

**Amended pursuant to the Order of Associate Judge Robinson**

**Pronounced on July 23, 2024**

**Original filed on May 29, 2023**



**NO. 233921**

**VANCOUVER REGISTRY**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

[REDACTED]

**PLAINTIFF**

**AND:**

**VOLKSWAGEN GROUP CANADA INC. and  
AUDI CANADA INC.**

**DEFENDANTS**

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

**AMENDED 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 - Nature of Claim**

1. The within proposed consumer product liability multi-jurisdictional class proceeding involves certain model year 2018-2023 Audi 48 Volt ~~electric~~ vehicles, defined below as “Affected Class Vehicles”, designed, manufactured, assembled, tested, marketed, distributed, supplied, leased and/or sold by the Defendants, VOLKSWAGEN GROUP CANADA INC. and AUDI CANADA INC., in Canada, including the Province of British Columbia, equipped with a defective alternator, also known as the “belt starter generator”, that causes the Affected Class Vehicles to shut down while in operation and/or fail to start. In particular, due to the defective alternator, which is responsible for providing electricity to charge the battery and power electric systems, the Affected Class Vehicles experience various electrical malfunctions causing dashboard or instrument cluster panel warning signals to illuminate and the vehicle to enter limp mode, lose speed, power and key electronic functions and become inoperable while in motion, all of which poses a real and substantial danger of harm or injury to vehicle occupants, and damage to the vehicle’s electrical system, including the battery (“Alternator Defect”).
2. When the Alternator Defect manifests warning signals illuminate on the Affected Class Vehicles’ dashboard or instrument cluster panel including, *inter alia*, the following: “Electrical system: malfunction! Safely stop vehicle”; “Electrical system: malfunction! Please contact Service”; “Parking aid: malfunction!”; “Transmission: malfunction!”; “Rear spoiler: malfunction!”; “Drive system: malfunction! Stop vehicle safely”; “Tire pressure monitoring system: malfunction!;” “Traction control: malfunction!;” “Automatic start/stop system: malfunction!;” “Parking brake: malfunction!;” and “Start/stop system: malfunction!”. As the

Alternator Defect makes the Affected Class Vehicles unreliable and renders them inoperable when it manifests, it affects their central functionality and drivability in a safe manner.

3. Affected Class Vehicles refers to the following model year Audi ~~electric~~ vehicles designed, manufactured, assembled, tested, marketed, distributed, supplied, leased and/or sold by the Defendants, VOLKSWAGEN GROUP CANADA INC. and AUDI CANADA INC., in Canada, including the Province of British Columbia, equipped with the said defective alternator:

<u>Model</u>	<u>Model Years (MY)</u>
A6	<del>2018</del> <u>2019-2023</u>
A7	<del>2018</del> <u>2019-2023</u>
A8	<del>2018</del> <u>2019-2023</u>
Q7	<del>2018</del> <u>2020-2023</u>
S6	<del>2018, 2020-2023</del>
S7	<del>2018, 2020-2023</del>
S8	<del>2018, 2020-2023</del>
R8	<del>2018, 2020-2023</del>
<u>RS6</u>	<u>2021-2023</u>
RS7	<del>2018, 2021-2023</del>
Q8	<del>2019-2021</del> <u>2023</u>
A6 allroad	2020-2023
<del>SQ7</del>	<del>2020-2023</del>
<del>SQ8</del>	<del>2020-2023</del>
RS Q8	2020-2023
<del>A8 e quattro</del>	<del>2020-2021</del>
<del>A7 e quattro</del>	<del>2021-2023</del>
<del>RS e-tron GT</del>	<del>2022-2023</del>

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

4. Although most of the Affected Class Vehicles are under warranty, the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., have been unable to provide replacement alternators within a reasonable period of time as the Alternator Defect is so pervasive that there is a long backorder of replacement alternators, often leaving owners and/or lessees without use of their Affected Class Vehicles or to continue to operate an unsafe vehicle for months. Further, when owners and/or lessees of the Affected Class Vehicles seek a repair for the Alternator Defect they are routinely told by Audi dealerships that there is no recall and many are forced to pay for this safety-related cost of repair at their own expense that exceeds \$7,000.00. Additionally, when owners and/or lessees present their Affected Class Vehicles' to Audi dealerships after the Alternator Defect manifests, the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., fail to reimburse them for rental cars, alternative transportation, towing costs and other out-of-pocket costs incurred as a result of the Alternator Defect.
5. The Alternator Defect poses a real and substantial danger of harm or injury to vehicle occupants, and though consumers have complained about it, the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., have failed or refused to issue a recall and adequately address the Alternator Defect.
6. In designing, manufacturing, assembling, testing, marketing, distributing, supplying, leasing and/or selling the Affected Class Vehicles, the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., have engaged in unfair, deceptive, and/or misleading consumer practices, and further have breached their express and implied warranties.
7. Prior to selling and/or leasing the Affected Class Vehicles, the Defendants, VOLKSWAGEN GROUP OF CANADA INC. and/or AUDI CANADA INC., knew that the Affected Class Vehicles were defective, yet omitted and kept this material fact from the Plaintiff and putative class members. Rigorous pre-release durability testing made the Defendants, VOLKSWAGEN GROUP OF CANADA INC. and/or AUDI CANADA INC., aware of the Alternator Defect. The Alternator Defect is also widely discussed and complained about on

internet forums and message boards devoted to the Affected Class Vehicles and in complaints made directly to government safety regulators, Transport Canada and/or the United States National Highway Traffic Safety Administration ("NHTSA"), all of which Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., review and monitor. The Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., have failed or refused to recall the Affected Class Vehicles and have not sufficiently remedied or fixed the Alternator Defect.

8. The Defendants', VOLKSWAGEN GROUP CANADA INC.'s and/or AUDI CANADA INC.'s, knowledge of the Alternator Defect is also supported by a series of technical service bulletins ("TSB") and dealer communications they issued released regarding the Alternator Defect. In TSB #2058831/5, issued released on September 27, 2022, the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., listed the Audi MY affected by the Alternator Defect and directed dealerships to perform a control module software update and/or to replace the alternator. Further, the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., issued released TSB #10228815 on December 22, 2022, announcing that they would reimburse costs associated with Audi branded loaner support vehicles to customers affected by alternator failures and resulting long waits due to backorder in parts. Despite these bulletins and dealer communications, the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., failed or refused to issue a recall and owners and/or lessees of the Affected Class Vehicles continue to experience the Alternator Defect due to the Defendants', VOLKSWAGEN GROUP CANADA INC.'s and/or AUDI CANADA INC.'s, failure or refusal to perform necessary repairs and/or provide replacement alternators pro-actively.
9. The Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., have advised owners and/or lessees of the Affected Class Vehicles that the alternators in their Affected Class Vehicles will receive a seven year warranty extension. Despite such, the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., continue to refuse to issue a recall and owners and/or lessees of Affected Class Vehicles continue to experience the Alternator Defect due to the Defendants', VOLKSWAGEN GROUP CANADA INC.'s and/or AUDI CANADA INC.'s, failure or refusal to timely perform necessary repairs and/or provide replacement alternators. Furthermore, it is yet unknown whether the replacement alternators and the control module software update performed on Affected Class Vehicles permanently remedy or fix the Alternator Defect.

10. As a result of the alleged misconduct of the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., the Plaintiff and putative class members were harmed and suffered actual damages. The Plaintiff and putative class members did not receive the benefit of their bargain; rather, they purchased and/or leased vehicles that are of a lesser standard, grade and quality than represented, and they did not receive vehicles that met ordinary and reasonable consumer expectations regarding safe and reliable operation. Purchasers and/or lessees of the Affected Class Vehicles paid more, either through a higher purchase price or lease payments, than they would have had the Alternator Defect been disclosed. The Plaintiff and putative class members were deprived of having a safe, defect-free alternator installed in their Affected Class Vehicles, and the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., have unjustly benefitted from the higher price paid by consumers for such vehicles.
11. The Plaintiff and putative class members also suffered damages in the form of, *inter alia*, out-of-pocket costs of repair, rental car costs, towing costs and/or diminished value of the Affected Class Vehicles.
12. No reasonable consumer would have purchased and/or leased an Affected Class Vehicle had the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., made full and complete disclosure of the Alternator Defect, or would have paid a lesser price.
13. The Plaintiff and putative class members expected that the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., would disclose material facts about the safety of their Affected Class Vehicles and the existence of any defect that will result in expensive and non-ordinary repairs. The Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., failed to do so.
14. The Plaintiff seeks relief for all other current and/or former owners and/or lessees of the Affected Class Vehicles equipped with the defective alternator, including, *inter alia*, recovery of damages and/or repair under provincial consumer protection legislation, breach of express warranty, breach of implied warranty of merchantability and reimbursement of all expenses associated with the repair and/or recall of the Alternator Defect in the Affected Class Vehicles.



