sold and/or leased a defective product without informing the Plaintiff, proposed Class Members and/or consumers about the Roof Crush Defect in the Affected Class Vehicles. The time limits contained in the Defendants' warranty periods were also unconscionable and inadequate to protect the Plaintiffs and proposed Class Members. Among other things, the Plaintiffs and proposed Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favoured the Defendants. A gross disparity in bargaining power existed between the Defendants and the Plaintiffs and proposed Class Members, and the Defendants knew that the roof structure or components in the Affected Class Vehicles did not support the weight of the vehicle in a rollover accident so as to prevent the roof from crushing down or collapsing to the level of the vehicle's body, which would cause harm, injury and/or death to vehicle occupants.

27. The Plaintiffs and proposed Class Members have complied with all obligations under the warranty or otherwise have been excused from performance of said obligations as a result of the Defendants' conduct alleged herein. Affording the Defendants a reasonable opportunity to cure their breach of written warranties, therefore, would be unnecessary and futile.

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

Violation of *BPCPA* and Parallel Provincial Consumer Protection Legislation

29. The Plaintiff, [redacted] and proposed Class Members in British Columbia hereby incorporate by

reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

30. The Defendants are in British Columbia for the purposes of the *BPCPA,* and in provinces with parallel consumer protection legislation, as described in Schedule "A".

31. The Affected Class Vehicles are consumer "goods" within the meaning of section 1(1) of the *BPCPA,* and parallel provincial consumer protection legislation, as described in Schedule "A" .

32. The Plaintiff, [redacted] and proposed 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 parallel provincial consumer protection legislation, as described in Schedule "A" .

33. The purchase and/or lease of the Affected Class Vehicles by the Plaintiff, [redacted] and proposed 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 parallel provincial consumer protection legislation, as described in Schedule "A" .

34. The Defendants are a "supplier" within the meaning of section 1(1) of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A", as they carried on business in British Columbia and who in the course of business participated in a consumer transaction by: (I) supplying goods to a consumer, or (ii) soliciting, offering, advertising or promoting with respect to a consumer transaction, whether or not privity of contract exists between that person and the consumer, and includes an assignee of, any rights or obligations of the supplier under the *BPCPA*. The Defendants are the vehicle manufacturers of the Affected Class Vehicles and distribute, market and/or supply such vehicles to consumers including proposed Class Members in British Columbia. At all relevant times, the Defendants were a supplier and/or seller of the Affected Class Vehicles as their resellers, authorized dealers and/or distributors were acting as the agents of the Defendants.

35. By failing to disclose and actively concealing the Roof Crush Defect in the Affected Class Vehicles, the Defendants engaged in unfair and deceptive trade practices prohibited by sections 4 and 5 of the *BPCPA,* and parallel provincial consumer protection legislation, as described in Schedule "A". The Defendants knew that the roof structure or components in the Affected Class Vehicles did not support the weight of the vehicle in a rollover accident so as to prevent the roof from crushing down or collapsing to the level of the vehicle's body, which would cause harm, injury and/or death to the Plaintiff, [redacted] and proposed Class Members, but yet failed to adequately warn consumers.

36. As alleged herein, the Defendants made misleading representations and omissions concerning the safety, durability and/or reliability of the roof structure or components in the Affected Class Vehicles.

37. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff, [redacted] and proposed Class Members were deceived by the Defendants' failure to disclose their knowledge of the Roof Crush Defect and associated safety risk.

38. In particular, the Defendants engaged in a pattern of unfair or deceptive acts or practices in failing to warn or disclose to the Plaintiff, [redacted] and proposed Class Members that the roof structure or components in the Affected Class Vehicles did not support the weight of the vehicle in a rollover accident so as to prevent the roof from crushing down or collapsing to the level of the vehicle's body, which would cause harm, injury and/or death to the Plaintiff, [redacted] and proposed Class Members, as follows:

(a) failing to disclose that the Affected Class Vehicles, including the roof, 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 Roof Crush Defect;

(c) failing to disclose at the time of purchase and/or lease that the Affected Class Vehicles, including the roof, were defective, not fit for their intended, and ordinary purpose, and created a serious and imminent risk of danger or harm to occupants

of the Affected Class Vehicles;

(d) failing to give adequate warnings and/or notices regarding the use, defects, and problems with the roof structure or components in the Affected Class Vehicles' to consumers who purchased and/or leased the Affected Class Vehicles, even though the Defendants possessed exclusive knowledge of the inherent Roof Crush Defect in the Affected Class Vehicles before and at the time of purchase and/or lease;

(e) failing to disclose, either through warnings and/or recall notices, and/or actively concealing, the fact that the roof structure or components in the Affected Class Vehicles were defective, even though the Defendants knew about the Roof Crush Defect; and

(f) representing that the Roof Crush Defect in the Affected Class Vehicles would be covered under its warranty program.

39. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff, [redacted] and proposed Class Members in British Columbia were deceived by the Defendants failure to disclose their exclusive knowledge of the Roof Crush Defect such that the roof structure or components in the Affected Class Vehicles did not support the weight of the vehicle in a rollover accident so as to prevent the roof from crushing down or collapsing to the level of the vehicle's body, which would cause harm, injury and/or death to the Plaintiff, [redacted] and proposed Class Members.

40. By failing to disclose and actively concealing the Roof Crush Defect, the Defendants 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".

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

(a) publishing product brochures and/or owners' manuals that made materially

misleading omissions concerning vehicle safety and purported performance which uniformly omitted any warning to consumers that the roof structure or components in the Affected Class Vehicles did not support the weight of the vehicle in a rollover accident so as to prevent the roof from crushing down or collapsing to the level of the vehicle's body, which would cause harm, injury and/or death to the Plaintiff, [redacted] and proposed Class Members

(b) advertisements which uniformly omitted any information about the Roof Crush Defect and which misled consumers into believing that the roof in the Affected Class Vehicles would not crush down or collapse to the level of the vehicle's body in a rollover accident; and

(c) emphasizing and extolling in brochures the safety, durability and performance of the Affected Class Vehicles.

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

(a) representing that the Affected Class Vehicles, including the roof, were defect-free and did not pose a safety hazard, which it did not;

(b) representing that the Affected Class Vehicles, including the roof, were of a particular standard, quality or grade, when they were not;

(c) advertising the Affected Class Vehicles, including the roof, with intent not to sell them as advertised; and

(d) representing that the Affected Class Vehicles, including the roof, have been supplied in accordance with a previous representation as to safety, durability and/or reliability, when they have not.

43. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff, [redacted] and proposed Class Members in British Columbia were deceived by the Defendants failure to disclose

their exclusive knowledge of the Roof Crush Defect and/or their representations made as to the safety, durability and/or reliability of the Affected Class Vehicles in their sales brochure materials, manuals, press releases and/or websites.

44. The Defendants intentionally and knowingly misrepresented and omitted material facts regarding their Affected Class Vehicles, specifically regarding the Roof Crush Defect, with an intent to mislead the Plaintiff, [redacted] and proposed Class Members.

45. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff, [redacted] and proposed Class Members were deceived by the Defendants' failure to disclose their knowledge of the Roof Crush Defect and associated safety risk.

46. The Plaintiff, [redacted] and proposed Class Members had no way of knowing of the Defendants' representations were false, misleading and incomplete or knowing the true nature of the Roof Crush Defect in the Affected Class Vehicles. As alleged herein, the Defendants engaged in a pattern of deception in the face of a known roof defect in the Affected Class Vehicles. The Plaintiff, [redacted] and proposed Class Members did not, and could not, unravel the Defendants' deception on their own.

47. The Defendants knew, or ought to have known, that their conduct violated sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A".

48. The Defendants owed the Plaintiff, [redacted] and proposed Class Members a duty to disclose the truth about the Roof Crush Defect in the Affected Class Vehicles as it created a serious safety hazard and the Defendants:

(a) possessed exclusive knowledge of the Roof Crush Defect in the Affected Class Vehicles;

(b) intentionally concealed the foregoing from the Plaintiff and proposed Class Members; and/or

(c) failed to warn consumers or to publicly admit that the Affected Class Vehicles had

a roof defect.

49. The Defendants had a duty to disclose that the roof in the Affected Class Vehicles was fundamentally flawed as described herein because it created a serious safety hazard and the Plaintiff, [redacted] and proposed Class Members relied on the Defendants' material misrepresentations and omissions regarding the Affected Class Vehicles and the Roof Crush Defect.

50. The Defendants' conduct proximately caused damages to the Plaintiff, [redacted] and proposed Class Members that purchased and/or leased the Affected Class Vehicles and suffered harm as alleged herein.

