Court File No. VLC-S-S-252762
NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

[redacted]

PLAINTIFF

AND:

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

DEFENDANTS

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

NOTICE OF CIVIL CLAIM

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

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

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

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

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

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

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

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

TIME FOR RESPONSE TO CIVIL CLAIM

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

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

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

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

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

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

A. Introduction - Overview

1. The within proposed product liability multi-jurisdictional class proceeding involves certain model year Ford Escape and Lincoln Corsair Grand Touring plug-in hybrid electric vehicles ("**PHEV**"), defined below as "**Affected Class Vehicles**", engineered, designed, manufactured, assembled, tested, marketed, distributed, supplied leased and/or sold by the Defendants, FORD MOTOR COMPANY ("FORD US") and FORD MOTOR COMPANY OF CANADA, LIMITED/FORD DU CANADA LIMITEE ("FORD CANADA"), in Canada, including the Province of British Columbia, equipped with a defective high-voltage lithium-ion battery that can cause spontaneous vehicle fires and explosions ("**Spontaneous Fire Risk**") during operation or while parked ("**Battery Defect**"). The Battery Defect poses a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves.

2. In an electric vehicle ("**EV**"), the electric battery is the most important component because it stores the chemical energy and converts it to electricity to power the motor and propel the vehicle. The battery also powers the vehicle's electrical systems when it is not in operation, such as the central locking system, the alarm, and other security features. The battery also powers the vehicle's onboard computer and diagnostic systems.

3. The amount of electrical energy a battery can store is referred to as "capacity", which is measured in kilowatt hours ("**kWh**"). The battery's design influences how fast it can be

recharged, and its size and capacity impacts how far the vehicle can travel on a single charge (called "range").

4. Most batteries in EVs are lithium-ion, which allows for higher energy density, meaning that the lithium-ion battery can store a lot of energy in a small mass. Lithium-ion batteries also have long cycle life, meaning that the battery can perform through numerous charges and discharge cycles before it no longer holds a charge.

5. Lithium-ion batteries, however, have disadvantages. EV manufacturers are aware that lithium-ion batteries have a long history of fire issues. As lithium-ion batteries can store significant amounts of energy, they can overheat when charged to full or nearly full capacity, putting the battery at risk of exploding or catching fire. This is called "thermal runaway": when the battery's temperature rapidly and uncontrollably rises, leading to a fire. Overheating can result from short circuiting in a battery cell within the lithium-ion battery's module. External short circuiting occurs when there is unintended direct contact between the positive and negative terminals, thereby allowing energy to flow unimpeded, while internal short circuiting can occur within a single cell due to a manufacturing defect.

6. The Battery Defect in the Affected Class Vehicles causes an internal short circuit in the lithium-ion battery cell, resulting in a sudden and complete loss of motive power while in operation and further, increases the risk of a fire, or thermal event, even when the vehicle is parked and in the off position.

7. "Affected Class Vehicles" refers to the following model year Ford 2.5 litre ("2.5L") PHEV vehicles engineered, designed, manufactured, assembled, tested, marketed, advertised, distributed, supplied, sold and/or leased by the Defendants, FORD US and/or FORD CANADA, in Canada, including the Province of British Columbia, equipped with a defective lithium-ion battery:

Model	**Model Year ("MY")**
Escape	2020-2024
Lincoln Corsair Grand Touring	2021-2024

The Plaintiff reserves the right to amend the definition of Affected Class Vehicles to include additional models and model years.

8. The Defendants, FORD US and FORD CANADA, have publicly identified seven high-voltage battery failures and one vehicle fire suspected to arise from the Battery Defect. The high-voltage battery manufacturer, Samsung SDI Co., Ltd. ("Samsung"), also supplied these defective batteries to other vehicle manufacturers, Stellantis Chrysler and Volkswagen AG, for use in nearly 160,000 other vehicles, and, to date, those vehicle manufacturers have reported at least twenty-four vehicle fires arising from their high-voltage lithium-ion battery packs, including some occurring in Stellantis Chrysler vehicles that had already received a purported fix for the fire risk defect. Recently, after the Defendants, FORD US and/or Ford Canada, Stellantis Chrysler, and Volkswagen AG recalled their vehicles, Samsung recalled more than 180,000 of these high-voltage battery packs deemed at risk of failure and sudden fire.

9. The Battery Defect exposes putative class members to an unreasonable risk of accident, injury, death and/or property damage if their vehicle's high-voltage lithium-ion battery—located under the front seats—fails or catches fire while in operation or, perhaps more commonly, spontaneously ignites while the vehicle is parked at the putative class member's home, on a public street, or in a public parking lot. The Spontaneous Fire Risk arising from the Battery Defect also exposes passengers, other drivers on the road, owners of other cars parked near the Affected Class Vehicles, and other bystanders to an unreasonable risk of accident, injury, death, and/or property damage.