**B. The Parties**

**i. Representative Plaintiff**

15. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
16. [REDACTED]  
[REDACTED]
17. ~~On or about April 12, 2021 the Plaintiff entered into a motor vehicle purchase agreement for a 2022 Audi RS e-tron GT quattro ("Audi RS e-tron") containing the Alternator Defect, an Affected Class Vehicle, from an Audi dealership in Victoria, British Columbia, Canada for \$197,714.00 plus tax. [REDACTED] on behalf of the Plaintiff, executed the motor vehicle purchase agreement and further, was a personal guarantor pursuant to a financing agreement to purchase the vehicle. At no time did the said Audi dealership or the Defendants, AUDI AG, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., advise the Plaintiff or [REDACTED] the Alternator Defect in the Audi RS e-tron prior to, or at the time of purchase, or thereafter.~~ On or about September 26, 2023 the Plaintiff entered into a vehicle lease agreement for a 2023 Audi RS6 containing the Alternator Defect, an Affected Class Vehicle, from an Audi dealership in Richmond, British Columbia, primarily for personal, family or household use. [REDACTED] the Plaintiff, executed the vehicle lease agreement and further, was a personal guarantor thereto. The term of the lease agreement was 48 months or four years, with a vehicle lease value price of \$147,647.12 and a total transaction cost of \$201,479.89 for the option to purchase the Audi RS6 at the end of the lease term.
18. ~~In or about January 2022 the said Audi dealership delivered to the Plaintiff the Audi RS e-tron. At no time at delivery, or thereafter, did the said Audi dealership or the Defendants, AUDI AG, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., advise the Plaintiff or [REDACTED] of the Alternator Defect in the Audi RS e-tron. At no time did the said~~

Audi dealership, or the Defendants, VOLKSWAGEN GROUP CANADA INC. and/or AUDI CANADA INC., advise or warn the Plaintiff, or [REDACTED], of the Alternator Defect in the Audi RS6 prior to, or at the time of entering into the vehicle lease agreement, or thereafter.

19. ~~In or about October 2022, [REDACTED], as the principal operator, began to experience problems with activating the rear spoiler feature of the Audi RS e-tron as it did not function. A rear spoiler error malfunction warning signal illuminated on the Audi RS e-tron's dashboard or instrument cluster panel. The function of a rear spoiler is to increase downforces so as to reduce drag, which makes the vehicle more planted and stable. At the time of entering into the vehicle lease agreement the Plaintiff, and/or [REDACTED], did not know that the Audi RS 6 was equipped with a defective alternator as alleged herein. Had the Plaintiff known of the Alternator Defect prior to entering into vehicle lease agreement, it would not have leased the Audi RS 6, or would have paid a lesser lease value price. As a result, the Plaintiff did not receive the benefit of its bargain.~~
20. ~~On or about October 12, 2022, [REDACTED] attended the said Audi dealership with the Audi RS e-tron and advised of the rear spoiler malfunction. At the time the Audi RS e-tron had 16,587 kilometers on it. A diagnostic scan inspection of the Audi RS e-tron found multiple fault codes for the rear spoiler malfunction and a new rear spoiler drive motor unit was required to repair the malfunction, which was ordered.~~
24. ~~On November 4, 2022 [REDACTED] attended the said Audi dealership and had a 12-Volt battery control module software update performed on the Audi RS e-tron.~~
22. ~~On or about December 9, 2022 [REDACTED] attended the said Audi dealership with the Audi RS e-tron and who replaced the rear spoiler drive unit. At the time the Audi RS e-tron had 21,966 kilometers on it.~~
23. ~~On or about May 11, 2023 [REDACTED] attended the said Audi dealership and advised that the battery charger for the Audi RS e-tron was not functioning so as to charge the electric vehicle. A 12-Volt battery control module software update was performed. At the time the Audi RS e-tron had 32,266 kilometers on it. Later that evening, around 8:30 p.m., [REDACTED] was unable to drive the Audi RS e-tron as it entered limp mode and various warning signals illuminated on the vehicle's dashboard or instrument cluster panel, including "Safety system: malfunction! See owner's manual"; "Stabilization control (ESC): malfunction! See~~



~~Owner's manual"; "Driver assistance systems: currently limited. Affected systems will be continuously updated in message memory"; "Drive system: warning! Limited performance"; "Drive system: malfunction! Please contact Service"; "All-wheel drive: malfunction! Limited stability. Please contact Service"; "Drive system: malfunction! Safely stop vehicle". The Plaintiff continues to experience various electrical malfunctions causing dashboard or instrument cluster panel warning signals to illuminate on the Audi RS e-tron.~~

24. ~~At the time of purchase the Plaintiff or Mr. Rai did not know that the Audi RS e-tron was equipped with the defective alternator as alleged herein. Had the Plaintiff known of the alternator defect prior to purchase, it would not have purchased the Audi RS e-tron, or would not have paid less for it. As a result, the Plaintiff did not receive the benefit of its bargain.~~

ii. **The Defendants**

25. ~~The Defendant, AUDI AG ("AUDI"), is a company duly incorporated pursuant to the laws of the Federal Republic of Germany and has an address for service at Auto-Union-Street 2 D85045, Ingolstadt, Germany:~~

26.20 The Defendant, VOLKSWAGEN GROUP CANADA INC. ("VWGC"), is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0005636, and has a registered agent, LML & S Services Inc. at 1500 Royal Centre, PO Box 11117, 1055 West Georgia Street, Vancouver, British Columbia, V6E 4N7, Canada.

27.21 The Defendant, AUDI CANADA INC. ("ACI"), is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0070488, and has a registered agent, LML & S Services Inc. at 1500 Royal Centre, PO Box 11117, 1055 West Georgia Street, Vancouver, British Columbia, V6E 4N7, Canada.

28. ~~At all material times to the cause of action herein, the Defendant, AUDI, designs, manufacturers, assembles, exports, markets, advertises, distributes, sells and/or leases Audi vehicles worldwide, including the Affected Class Vehicles, as averred to in paragraph three herein, containing the Alternator Defect, through its related subsidiaries, affiliates,~~

~~agents and/or operating or organizational units, including the Defendants, VWGC and/or ACI, Volkswagen Group of America, Inc., authorized dealerships and/or independent retailers in North America.~~

~~29-22.~~ At all material times to the cause of action herein, the Defendant, VWGC, imports, markets, advertises, distributes, leases and/or sells Audi vehicles, including the Affected Class Vehicles, as averred to in paragraph three herein, containing the Alternator Defect in Canada, and within the Province of British Columbia, pursuant to a general distributor agreement with. Audi AG, a company duly incorporated pursuant to the laws of the Federal Republic of Germany, who designs, manufactures, assembles, exports, markets, advertises, distributes, sells and/or leases Audi vehicles worldwide, including the Affected Class Vehicles, as averred to in paragraph three herein, containing the Alternator Defect, through its related subsidiaries, affiliates, agents and/or operating or organizational units, including the Defendants, VWGC and/or ACI, and authorized dealerships and/or independent retailers in North America. The Defendant, VWGC, is Audi AG's Canadian distribution, marketing and/or sales arm of Audi vehicles and part of the Audi Group of Companies which , Audi AG exercises, direct and/or indirect, control over, including, *inter alia*, management policies, information governance policies, pricing and warranty terms.

~~30-23.~~ At all material times to the cause of action herein, the Defendant, ACI, was a wholly owned subsidiary, affiliate, agent and/or a operating or organizational unit of the Defendant, VWGC, that marketed, advertised, distributed, leased and/or sold Audi vehicles, including the Affected Class Vehicles, as averred to in paragraph three herein, containing the Alternator Defect in Canada, and within the Province of British Columbia, on behalf of the Defendants, VWGC, and Audi AG, through authorized dealerships and/or independent retailers.

~~31-24.~~ At all material times to the cause of action herein, the Defendants, VWGC and/or ACI, were responsible for the distribution, sale, service and/or repair of the Affected Class Vehicles in Canada; and further, as subsidiaries, affiliates, agents and/or operating or organizational units were, and are, directly and/or indirectly involved with Audi AG in the design, manufacture, assembly and/or testing of Audi vehicles, including the Affected Class Vehicles, as averred to in paragraph three herein, containing the Alternator Defect.