51. The Plaintiff, [redacted] and proposed Class Members were injured and suffered ascertainable loss, injury-in-fact and/or actual damage as a proximate result of the Defendants' conduct in that the Plaintiff, [redacted] and proposed Class Members incurred costs related to the Roof Crush Defect including repair, service and/or replacement costs, rental car costs and overpaid for their Affected Class Vehicles that have suffered a diminution in value.

52. The Defendants' violations cause continuing damages to proposed Class Members. The Defendants' unlawful acts and practices complained of herein affect the public interest.

53. The Defendants knew of the defective roof and that the Affected Class Vehicles were materially compromised by the Roof Crush Defect.

54. The facts concealed and omitted by the Defendants from the Plaintiff, [redacted] and proposed 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 the Plaintiff, [redacted] and proposed Class Members known about the defective nature of the roof structure or components 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.

55. The Plaintiff, [redacted] and proposed Class Members' damages were directly or proximately caused by the Defendants' unlawful and deceptive business practices.

56. As a result of the Defendants' conduct as alleged herein, proposed 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 Defendants 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".

57. Proposed 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 Defendants' failure to disclose and/or actively conceal the Roof Crush Defect from proposed Class Members in British Columbia and their misrepresentations as to the benefits, performance and/or safety of the Affected Class Vehicles.

Breach of the *Competition Act*

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

59. By making representations to the public as to the safety, durability, reliability, quality, character and/or performance of the Affected Class Vehicles, in particular to their roof structure or components, the Defendants breached sections 36 and/or 52 of the *Competition Act*, in that their representations:

(a) were made to the public in the form of advertising product brochures, statements and/or other standardized statements claiming the safety, durability, quality, character and/or performance 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.

60. At all relevant times, the Defendants were the seller and/or supplier of the Affected Class Vehicles. As such, there existed contractual privity and/or vertical privity of contract between proposed Class Members and the Defendants as to the Affected Class Vehicles as their resellers, authorized dealers and/or distributors at all material times were acting as the agents of the Defendants.

61. The Defendants engaged in unfair competition and unfair or unlawful business practices through the conduct, statements and omissions described herein and by knowingly and intentionally concealing the Roof Crush Defect in the Affected Class Vehicles from the Plaintiffs and proposed Class Members, along with concealing the safety risks, costs, and monetary damage resulting from the Roof Crush Defect. The Defendants should have disclosed this information because they were in a superior position to know the true facts related to the Roof Crush Defect and the Plaintiffs and proposed Class Members could not reasonably be expected to learn or discover the true facts related to the Roof Crush Defect.

62. The Roof Crush Defect in the Affected Class Vehicles constitutes a serious safety issue. The Defendants knew that the roof structure or components in the Affected Class Vehicles did not support the weight of the vehicle in a rollover accident so as to prevent the roof from crushing down or collapsing to the level of the vehicle's body, which would cause harm, injury and/or death to vehicle occupants, which triggered the Defendants' duty to disclose the safety issue to consumers.

63. These acts and practices have deceived the Plaintiffs and proposed Class Members. In failing to disclose the Roof Crush Defect and suppressing other material facts from the Plaintiffs and proposed Class Members, the Defendants breached their duty to disclose these facts, violated the *Competition Act* and caused damages to the Plaintiffs and proposed Class Members. The Defendants' omissions and concealment pertained to information that was material to the Plaintiffs and proposed Class Members, as it would have been to all reasonable consumers.

64. Further, proposed Class Members relied upon the Defendants' misrepresentations as to the safety, durability and/or reliability 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 proposed Class Members.

65. The Plaintiffs and proposed Class Members have, therefore, suffered damages and are entitled to recover damages pursuant to section 36(1) and/or 52 of the *Competition Act*.

Fraudulent Concealment

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

67. The Defendants had a duty to disclose material facts in connection with the purchase and/or lease of the Affected Class Vehicles. They knowingly made false representations concerning material information, knowingly concealed material information and knowingly failed to disclose material information in connection with the purchase and/or lease of the Affected Class Vehicles. As a result of the Defendants misconduct the Plaintiffs and proposed Class members suffered damages.

68. The Defendants sold and/or leased the Affected Class Vehicles to the Plaintiffs and proposed Class Members without disclosing the Roof Crush Defect and concealed and suppressed the defect from government regulators and consumers.

69. The Defendants concealed and suppressed the Roof Crush Defect with the intent to deceive the Plaintiffs and proposed Class Members.