10. The Defendants, FORD US and FORD Canada, have no remedy yet for the Battery Defect but claim a software update for the batteries is forthcoming. However, such software update remedies have recently proved ineffective at eliminating fires, as seen in the Jeep Wrangler and Cherokee hybrid-electric vehicles, manufactured by Stellantis Chrysler, outfitted with the same Samsung-manufactured high-voltage lithium-ion batteries, and in the Stellantis Chrysler Pacifica hybrid-electric vehicles equipped with defective LG Energy Solution, Ltd. high-voltage lithium-ion batteries. In each case, fires continued to occur in vehicles that received the software update, necessitating re-recall and a new fix.

11. While they await this purported fix, the Defendants, FORD US and FORD Canada, direct the Plaintiff and putative class members to stop charging their Affected Class Vehicles,

effectively denying them use of the prominent hybrid-electric feature for which they paid a premium. Likewise, the Plaintiff and putative class members are forced to pay for gas while increasing their carbon footprint. A PHEV that cannot be operated in all-electric mode and is less efficient than its gas-powered equivalent is not fit for its ordinary purpose.

12. The Defendants, FORD US and FORD Canada, had all the knowledge they needed to anticipate, test for, and prevent the Spontaneous Fire Risk arising from the Battery Defect before the Affected Class Vehicles went to market. This knowledge came from, among other things, (i) industry and scientific studies on the fire risks of lithium-ion battery packs; industry insights on the appropriate specifications and control systems for lithium-ion batteries; (ii) rigorous pre-launch testing of the high-voltage battery and hybrid propulsion system that any responsible vehicle manufacturer would have conducted; and known fire issues arising in other vehicles with lithium-ion battery packs, including those equipped with the same Samsung batteries here and others used in the Defendants', FORD US's and FORD CANADA's, own Fusion PHEVs. Despite this exclusive knowledge, the Defendants, FORD US and FORD CANADA, chose profits over safety and sold and/or leased the Affected Class Vehicles to the Plaintiff and putative class members without disclosing or rectifying the Spontaneous Fire Risk arising from the Battery Defect.

13. Owners and/or lessees of the Affected Class Vehicles have been injured in fact, incurred damages, and suffered ascertainable losses in money and property as a result of the Battery Defect. They paid thousands of dollars for a plug-in hybrid electric propulsion system that they cannot use and will continue to incur damages until the Battery Defect is fixed. Had the Plaintiff and putative class members known of the Battery Defect, they would not have purchased and/or leased those vehicles, paid substantially less for them or purchased non-hybrid versions of the vehicles, which are significantly less expensive.

14. The Defendants', FORD US's and/or FORD CANADA's, marketing of their vehicles as safe, dependable and reliable is pervasive across North America as characterized by their longstanding ubiquitous slogan: "Built Ford Tough".

15. No reasonable consumer expects to purchase a vehicle with a concealed defect that presents a substantial and real catastrophic danger to vehicle occupants and/or property as a result

of fire. The Battery Defect, and resulting Spontaneous Fire Risk, is material to the Plaintiff and putative class members because when they purchased and/or leased their Affected Class Vehicle they reasonably relied on the reasonable expectation that the Affected Class Vehicles would be free from defects and the risk of fire.

16. The Defendants, FORD US and/or FORD CANADA, knowingly omitted, concealed and/or suppressed material facts regarding the Battery Defect, and resulting Spontaneous Fire Risk, and misrepresented the safety standard, quality, or grade of the Affected Class Vehicles, all at the time of purchase and/or lease or otherwise, which directly caused harm or loss to the Plaintiff and putative class members. As a direct result of the Defendants', FORD US's and/or FORD CANADA's, unfair, deceptive and/or fraudulent business practices and wrongful conduct, the Plaintiff and putative class members have suffered ascertainable losses or damages, including, *inter alia*: (i) out-of-pocket expenses for repair of the Battery Defect; (ii) costs for future repairs; (iii) damage to property; (iv) sale of their vehicles at a loss; and/or (v) diminished value of their vehicles.

17. The Defendants, FORD US and FORD CANADA, have failed to provide a remedy for the Battery Defect, and resulting Spontaneous Fire Risk, and further, refused to provide putative class members with loaner vehicles or offer to reimburse owners and/or lessees of the Affected Class Vehicles for car payments, towing charges, rental vehicles, property damage, time off work, loss of use, and other miscellaneous costs while they wait for the Defendants, FORD US and FORD CANADA, to find a fix or remedy for the Battery Defect, and resulting Spontaneous Fire Risk.

18. The Plaintiff seeks relief for all other owners and/or lessees of the Affected Class Vehicles with the Battery Defect, and resulting Spontaneous Fire Risk, including, *inter alia*, recovery of damages and/or repair under various provincial consumer protection legislation, breach of express warranty, breach of implied warranty or condition of merchantability, statutory and equitable claims and reimbursement of all expenses associated with the repair and/or replacement of the defective high-voltage lithium-ion battery equipped in the Affected Class Vehicles and/or buy back of the Affected Class Vehicles.

B. The Parties

i. The Representative Plaintiff

19. The Plaintiff [redacted] has an address for service c/o 210 - 4603 Kingsway, Burnaby, British Columbia, Canada, V5H 4M4.