~~32-25.~~ At all material times to the cause of action herein, the Defendants, VWGC and ACI, shared the common purpose of, *inter alia*, designing, developing, manufacturing, assembling, marketing, distributing, supplying, leasing and/or selling Audi vehicles, including the Affected Class Vehicles, as averred to in paragraph three herein, containing the Alternator Defect in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendants, VWGC and ACI, are inextricably interwoven with that of the other, and with Audi AG, as to the Alternator Defect in the Affected Class Vehicles, as averred to in paragraph three herein, such that each is the agent or alter ego of the other.

~~33-26.~~ Hereinafter, the Defendants, VWGC and ACI, are collectively, and/or interchangeably, referred to as the Defendant, "AUDI" or "Defendants", unless referred to individually.

#### **C. The Class**

~~34-27.~~ This action is brought on behalf of members of a class consisting of the Plaintiff, all British Columbia residents, and all other persons resident in Canada, ~~excluding the Province of Quebec,~~ who own, owned, lease and/or leased an Affected Class Vehicle ("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. The Alternator Defect in the Affected Class Vehicles**

~~35-28.~~ A vehicle's alternator, also otherwise known as the belt starter generator, converts mechanical energy produced by the engine to electrical energy that in turn charges the

battery and provides electric current to the vehicle's electronic systems. The use of energy produced by engines to power electronic systems through a generator has been one of the earlier adoptions by the automobile industry to maximize efficiency.

36-29. The Affected Class Vehicles have been designed to have the ability to power their electronic functions *via* the use of a generator while the engine is running. The Affected Class Vehicles are equipped with a 48 Volt battery, a 48 Volt starter generator or belt alternator starter, and a 12-48 Volt bidirectional converter. The battery starts the engine and then acts as a dynamo, translating the combustion engine's rotational energy into electrical power. The converter is responsible for supplying energy from the 48 Volt system to power the Affected Class Vehicles' electronic features, such as power braking, power steering, air conditioning, spoiler, seatbelts, among others. If the alternator fails to perform properly, a vehicle's electrical system will not have the requisite power to operate, and the vehicle will lose power and become inoperable.

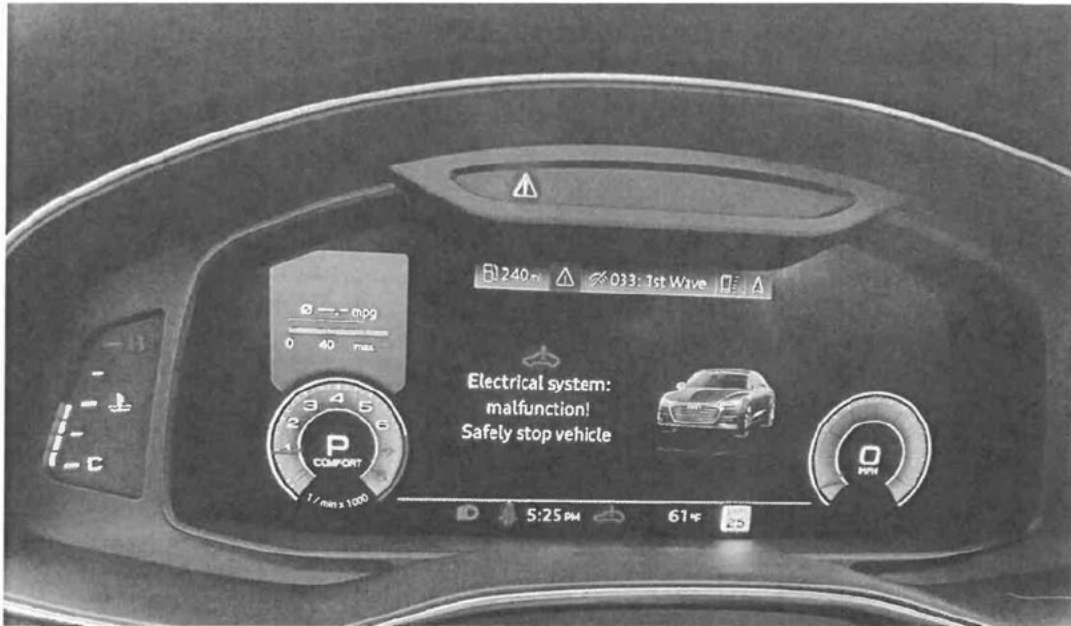
37-30. The proper operation of the alternator, as well as the other components of a vehicle's electrical system, is crucial to the functionality and drivability of a vehicle in a safe manner. However, the Alternator Defect in the Affected Class Vehicles causes the electrical system to fail and results in the loss of key electronic functions powered by the alternator and battery.

38-31. The Affected Class Vehicles suffer from a range of motive power, electronic and functionality issues caused by the Alternator Defect including, *inter alia*, rapid and unexpected deceleration, loss of power and key electronic functions, shutting down of the engine, locking of the transmission, and/or inhibiting steering capabilities, among others. ~~Below are photographs evidencing some of the warning signals that illuminate on the Affected Class Vehicles' dashboard or instrument cluster panel when the Alternator Defect manifests shortly before or upon experiencing the symptoms as described herein:~~









**39:32.** The Alternator Defect poses a real and substantial danger to vehicle occupants as a result of a sudden loss of power, stalling, shutting down while in motion and various key electronic malfunctions, and damage to the vehicle's electrical system, including the battery, as

described herein. The Defendant, AUDI, and/or Audi AG, failed to design a safer ~~a~~ alternative for the alternator component part, which did not cause various electrical malfunctions resulting in Affected Class Vehicles entering into limp mode, loss of power, speed and key electronic functions and becoming inoperable while in motion and/or fail to start and damage the vehicle's electrical system, including the battery.

~~40-33.~~ The Alternator Defect requires extensive repairs to fix. And while the Alternator Defect often occurs within Audi's four year/80,000 kilometer new vehicle limited warranty, the Defendant, AUDI, has failed or refused to perform necessary repairs and/or replacement of the defective alternators within a reasonable period of time. Further, owners and/or lessees of the Affected Class Vehicles have had to pay for the alternator replacements out-of-pocket, which costs thousands of dollars.

~~41-34.~~ Owners and/or lessees of the Affected Class Vehicles further incur considerable out-of-pocket expense in the form of rental cars, alternative transportation, towing and roadside assistance when their Affected Class Vehicles break down. Affected Class Vehicles requiring alternator replacements often sit at Audi dealerships for weeks or months before the replacement is performed. Furthermore, there is no guarantee that the replacement alternators will not also be subject to the Alternator Defect and fail again.

~~42-35.~~ The Defendant, AUDI, has extended its warranty coverage for the alternator to seven years for the Affected Class Vehicles. However, this warranty extension does nothing to address the serious safety issues caused by the Alternator Defect. Moreover, Affected Class Vehicle owners and/or lessees are routinely told that alternator replacements are on backorder for months. Nor does the warranty extension promise to provide reimbursement for out-of-pockets expenses such as rental cars or towing. There is also no indication that the Defendant, AUDI, has remedied or fixed the Alternator Defect, so even with the warranty extension, owners and/or lessees of the Affected Class Vehicles will continue to experience dangerous and repeated alternator failures as the replacement alternators also suffer from the Alternator Defect as well. The Alternator Defect thus continues to pose a real and

substantial danger or harm or injury to vehicle occupants and impacting the central functionality and safe drivability of the Affected Class Vehicles.

**ii. The Defendant, AUDI's, knowledge of the Alternator Defect in the Affected Class Vehicles**

~~43.~~36. The Defendant, AUDI, had a duty to disclose, or warn of, the Alternator Defect due to, *inter alia*, its knowledge that it poses a real and substantial danger of harm or injury to vehicle occupants, the fact that the Alternator Defect affects the central functionality of the Affected Class Vehicles, its superior and exclusive knowledge of the Alternator Defect, and the fact that the Alternator Defect constitutes information reasonable consumers would want to know.

~~44.~~37. In addition to being on notice of the Alternator Defect through Transport Canada, NHTSA and/or other online internet complaints, the Defendant, AUDI, also directly learned of the widespread alternator problems from its network of dealerships as early as 2018, ~~when it began selling the 2018 MY Affected Class Vehicles.~~

~~45.~~38. Likewise, many putative Class Members have contacted the Defendant, AUDI's, customer relations department for information about the Alternator Defect, their need for alternator replacements, the status of backordered parts, and requests to cover rental vehicle costs.