70. The Defendants did so to falsely assure owners and/or lessees of the Affected Class Vehicles that the vehicles they were purchasing and/or leasing were safe, dependable and reliable and would live up to the characteristics associated with the Ford brand, and then to avoid the cost and negative publicity of a recall. They concealed information that was material to consumers, both because it concerned the safety, dependability and reliability of the Affected Class Vehicles and because the information would have significantly decreased the value and sales price of the vehicles.

71. The Defendants had a duty to disclose the Roof Crush Defect because it was known and

only known to them. The Defendants had superior knowledge and access to the facts and knew the facts were not known to, or reasonably discoverable by, the Plaintiffs and proposed Class Members. The Defendants also had a duty to disclose because they made many affirmative representations about the safety, durability, and reliability of the Affected Class Vehicles, as set forth herein. These representations were misleading, deceptive, and incomplete without the disclosure of the Roof Crush Defect. Finally, once the Affected Class Vehicles were on the road, the Defendants had a duty to monitor the Affected Class Vehicles under the *MVSA* and *Regulations*, including the duty to promptly notify consumers of known safety defects.

72. The Defendants concealed and/or suppressed these material facts, in whole or in part, to protect their profits and avoid recalls that would hurt their image, and it did so at the expense of the Plaintiffs and proposed Class Members.

73. The Defendants still have not made full and adequate disclosure and continue to defraud proposed Class Members and conceal material information regarding the Roof Crush Defect.

74. Proposed Class Members were unaware of these omitted material facts and would not have purchased and/or leased the Affected Class Vehicles had they known of the concealed and/or suppressed facts. The Defendants were in exclusive control of the material facts and such facts were not known to proposed Class Members.

75. As a result of the concealment and/or suppression of the facts, proposed Class Members sustained damage. In purchasing and/or leasing the Affected Class Vehicles proposed Class Members did not receive the benefit of their bargain as such vehicles were worth less than it would have been without the Roof Crush Defect and further, the Affected Class Vehicles have diminished in value as a result of the Defendant, FORD's, concealment of, and failure to timely disclose and remedy the Roof Crush Defect. Had proposed Class Members been aware of the concealed defects that existed in the Affected Class Vehicles, they would have paid less for their vehicles or would not have purchased them at all.

76. The Defendants' acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of the rights of proposed Class Members. The

Defendants' misconduct warrants an assessment of punitive damages in an amount sufficient to deter such misconduct in the future.

77. The particulars of the Defendants' fraudulent concealment of the Roof Crush Defect are in the possession of the Defendants and which will be subject to pre-trial disclosure and at trial.

Unjust Enrichment

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

79. The Defendants have unjustly profited from the Roof Crush Defect in the Affected Class Vehicles whose value was inflated by their active concealment and the Plaintiffs and proposed Class Members have overpaid for the Affected Class Vehicles.

80. The Defendants have received and retained unjust benefits from the Plaintiffs and proposed Class Members and an inequity has resulted. It is inequitable and unconscionable for the Defendants to retain these benefits.

81. As a result of the Defendants' fraud, misrepresentations, deception and/or failure to disclose, the Plaintiffs and proposed Class Members were not aware of the true facts concerning the Roof Crush Defect in the Affected Class Vehicles and did not benefit from the Defendants' misconduct.

82. The Defendants knowingly accepted the unjust benefits of its misconduct. There is no juristic reason why the amount of its unjust enrichment should not be disgorged and returned to the Plaintiffs and proposed Class Members, in an amount to be proven at Trial.

83. Further, the purchase of both new and/or used Affected Class Vehicles from authorized or affiliated dealerships of the Defendants or third party sellers conferred a benefit on the Defendants as such vehicles required use of the Defendants' parts as called for in the Defendants' recall or repair of the Roof Crush Defect in the Affected Class Vehicles.

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

84. The Plaintiffs and proposed Class Members had no way of knowing about the Roof Crush Defect in the Affected Class Vehicles. The Defendants concealed their knowledge of the Roof Crush Defect while continuing to market, sell and/or lease the Affected Class Vehicles.

85. Within the *Limitation Act*, and to parallel legislative provisions in the rest of Canada as described in Schedule "B", the Plaintiffs and proposed Class Members could not have discovered through the exercise of reasonable diligence that the Defendants were concealing the conduct complained of herein and misrepresenting the true qualities of the Affected Class Vehicles, in particular to their roof system.