~~46.~~39. The Defendant, AUDI, has ~~issued~~ released several manufacturer communications to its dealers about the Alternator Defect. On March 3, 2022, the Defendant, AUDI, ~~issued~~ released TSB #10222114. This communication instructs dealerships on how to handle customer complaints that their vehicle will not start or is suffering from a electrical system malfunction. The suggested repair consists of installing the latest control module software updates, particularly those related with the electrical system, and replacing the defective alternator.

~~47-40.~~ The Defendant, AUDI, also released TSB #10228815 on December 22, 2022 in regard to the backorder of alternators. The Defendant, AUDI, offered up to \$30 per day in reimbursement for Audi-branded loaner cars to all owners and/or lessees of Audi vehicles affected by the alternator failure and awaiting parts replacement. Many owners and/or lessees were without their Affected Class Vehicles for months awaiting an alternator replacement, were not able to obtain a loaner vehicle from Audi dealerships, and paid for rental vehicles out-of-pocket.

~~48-41.~~ In manufacturer communication #10231594 to NHTSA, dated February 9, 2023, the Defendant, AUDI, Audi AG and its American subsidiaries and/or affiliates noted in minutes of a dealer council meeting of January 10, 2023 that it was experiencing 80 alternator failures per week and that there were shipping issues with how the parts for the alternator were arriving from Germany.

~~49-42.~~ While these manufacturer communications show that the Defendant, AUDI, was aware of and actively analyzing the Alternator Defect for sometime, none of them warned current owners and/or lessees, or prospective customers, of the Alternator Defect, or preemptively repairing the Affected Class Vehicles.

~~50-43.~~ The Defendant, AUDI, would also have been made aware of the Alternator Defect through pre-release durability testing. Vehicles, particularly luxury vehicles such as those at issue in this proposed class proceeding, undergo significant pre-release durability testing on all components and systems. As the Alternator Defect relates to the electrical system, it would likely have been analyzed since the electrical systems in modern vehicles power an ever-increasing array of features and functions.

~~51-44.~~ Despite its knowledge of the Alternator Defect, the Defendant, AUDI, failed to disclose or warn the Plaintiff and putative Class Members of the Alternator Defect. The Defendant, AUDI, could have provided owners and/or lessees of the Affected Class Vehicles with adequate and satisfactory notice of the Alternator Defect, including through its network of dealers, in owners' manuals, on its website, in vehicle brochures and window stickers. Had the Defendant, AUDI, disclosed the Alternator Defect in any of these places, reasonable consumers would have been aware of it.



~~52:45.~~ Despite receiving complaints from owners and/or lessees of earlier MY Affected Class Vehicles, the Defendant, AUDI, continued to design, manufacture, sell and/or lease additional model years of Affected Class Vehicles with the same alternators, and therefore the same Alternator Defect, without informing prospective purchasers and/or lessees about the Alternator Defect. In fact, the Defendant, AUDI, continues to ~~install the same defective alternator into its new vehicles.~~ distribute, sell and/or lease new Audi vehicles equipped with the defective alternator.

~~53:46.~~ There are no significant differences between the alternators as installed in the Affected Class Vehicles or in the way in which they are installed that would impact the Alternator Defect or functionality as between the different MY Affected Class Vehicles.

~~54:47.~~ Despite its long-running knowledge of the Alternator Defect, the Defendant, AUDI, still does not inform prospective purchasers and/or lessees about the Alternator Defect. Nor has the Defendant, AUDI, warned current owners and/or lessees about the Alternator Defect and the attendant safety hazards.

~~55:48.~~ As a consequence of Defendant, AUDI's, actions and/or inactions, Affected Class Vehicle owners and/or lessees have been deprived of the benefit of their bargain, subjected to hazardous vehicle power loss risks, suffered alternator damages and had to pay for expensive alternator replacements, incurred lost time and out-of-pocket costs from frequent dealership visits and increased maintenance costs, and had to pay for rental/loaner vehicles. The Affected Class Vehicles also have suffered a diminution in value due to the Alternator Defect.

~~56:49.~~ Had the Plaintiff and putative Class Members known about the Alternator Defect, they would not have purchased and/or leased their Affected Class Vehicles or would have paid significantly less in doing so.

**iii. The Alternator Defect poses a real and substantial danger to vehicle occupant safety and renders the Affected Class vehicles per se defective**

~~57-50.~~ Government regulations in both the United States and Canada (49 U.S. Code 301- Motor Vehicle Safety Act and *Motor Vehicle Safety Act*, R.S.C. 1993, c.16) require that vehicle manufacturers to disclose to NHTSA and Transport Canada respectively of “early warning reporting” data, including claims relating to property damage received by the automotive manufacturer, warranty claims paid by the automotive manufacturer, consumer complaints, incidents involving injury or death, and field reports prepared by the automotive manufacturer’s employees or representatives concerning failure, malfunction, lack of durability, or other performance issues.

~~58-51.~~ Further, these government regulations require immediate action when a vehicle manufacturer determines or should determine that a safety defect exists. A safety defect is defined by regulation to include any defect that creates an “unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle” or “unreasonable risk of death or injury in an accident.” Within a period of time of learning about a safety defect, a manufacturer must notify NHTSA and Transport Canada and provide a description of the vehicles potentially containing the defect, including “make, line, model year, [and] the inclusive dates (month and year) of manufacture,” a description of how these vehicles differ from similar vehicles not included in the recall, and “a summary of all warranty claims, field or service reports, and other information” that formed the basis of the determination that the defect was safety related. Then, “within a reasonable time” after deciding that a safety issue exists, the vehicle manufacturer must notify the owners of the defective vehicles. Violating these notification requirements can result in a substantial civil penalty.

~~59-52.~~ The Defendant, AUDI, knew or ought to have known about the Alternator Defect as evidenced by: (1) consumer complaints lodged with NHTSA, Transport Canada and/or elsewhere online; (2) warranty claims, part sales, and consumer complaints lodged with the Defendant, AUDI, directly; (3) technical service bulletins ~~issued~~ released by the Defendant, AUDI, in an attempt to address the Alternator Defect; and (4) the Defendant, AUDI’s, own pre-sale durability testing of the Affected Class Vehicles.

~~60-53.~~ The internet is replete with consumer complaints about the Alternator Defect in the Affected Class Vehicles alleging incidents of loss of motive power as a result of alternator failures

and the danger it poses to vehicle occupants. The Defendant, AUDI's, customer relations department routinely monitors the internet for customer complaints and retains the services of third parties to do the same. The Defendant, AUDI's, customer relations divisions regularly receive and respond to customer calls concerning, *inter alia*, product defects. Through these sources, the Defendant, AUDI, was made aware of the Alternator Defect. Based on its commercial interests and its duty to monitor safety-related complaints or concerns, the Defendant, AUDI, assuredly saw scores of consumer complaints regarding alternator failures. The complaints indicate the Defendant, AUDI's, knowledge of the Alternator Defect and its real and substantial danger to vehicle occupants of the Affected Class Vehicles.

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

61.54. The Defendant, AUDI, expends large sums of money on advertising and focuses that advertising intently on claims of advanced technology, safety and dependability. The Defendant, AUDI, knows and intends that consumers, including purchasers and/or lessees of the Affected Class Vehicles, will buy and/or lease its vehicles because they believe them to be hi-tech, safe and dependable.

62.55. For example in owner's manuals that the Defendant, AUDI, provides every purchaser and/or lessee of a new Affected Class Vehicle, the Defendant, AUDI, states the following:

Thank you for choosing an Audi - we value your trust in us.

Your new Audi will allow you to experience the best in groundbreaking technology and premium quality equipment that a vehicle has to offer. Audi recommends that you read your Owner's Manual thoroughly so that you quickly become acquainted with your Audi and make use of all of its features.

In addition to explaining how the different features work, there are many

useful tips and information concerning your safety, how to care for your vehicle, and how to maintain your vehicle's value. Audi also gives you useful tips and information on how to drive your vehicle more efficiently and in an environmentally-friendly manner.

Audi hopes you enjoy driving your vehicle and wishes you safe and pleasant motoring.

~~63:~~56. A defective alternator in a vehicle that causes various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or fail to start is not a safe and dependable vehicle. As such, the Defendant, AUDI's, marketing of the Affected Class Vehicles as technologically advanced, safe and dependable is false and/or misleading and omits facts that would be material to consumers who purchase and/or lease Affected Class Vehicles.

~~64:~~57. The Defendant, AUDI's, advertising for Affected Class Vehicles conveys a pervasive message that Audi vehicles are technologically advanced, safe and dependable. Safety and dependability are material to consumers when purchasing and/or leasing a vehicle.

~~65:~~58. The Defendant, AUDI, advertised the Affected Class Vehicles as safe and reliable, but it concealed the danger of the Alternator Defect. The Defendant, AUDI,:

- (a) failed to disclose, at and after the time of purchase, lease, and/or service, the Alternator Defect, despite its knowledge;
- (b) failed to disclose, at and after the time of purchase, lease, and/or service, that the alternator equipped in the Affected Class Vehicles was defective causing various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or fail to start; and
- (c) failed to disclose and actively concealed the existence and pervasiveness of the Alternator Defect, despite its knowledge.

**v. Agency Relationship Between the Defendant, AUDI, and its authorized dealerships as to the Affected Class Vehicles**

~~66-59.~~ Audi-authorized dealerships are sales agents of the Defendant, AUDI, as the vehicle distributor, supplier and/or manufacturer. The dealerships have accepted that undertaking. The Defendant, AUDI, has the ability to control authorized Audi dealers, and acts as the principal in that relationship, as is shown by the following:

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



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

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

vehicles.

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

## **Part 2: RELIEF SOUGHT**

1. The Plaintiff, on its own behalf and on behalf of putative Class Members, claims against the Defendants, VOLKSWAGEN GROUP CANADA INC., and AUDI CANADA INC., jointly and

severally, as follows:

- (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the named representative;
- (b) a declaration that the Defendants, VOLKSWAGEN GROUP CANADA INC. and AUDI CANADA INC., were negligent in the design and/or manufacturing of the Affected Class Vehicles equipped with a defective alternator causing the Plaintiff and putative Class Members to suffer damages;
- (c) a declaration that the Defendants, VOLKSWAGEN GROUP CANADA INC. and AUDI CANADA INC.,:
  - (i) breached their duty of care to the Plaintiff and putative Class Members;
  - (ii) breached express warranties as to the Affected Class Vehicles and are consequently liable to the Plaintiff and putative Class Members for damages;
  - (iii) breached implied warranties or conditions of merchantability as to the Affected Class Vehicles and are consequently liable to the Plaintiff and putative 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

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



- (g) a declaration that the Defendants, VOLKSWAGEN GROUP CANADA INC. and AUDI CANADA INC., breached sections 36 and/or 52 of the *Competition Act*, R.S.C 1985, c. C-34 and are consequently liable to the Plaintiff and putative Class Members for damages;
- (h) an order enjoining the Defendants, VOLKSWAGEN GROUP CANADA INC. and AUDI CANADA INC., from continuing their unlawful and unfair business practices as alleged herein;
- (i) injunctive and/or declaratory relief requiring the Defendants, VOLKSWAGEN GROUP CANADA INC. and AUDI CANADA INC., to recall, repair and/or replace the defective alternator equipped in the Affected Class Vehicles and/or buy back all Affected Class Vehicles and to fully reimburse and make whole all putative Class Members for all costs and economic losses associated therewith;
- (j) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 (“CPA”) directing an aggregate assessment of damages;
- (k) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the CPA;
- (l) damages, including actual, compensatory, incidental, statutory and consequential damages;
- (m) special damages;
- (n) punitive damages;
- (o) costs of investigation pursuant to section 36 of the *Competition Act*;
- (p) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and

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

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

#### **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 Defendant, AUDI, at all material times owed a duty of care to the Plaintiff and putative Class to provide a product that did not have a design defect. The Affected Class Vehicles equipped with the defective alternator pose a real and substantial danger of harm or injury to putative Class Members, and damage to the vehicle's electrical system, including the battery, on account of the Alternator Defect.
3. The Defendant, AUDI, as the designer, engineer, manufacturer, promoter, marketer and/or distributor of the Affected Class Vehicles and their counterparts, intended for use by ordinary consumers, owed a duty of care to the Plaintiff and putative Class to ensure that the Affected Class Vehicles and their component parts, including the alternator, were reasonably safe for use.
4. At all material times, the Defendant, AUDI, owed a duty of care to the Plaintiff and putative Class Members and breached that standard of care expected in the circumstances. It knew that its alternator equipped in the Affected Class Vehicles was defective causing various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or failing to start, all of which posed a real and substantial danger of harm or injury to vehicle occupants, and damage to the vehicle's electrical system, including the battery. Despite such knowledge, the Defendant, AUDI, continued to ~~install the defective alternator in the Affected Class Vehicles.~~ distribute, sell and/or lease new Audi vehicles equipped with the defective alternator.
5. The Defendant, AUDI, owed the Plaintiff and putative Class Members a duty to carefully monitor the safety and post-market performance of the alternator equipped in the Affected Class Vehicles. The Defendant, AUDI, had a duty to warn, or promptly warn, the Plaintiff and putative Class Members that its alternator equipped in the Affected Class Vehicles was defective causing various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or failing to start, all of which posed a real and substantial danger of harm or injury to vehicle occupants, and

damage to the vehicle's electrical system, including the battery, and which it failed to do.

6. The circumstances of the Defendant, AUDI, being in the business of designing, manufacturing, distributing, selling, leasing and/or placing the Affected Class Vehicles and their component parts, including the vehicle's alternator, into the Canadian stream of commerce are such that the Defendant, AUDI, is in a position of legal proximity to the Plaintiff and putative Class Members, and therefore are under an obligation to be fully aware of safety when designing, manufacturing, assembling, distributing and/or selling a product such as the Affected Class Vehicles equipped with the defective alternator.
7. It was reasonably foreseeable that a failure by Audi AG and/or the Defendant, AUDI, to design, manufacturer and/or install an alternator in the Affected Class Vehicles that did not cause various electrical malfunctions resulting in loss of speed, power and key electronic functions, and thereafter to monitor the performance of the alternator following market introduction, and take corrective measures when required, would lead to vehicles becoming inoperable while in motion, and/or fail to start, and cause harm to the Plaintiff and putative Class Members and damage to the Affected Class Vehicles.
8. The Defendant, AUDI, through its employees, officers, directors, and agents, failed to meet the reasonable standard of care or conduct expected of a vehicle supplier, distributor and/or manufacturer in the circumstances in that:
  - (a) it knew, or ought to have known, about the Alternator Defect in the Affected Class Vehicles and should have timely warned the Plaintiff and putative Class Members;
  - (b) it designed, developed, manufactured, tested, assembled, marketed, advertised, distributed, supplied and/or sold vehicles equipped with a defective alternator causing various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or failing to start, all of which posed a real and substantial danger of harm or injury to vehicle occupants, and damage to the vehicle's electrical system, including the battery;
  - (c) it failed to timely warn the Plaintiff, putative Class Members and/or consumers about

the Alternator Defect in the Affected Class Vehicles causing them to enter limp mode, lose speed, power, key electronic functions and become inoperable while in motion, which posed a serious safety hazard to drivers and passengers, and damage to the vehicle's electrical system, including the battery;

- (d) it failed to change the design, manufacture and/or assembly of the defective alternator equipped in the Affected Class Vehicles in a reasonable and timely manner;
- (e) it failed to provide a safer alternative design for an alternator equipped in the Affected Class Vehicles that did not cause various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or failing to start, and damage the vehicle's electrical system, including the battery;
- (f) it failed to properly inspect and test the alternator equipped in the Affected Class Vehicles;
- (g) it knew, or ought to have known, about the Alternator Defect in the Affected Class Vehicles but failed to disclose it;
- (h) it failed to timely issue and implement safety, repair and/or replacement recalls of the Affected Class Vehicles with a defective alternator;
- (i) the Alternator presented a serious safety hazard to drivers and passengers as the Affected Class Vehicles could lose speed, power and key electronic functions and become inoperable while in motion, and damage the vehicle's electrical system, including the battery.;
- (j) notwithstanding that it foresaw personal injury and the loss of life and property of the drivers and passengers in the Affected Class vehicles, it failed or failed to promptly eliminate or correct the Alternator Defect; and

- (k) it failed to exercise reasonable care and judgment in matters of design, manufacture, materials, workmanship and/or quality of product which would reasonably be expected of them as an automobile supplier, distributor and/or manufacturer.
9. As a result of the Alternator Defect in the Affected Class Vehicles by reason of the Defendant, AUDI's, negligence and its failure to disclose and/or adequately warn of the Alternator Defect, the Plaintiff and putative Class Members have suffered damages and will continue to suffer damages. The value of each of the Affected Class Vehicles is reduced or diminished. The Plaintiff and each putative Class Member must expend the time to have his/her vehicle repaired and be without their vehicle. The Defendant, AUDI, should compensate the Plaintiff and each putative Class Member for their incurred out-of-pocket expenses for, *inter alia*, repair, towing, alternative transportation and vehicle payments as a result of the Alternator Defect.