86. The Plaintiffs and proposed Class Members did not know facts that would have caused a reasonable person to suspect or appreciate that there was a Roof Crush Defect contained in the Affected Class Vehicles.

87. For these reasons, the *Limitation Act*, and to parallel 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.

88. Further, due to Defendants knowing and active concealment of the Roof Crush Defect throughout the time period relevant to this proposed class proceeding, the *Limitation Act*, and to parallel legislative provisions in the rest of Canada as described in Schedule "B" has been tolled.

89. Instead of publicly disclosing the Roof Crush Defect in the Affected Class Vehicles, the Defendants kept the Plaintiffs and proposed Class Members in the dark as to the Roof Crush Defect and the serious safety hazard it presented.

90. The Defendants were under a continuous duty to disclose to the Plaintiffs and proposed Class Members the existence of the Roof Crush Defect in the Affected Class Vehicles.

91. The Defendants knowingly, affirmatively and actively concealed or recklessly disregarded the true nature, quality and character of the Affected Class Vehicles, in particular to their

defective roof system.

92. As such, the Defendants are estopped from relying on the *Limitation Act*, and parallel 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:

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

Fax number address for service (if any):

604-435-4944

E-mail address for service (if any):

none

Place of trial:

Vancouver, BC, Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: October 17, 2022

Signature of K.S. Garcha
lawyer for the plaintiff

Schedule "A"

Consumer Protection Legislation Across Canada

Province or Territory	Legislation
Alberta	*Consumer Protection Act*, RSA 2000, c. C-26.3 "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)
Saskatchewan	*The Consumer Protection and Business Practices Act*, SS 2014, c. C-30.2 "Goods" - Section 2(e); "Consumer" - Section 2(b); "Supplier" - Section 2(l); "Unfair Practices" - Sections 6 and 7; and Statutory Remedies - Section 93
Manitoba	*Consumer Protection Act*, CCSM c. C200 "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)
Ontario	*Consumer Protection Act*, 2002, SO 2002, c. 30, Sch. A "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)
New Brunswick	*Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1 "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);

Schedule "B"

Limitation Act Legislation Across Canada

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

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

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

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

Appendix

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The proposed multi-jurisdictional class proceeding involves certain Affected Class Vehicles designed, manufactured, assembled, tested, marketed, distributed, supplied, leased and/or sold by the Ford Defendants in Canada whose roofs contain a design and/or manufacturing defect which does not support the weight of the vehicle in a rollover accident so as to prevent the roof from crushing down or collapsing to the level of the vehicle's body, all of which poses an imminent, substantial and/or grave risk of harm, injury and/or death to vehicle occupants.

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
[x] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[x] a class action
[ ] maritime law
[ ] aboriginal law
[ ] constitutional law
[ ] conflict of laws
[ ] none of the above
[ ] do not know

Part 4:

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50

2. *Court Jurisdiction and Proceedings Transfer Act,* R.S.B.C. 2003 c. 28

3. *Business Practices and Consumer Protection Act,* S.B.C. 2004; *Consumer Protection Act*, RSA 2000, c. C-26.3*; The Consumer Protection and Business Practices Act,* SS, 2014, c C-30.2;*The Business Practices Act*, CCSM c B120; *Consumer Protection Act,* 2002, SO 2002, c 30, Sch A*;*

Consumer Product Warranty and Liability Act, and SNB 1978, c C-18.1

4. *Sale of Goods Act*, R.S.B.C 1996, c. 410; *Sale of Goods Act*, RSA 2000, c. S-2; *Sale of Goods Act*, RSS 1978, c. S-1; *The Sale of Goods Act*, CCSM 2000, c. S10; *Sale of Goods Act*, RSO 1990, c. S.1; *Sale of Goods Act*, RSNL 1990, c. S-6 ;*Sale of Goods Act*, RSNS 1989, c. 408; *Sale of Goods* Act, RSNB 2016, c. 110; *Sale of Goods Act*, RSPEI 1988, c. S-1; *Sale of Goods Act*, RSY 2002, c. 198; *Sale of Goods Act*, RSNWT 1988, c. S-2; and *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2,

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

6. *Motor Vehicle Safety Regulations*, C.R.C., c. 1038

7. Federal Motor Vehicle Safety Standard, United States *Code of Federal Regulations*, Title 49, Part 571

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

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

10. *Limitation Act*, S.B.C. 2012, c.13; *Limitations Act*, 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

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