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

10. The Plaintiff and putative Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Amended Notice of Civil Claim.
11. As an express warrantor, manufacturer, supplier and/or merchant, the Defendant, AUDI, had certain obligations to conform the Affected Class Vehicles with the defective alternator to its express warranties.
12. The Defendant, AUDI, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through authorized dealerships and/or independent retail dealers. Such representations formed the basis of the bargain in the Plaintiff's and putative Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
13. When the Plaintiff and putative Class Members purchased and/or leased their Affected Class Vehicles equipped with the defective alternator (either as new vehicles or as used vehicles with remaining warranty coverage), the Defendant, AUDI, expressly warranted under its warranty that it would cover all parts and labour needed to repair any item on the

vehicle when it left the manufacturing plant that is defective in material, workmanship or factory preparation. The Defendant, AUDI, provided an express 4 year/80,000 kilometer written basic warranty on the Affected Class Vehicles it supplied, distributed and/or manufactured.

14. Further, the Defendant, AUDI's, certified plus warranty provides an additional one year/20,000 kilometer coverage on the Affected Class Vehicles for the cost of all parts and labour needed to repair any item on the vehicle when it left the manufacturing plant that is defective in material, workmanship or factory preparation for 5 years/100,000 kilometers from the original in-service date of the vehicle.
15. The warranties of the Defendant, AUDI, formed a basis of the bargain that was reached when the Plaintiff and putative Class Members purchased and/or leased the Affected Class Vehicles.
16. The Alternator Defect at issue in this litigation was present at the time the Affected Class Vehicles were sold and/or leased to Plaintiff and putative Class Members.
17. The Defendant, AUDI, breached its express warranties (and continue to breach these express warranties) because it did not and has not corrected the Alternator Defect in the Affected Class Vehicles.
18. Pursuant to its express warranties, the Defendant, AUDI, was obligated to correct any alternator defect in the Affected Class Vehicles owned and/or leased by the Plaintiff and putative Class Members.
19. Although the Defendant, AUDI, was obligated to correct the Alternator Defect, none of the purported, attempted fixes to the alternator equipped in the Affected Class Vehicles are adequate under the terms of the warranty, as they did not cure the Alternator Defect.
20. The Defendant, AUDI, has failed and/or refused to conform the Affected Class Vehicles with the defective alternator to its express warranties. The Defendant, AUDI's, conduct, as averred to herein, has voided any attempt on its part to disclaim liability for its actions.



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

would enforce the warranty period limit would be unconscionable. The Defendant, AUDI's warranties were adhesive, and did not permit negotiation, or the inclusion of design defects. The Defendant, AUDI, possessed superior knowledge of the Alternator Defect in the Affected Class Vehicles prior to offering them for sale. The Defendant, AUDI, concealed and did not disclose or remedy the Alternator Defect prior to sale (or afterward). Any effort to otherwise limit liability for the design defect is null and void.

26. Further, because the Defendant, AUDI, has not been able remedy the Alternator Defect, the limitation on remedies included in the warranty fails its essential purpose and is null and void.
27. The Plaintiff and putative Class Members have suffered damages caused by the Defendant, AUDI's, breach of its express warranties and are entitled to recover damages, including but not limited to diminution of value.

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

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

dealers, like those from whom putative Class Members bought and/or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. The Defendant, AUDI, knew that the Affected Class Vehicles equipped with the defective alternator would and did pass unchanged from the authorized dealers to putative Class Members, with no modification to the alternator.

31. The alternator equipped in the Affected Class Vehicles is inherently defective as it causes various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or failing to start, all of which posed a real and substantial danger of harm or injury to vehicle occupants, and damage to the vehicle's electrical system, including the battery.
32. 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.
33. The Defendant, AUDI, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through authorized dealerships and/or independent retail dealers. Such representations formed the basis of the bargain in putative Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
34. Affected Class Vehicles equipped the said alternator were defective at the time they left the possession of the Defendant, AUDI. The Defendant, AUDI, knew of this defect at the time these transactions occurred. Thus, Affected Class Vehicles equipped with the defective

alternator, when sold and at all times thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

35. The Plaintiff and putative Class Members purchased and/or leased the Affected Class Vehicles from the Defendant, AUDI, through its subsidiaries, authorized agents for retail sales, through private sellers or were otherwise expected to be the eventual purchasers and/or lessees of the Affected Class Vehicles when bought and/or leased from a third party. At all relevant times, the Defendant, AUDI, was the manufacturer, distributor, warrantor and/or seller of the Affected Class Vehicles. As such, there existed privity and/or vertical privity of contract between the Plaintiff and putative Class Members and the Defendant, AUDI, as to its Affected Class Vehicles. Alternatively, privity of contract need not be established nor is it required because the Plaintiff and putative Class Members are intended third-party beneficiaries of contracts between the Defendant, AUDI, and its resellers, authorized dealers and/or distributors and, specifically, of the Defendant's AUDI's, implied warranties.
36. The Defendant, AUDI's, resellers, authorized dealers and/or distributors are intermediaries between the Defendant, AUDI, and consumers. These intermediaries sell the Affected Class Vehicles to consumers and are not, themselves, consumers of the Affected Class Vehicles and, therefore, have no rights against the Defendant, AUDI, with respect to the Plaintiff's and putative Class Members' acquisition of the Affected Class Vehicles. The Defendant's, AUDI's, warranties were designed to influence consumers who purchased and/or leased the Affected Class Vehicles.
37. The Defendant, AUDI, knew or had reason to know of the specific use for which the Affected Class Vehicles were purchased and/or leased.
38. As a result of the Alternator Defect, the Affected Class Vehicles were not in merchantable condition when sold and are not fit for the ordinary purpose of providing safe and reliable transportation.
39. The Defendant, AUDI, knew about the Alternator Defect in the Affected Class Vehicles, allowing it to cure its breach of warranty if they chose.

40. At all times that the Defendant, AUDI, warranted and sold its Affected Class Vehicles, it knew or should have known that its warranties were false and yet it did not disclose the truth or stop manufacturing or selling its Affected Class Vehicles and, instead, continued to issue false warranties and continued to insist the products were safe. The Affected Class Vehicles were defective when the Defendant, AUDI, delivered them to its resellers, authorized dealers and/or distributors which sold the Affected Class Vehicles and the Affected Class Vehicles were, therefore, still defective when they reached Plaintiff and putative Class Members.
41. The Defendant, AUDI's, attempt to disclaim or limit the implied warranty of merchantability vis-à-vis the Plaintiff, putative Class Members and/or consumers is unconscionable and unenforceable. Specifically, the Defendant, AUDI's, warranty limitation is unenforceable because it knowingly sold and/or leased a defective product without informing the Plaintiff, putative Class Members and/or consumers about the Alternator Defect in the Affected Class Vehicles. The time limits contained in the Defendant, AUDI's, warranty periods were also unconscionable and inadequate to protect the Plaintiff and putative Class Members. Among other things, the Plaintiff and putative Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendant, AUDI. A gross disparity in bargaining power existed between the Defendant, AUDI, and the Plaintiff and putative Class Members, and the Defendant, AUDI, knew that the Affected Class Vehicles were equipped with a defective alternator which caused various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or failing to start, all of which posed a real and substantial danger of harm or injury to vehicle occupants, and damage to the vehicle's electrical system, including the battery.
42. The Plaintiff and putative Class Members have complied with all obligations under the warranty or otherwise have been excused from performance of said obligations as a result of the Defendant, AUDI's, conduct alleged herein. Affording the Defendant, AUDI, a reasonable opportunity to cure its breach of written warranties, therefore, would be unnecessary and futile.
43. As a direct and proximate result of the Defendant, AUDI's, breach of implied warranties or

conditions of merchantability, the Plaintiff and putative Class Members have suffered loss, diminution and/or damage as a result of the Alternator 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**

44. Putative Class Members in British Columbia hereby incorporate by reference the allegations contained in the preceding paragraphs of this Amended Notice of Civil Claim.
45. The Defendant, AUDI, is in British Columbia for the purposes of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in Schedule “A”.
46. The Affected Class Vehicles are consumer “goods” within the meaning of section 1(1) of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in Schedule “A”.
47. Putative Class Members in British Columbia who purchased and/or leased the Affected Class Vehicles primarily for personal, family or household purposes, and not for resale or for the purposes of carrying on business, are “consumers” within the meaning of section 1(1) of the *BPCPA*, and provinces with parallel consumer protection legislation, as described in Schedule “A”.
48. The purchase and/or lease of the Affected Class Vehicles by putative Class Members in British Columbia for personal, family or household purposes, and not for resale or for carrying on business constitutes a “consumer transaction” within the meaning of section 1(1) of the *BPCPA*, and provinces with parallel consumer protection legislation, as

described in Schedule "A".

49. The Defendant, AUDI, is a "supplier" within the meaning of section 1(1) of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in Schedule "A", as it carried on business in British Columbia and who in the course of business participated in a consumer transaction by: (i) supplying goods to a consumer, or (ii) soliciting, offering, advertising or promoting with respect to a consumer transaction, whether or not privity of contract exists between that person and the consumer, and includes an assignee of, any rights or obligations of the supplier under the *BPCPA*. The Defendant, AUDI, is the vehicle supplier and/or manufacturer of the Affected Class Vehicles and distributes, markets and/or supplies such vehicles to consumers including proposed Class Members in British Columbia. At all relevant times, the Defendant, AUDI, was a supplier and/or seller of the Affected Class Vehicles as its resellers, authorized dealers and/or distributors were acting as the agents of the Defendant, AUDI.
50. By failing to disclose and actively concealing the Alternator Defect in the Affected Class Vehicles, the Defendant, AUDI, engaged in unfair and deceptive trade practices prohibited by sections 4 and 5 of the *BPCPA*, and provinces with parallel consumer protection legislation, as described in Schedule "A". The Defendant, AUDI, knew that the Affected Class Vehicles equipped with a defective alternator caused various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or failing to start, all of which posed a real and substantial danger of harm or injury to vehicle occupants, and damage to the vehicle's electrical system, including the battery. The Defendant, AUDI, and made misleading statements or omissions concerning the Alternator Defect, but yet failed to adequately warn consumers.
51. As alleged herein, the Defendant, AUDI, made misleading representations and omissions concerning the quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles.
52. In purchasing and/or leasing the Affected Class Vehicles, putative Class Members were deceived by the Defendant, AUDI's, failure to disclose its knowledge of the Alternator Defect and associated safety risk.



53. In particular, the Defendant, AUDI, engaged in a pattern of unfair or deceptive acts or practices in failing to disclose to putative Class Members that the Affected Class Vehicles were equipped with a defective alternator which caused various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or failing to start, ending in a costly repair and/or replacement process that the Defendant, AUDI, will not cover, as follows.

- (a) failing to disclose that the Affected Class Vehicles equipped with the defective alternator was 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 Alternator Defect;
- (c) failing to disclose at the time of purchase and/or lease that the Affected Class Vehicles, including the defective alternator, were not in good working order, defective, not fit for their intended, and ordinary purpose, and created a real and substantial danger or harm to occupants of the Affected Class Vehicles, and damage to the vehicle's electrical system, including the battery;
- (d) failing to give adequate warnings and/or notices regarding the use, defects, and problems with the defective alternator in the Affected Class Vehicles' to consumers who purchased and/or leased the Affected Class Vehicles, even though the Defendant, AUDI, possessed exclusive knowledge of the inherent defect in the alternator equipped in the Affected Class Vehicles before and at the time of purchase and/or lease;
- (e) failing to disclose, either through warnings and/or recall notices, and/or actively concealing, the fact that the alternator equipped in the Affected Class Vehicles was defective, even though the Defendant, AUDI, knew about the Alternator Defect; and
- (f) representing that the Alternator Defect in the Affected Class Vehicles would be covered under its warranty program.

54. In purchasing and/or leasing the Affected Class Vehicles, putative Class Members in British Columbia were deceived by the Defendant, AUDI's, failure to disclose its exclusive knowledge that the defective alternator equipped in the Affected Class Vehicles caused various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or failing to start, all of which posed a real and substantial danger of harm or injury to vehicle occupants, and damage to the vehicle's electrical system, including the battery.
55. By failing to disclose and actively concealing the Alternator Defect, the Defendant, AUDI, 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".
56. Further, as alleged herein, the Defendant, AUDI, made misleading representations and/or omissions concerning the quality, advanced technology, reliability, durability performance and/or safety of the Affected Class Vehicles equipped with the defective alternator, by:
  - (a) publishing owners' manuals that made materially misleading omissions as to claims of advanced technology, safety and dependability but which uniformly omitted any warning to consumers that the Affected Class Vehicles were equipped with a defective alternator which caused various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or failing to start, all of which posed a real and substantial danger of harm or injury to vehicle occupants, and damage to the vehicle's electrical system, including the battery.
  - (b) advertisements which uniformly omitted any information about the Alternator Defect and which misled consumers into believing that the alternator would function properly; and
  - (c) emphasizing and extolling in brochures and press releases that the Affected Class Vehicles equipped with the defective alternator were dependable, technologically advanced, safe, of the highest quality and with exceptional capability.

57. The Defendant, AUDI's, conduct as alleged herein was, and is, in violation of sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A", in particular, by:
- (a) representing that the Affected Class Vehicles, including its alternator, were defect-free and did not pose a safety hazard, which it did not;
  - (b) representing that the Affected Class Vehicles, including its alternator, were of a particular standard, quality or grade, when they were not;
  - (c) advertising the Affected Class Vehicles, including its alternator, with the intent not to sell them as advertised; and
  - (d) representing that the Affected Class Vehicles, including its alternator, have been supplied in accordance with a previous representation as to quality, advanced technology, reliability, durability, performance and/or safety, when they have not.
58. In purchasing and/or leasing the Affected Class Vehicles, putative Class Members in British Columbia were deceived by the Defendant, AUDI's, failure to disclose its exclusive knowledge of the Alternator Defect and/or its representations made as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles in its sales brochure materials, manuals, press releases and/or websites.
59. The Defendant, AUDI, intentionally and knowingly misrepresented and omitted material facts regarding its Affected Class Vehicles, specifically regarding the Alternator Defect, with an intent to mislead putative Class Members.
60. In purchasing and/or leasing the Affected Class Vehicles, putative Class Members were deceived by the Defendant, AUDI's, failure to disclose its knowledge of the Alternator Defect and associated safety risk.
61. Putative Class Members had no way of knowing of the Defendant, AUDI's, representations were false, misleading and incomplete or knowing the true nature of the Alternator Defect

in the Affected Class Vehicles. As alleged herein, the Defendant, AUDI, engaged in a pattern of deception in the face of a known alternator defect in the Affected Class Vehicles. Putative Class Members did not, and could not, unravel the Defendant's, AUDI's, deception on their own.

62. The Defendant, AUDI, knew, or should have known, that its conduct violated sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A".
63. The Defendant, AUDI, owed putative Class Members a duty to disclose the truth about the Alternator Defect in the Affected Class Vehicles as it created a serious safety hazard and the Defendant, AUDI:
  - (a) possessed exclusive knowledge of the Alternator Defect in the Affected Class Vehicles;
  - (b) intentionally concealed the foregoing from putative Class Members; and/or
  - (c) failed to warn consumers or to publicly admit that the Affected Class Vehicles had an alternator defect.
64. The Defendant, AUDI, had a duty to disclose that the alternator equipped in the Affected Class Vehicles was fundamentally flawed as described herein because it created a serious safety hazard and putative Class Members relied on the Defendant, AUDI's, material misrepresentations and omissions regarding the Affected Class Vehicles and the Alternator Defect.
65. The Defendant, AUDI's, conduct proximately caused injuries to putative Class Members that purchased and/or leased the Affected Class Vehicles and suffered harm as alleged herein.
66. Putative Class Members were injured and suffered ascertainable loss, injury-in-fact and/or actual damage as a proximate result of the Defendant, AUDI's, conduct in that putative Class Members incurred costs related the Alternator Defect including, *inter alia*, repair,

service and/or replacement costs, rental car costs and overpaid for their Affected Class Vehicles that have suffered a diminution in value.

67. The Defendant, AUDI's, violations cause continuing injuries to putative Class Members. The Defendant, AUDI's, unlawful acts and practices complained of herein affect the public interest.
68. The Defendant, AUDI, knew of the defective alternator equipped in the Affected Class Vehicles and which were materially compromised by the Alternator Defect.
69. The facts concealed and omitted by the Defendant, AUDI, from putative 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 putative Class Members known about the defective nature of the alternator equipped in the Affected Class Vehicles, they would not have purchased and/or leased the Affected Class Vehicles or would not have paid the prices they paid.
70. Putative Class Members' injuries were directly or proximately caused by the Defendant, AUDI's, unlawful and deceptive business practices.
71. As a result of the Defendant, AUDI's, conduct as alleged herein, putative Class Members in British Columbia are entitled to a declaration under section 172(1)(a) of the *BPCPA* that an act or practice engaged in by the Defendant, AUDI, 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".
72. Putative Class Members in British Columbia are entitled, to the extent necessary, a waiver of any notice requirements under section 173(1) the *BPCPA*, and parallel provincial consumer protection legislation, as described in Schedule "A", as a result of the Defendant, AUDI's, failure to disclose and/or actively conceal the Alternator Defect from putative Class Members in British Columbia and its misrepresentations as to quality, advanced technology,

reliability, durability, performance and/or safety of the Affected Class Vehicles.

**Breach of the *Competition Act***

73. The Plaintiff and putative Class Members hereby incorporate by reference the **allegations** contained in the preceding paragraphs of this Amended Notice of Civil Claim.
74. By making representations to the public as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles, the Defendant, AUDI, breached sections 36 and/or 52 of the *Competition Act*, in that its representations:
- (a) were made to the public in the form of advertising brochures, manuals, statements and/or other standardized statements as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles;
  - (b) were made to promote the supply or use of a product or for the purpose of promoting its business interests;
  - (c) stated safety of the Affected Class Vehicles; and
  - (d) were false and misleading in a material respect.
75. At all relevant times, the Defendant, AUDI, was the seller and/or supplier of the Affected Class Vehicles. As such, there existed contractual privity and/or vertical privity of contract between the Plaintiff and putative Class Members and the Defendant, AUDI, as to the Affected Class Vehicles as its resellers, authorized dealers and/or distributors at all material times were acting as the agents of the Defendant, AUDI.
76. The Defendant, AUDI, 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 Alternator Defect in the Affected Class Vehicles from Plaintiff and putative Class Members, along with concealing the safety risks, costs, and monetary damage resulting from the Alternator Defect. The Defendant, AUDI, should have

disclosed this information because it was in a superior position to know the true facts related to the Alternator Defect and Plaintiff and putative Class Members could not reasonably be expected to learn or discover the true facts related to the Alternator Defect.

77. The Alternator Defect in the Affected Class Vehicles constitutes a serious safety issue. The Defendant, AUDI, knew that the Affected Class Vehicles equipped with the defective alternator caused various electrical malfunctions resulting in loss of speed, power and key electronic functions and become inoperable while in motion and/or failing to start, all of which posed a real and substantial danger of harm or injury to vehicle occupants, which triggered the Defendant's, AUDI's, duty to disclose the safety issue to consumers.

78. These acts and practices have deceived the Plaintiff and putative Class Members. In failing to disclose the Alternator Defect and suppressing other material facts from the Plaintiff and putative Class Members, the Defendant, AUDI, breached its duty to disclose these facts, violated the *Competition Act* and caused damage to the Plaintiff and putative Class Members. The Defendant, AUDI's, omissions and concealment pertained to information that was material to the Plaintiff and putative Class Members, as it would have been to all reasonable consumers.

79. Further, the Plaintiff and putative Class Members relied upon the Defendant, AUDI's, misrepresentations as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles to their detriment in purchasing and/or leasing the Affected Class Vehicles so as to cause loss and/or damage to the Plaintiff and putative Class Members.

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

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

81. The Plaintiff and putative Class Members had no way of knowing about the Alternator Defect in the Affected Class Vehicles. The Defendant, AUDI, concealed its knowledge of the Alternator Defect while continuing to market, sell and/or lease, the Affected Class Vehicles equipped with the defective alternator.



82. Within the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada as described in Schedule "B", the Plaintiff and putative Class Members could not have discovered through the exercise of reasonable diligence that the Defendant, AUDI, was concealing the conduct complained of herein and misrepresenting the true qualities of the Affected Class Vehicles.
83. The Plaintiff and putative Class Members did not know facts that would have caused a reasonable person to suspect or appreciate that there was a defect in the alternator equipped in the Affected Class Vehicles.
84. For these reasons, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada, as described in Schedule "B", has been tolled by operation of the discovery rule with respect to the claims in this proposed class proceeding.
85. Further, due to Defendant, AUDI's, knowledge and active concealment of the Alternator Defect throughout the time period relevant to this proposed class proceeding, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada as described in Schedule "A" has been tolled.
86. Instead of publicly disclosing the Alternator Defect in the Affected Class Vehicles, the Defendant, AUDI, kept the Plaintiff and putative Class Members in the dark as to the Alternator Defect and the serious safety hazard it presented.
87. The Defendant, AUDI, was under a continuous duty to disclose to the Plaintiff and putative Class Members the existence of the Alternator Defect in the Affected Class Vehicles.
88. The Defendant, AUDI, knowingly, affirmatively and actively concealed or recklessly disregarded the true nature, quality and character of the Affected Class Vehicles.
89. As such, the Defendant, AUDI, is estopped from relying on the *Limitation Act*, and equivalent legislative provisions in the rest of Canada as described in Schedule "B", in defense of this proposed class proceeding.

Plaintiff's(s') address for service:

Garcha & Company  
Barristers & Solicitors  
~~#405~~ #210 - 4603 Kingsway  
Burnaby, BC V5H 4M4  
Canada

Fax number address for service (if any):

~~604-435-4944~~ 436-3302

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: May 26, 2023

---

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

**Schedule "A"**

**Consumer Protection Legislation Across Canada**

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

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

**Schedule “B”**

**Limitation Act Legislation Across Canada**

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

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

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

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

Appendix

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

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

The within proposed multi-jurisdictional class proceeding involves certain model year 2018-2023 Audi vehicles designed, manufactured, assembled, tested, marketed, distributed, supplied, leased and/or sold by the Defendants in Canada equipped with a defective alternator that causes the vehicles to shut down while in operation and/or fail to start. In particular, due to the defective alternator, the vehicles experience various electrical malfunctions causing dashboard or instrument cluster warning signals to illuminate and the vehicle to lose speed, power, key electronic functions and become inoperable while in motion, all of which poses a real and substantial danger of harm or injury 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
- ☒ a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

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

**Part 4:**

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



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

3. *Business Practices and Consumer Protection Act*, S.B.C. 2004; *Consumer Protection Act*, RSA 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, SS, 2014, c C-30.2; *The Business Practices Act*, CCSM c B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, and SNB 1978, c C-18.1

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


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

6. 49 U.S. Code 301 - *Motor Vehicle Safety Act*

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

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

9. *Limitation Act*, S.B.C. 2012, c.13; *Limitations Act*, RSA 2000, c. L-12; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitation of Actions Act*, CCSM c. L150; *Limitations Act*, 2002, SO 2002, c. 24, Sch. B; *Limitations Act*, SNL 1995, c. L-16.1; *Limitation of Actions Act*, SNS 2014, c. 35; *Limitation of Actions Act*, SNB 2009, c. L-8.5; *Statute of Limitations*, RSPEI 1988, c. S-7; *Limitation of Actions Act*, RSY 2002, c. 139; *Limitation of Actions Act*, RSNWT 1988, c. L-8; *Limitation of Actions Act*, RSNWT (Nu) 1988, c. L-8



NO. S233921  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

[REDACTED]

PLAINTIFF

AND:

VOLKSWAGEN GROUP CANADA INC. and  
AUDI CANADA INC.

DEFENDANTS

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

---

**AMENDED NOTICE OF CIVIL CLAIM**

---

KELVIN GARCHA  
**DUSEVIC & GARCHA**  
Barristers & Solicitors  
#210-4603 Kingsway  
Burnaby, BC M5H 4M4  
Tel: 604-436-3315  
Fax: 604-436-3302  
Email: [kg@dusevicgarchalaw.ca](mailto:kg@dusevicgarchalaw.ca)