20. On or about November 24, 2022, the Plaintiff purchased a new 2022 Ford Escape 2.5L PHEV, an Affected Class Vehicle, primarily for personal, family or household use, from Magnuson Ford Sales Ltd., a Ford dealership, located in Abbotsford, British Columbia, Canada.

21. Prior to purchasing his Ford Escape, the Plaintiff reviewed the Defendants', FORD US's and/or FORD CANADA's, websites and marketing materials regarding the Ford Escape, which failed to disclose the presence of the Battery Defect, and the resulting Spontaneous Fire Risk, in the Ford Escape.

22. Through exposure and interaction with the Defendants, FORD US and/or FORD CANADA, the Plaintiff was aware of the Defendants', FORD US's and/or FORD CANADA's, uniform and pervasive marketing messages of dependability and safety and the benefits of being able to drive the vehicle in electric mode; these were primary reasons that the Plaintiff purchased the Affected Class Vehicle. However, despite touting the safety and dependability of the Affected Class Vehicles and the benefits of driving the vehicle in its electric mode, at no point did the Defendants, FORD US and/or FORD CANADA, or its representatives, disclose to the Plaintiff the Battery Defect, and resulting Spontaneous Fire Risk, before his purchase.

23. The Plaintiff regularly services his Ford Escape but is now concerned about driving and parking it near structures and other vehicles due to the dangers from the Spontaneous Fire Risk. Further, given that the Plaintiff can no longer charge the plug-in hybrid vehicle as the Defendants, FORD US and/or FORD CANADA, have instructed, the Plaintiff must pay for gas to use the vehicle that the Plaintiff would not have needed if the high-voltage lithium-ion battery were able to operate as intended. The Plaintiff would not have purchased the Ford Escape, would have paid less for it, or purchased a non-hybrid version

of the Escape, had the Plaintiff known about the Battery Defect and the resulting Spontaneous Fire Risk.

24. The Plaintiff did not receive the benefit of his bargain when he purchased his Ford Escape. He purchased a vehicle that is of a lesser standard, grade, and quality than represented, and he did not receive a vehicle that met ordinary and reasonable consumer expectations regarding safe and reliable operation. The Battery Defect, and the resulting Spontaneous Fire Risk, has significantly diminished the value of the Ford Escape as it is not safe, dependable and reliable as represented by the Defendants, FORD US and/or FORD CANADA, and which poses a real, substantial and imminent risk of harm, injury and/or death in the event of a fire.

ii. The Defendants

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

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

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

28. At all material times to the cause of action herein, the Defendant, FORD US, markets, advertises, distributes, supplies and/or sells Ford vehicles, including the Affected Class

Vehicles, as averred to in paragraph seven herein, containing the Battery Defect, and resulting Spontaneous Fire Risk, through, *inter alia*, its related subsidiaries, affiliates and/or operating units, including the Defendant, FORD CANADA, independent retailers and authorized dealerships in the United States of America and Canada, and within the Province of British Columbia. The Defendant, FORD US, also provides all the technical information for the purposes of designing, manufacturing, servicing and/or repairing its Affected Class Vehicles to its subsidiaries, affiliates and/or operating units, including the Defendant, FORD CANADA.

29. At all material times to the cause of action herein, the Defendant, FORD CANADA, was, and is, a wholly owned subsidiary of the Defendant, FORD US, which, *inter alia*, designs, manufactures, assembles, markets, advertises, distributes, supplies, sells and/or repairs, Ford vehicles, including the Affected Class Vehicles, as averred to in paragraph seven herein, containing the Battery Defect, and resulting Spontaneous Fire Risk, in Canada, and within the Province of British Columbia. The Defendant, FORD CANADA, was the sole distributor of the Affected Class Vehicles in Canada, including the Province of British Columbia. It sold and/or leased the Affected Class Vehicles through its dealer and retailer network, which were controlled by the Defendants, FORD CANADA and/or FORD US, and were their agents.

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

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

C. The Class

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

D. Factual Allegations

i. Motor Vehicle Safety Standards

33. In Canada, motor vehicle safety standards are governed by the *Motor Vehicle Safety Act,* S.C. 1993, c.16 ("***MVSA***") and the *Motor Vehicle Safety Regulations*, C.R.C., c. 1038 ("*Regulations*"). The Minister of Transport has the power and authority to verify that companies and persons comply with the *MVSA, Regulations* and vehicle safety standards. Transport Canada is delegated the authority to oversee the *MVSA* and *Regulations*. In the United States, the National Highway Traffic Safety Administration ("**NHTSA**") oversees, *inter alia*, vehicle safety standards, such as the Federal Motor Vehicle Safety Standard ("***FMVSS***"). Increasingly, the general approach to setting vehicle safety standards in Canada is to harmonize or analogize them with the *FMVSS* in the United States as much as possible. As such, vehicles designed or manufactured in the United States that comply with *FMVSS* may be imported and sold in Canada pursuant to the requirements of the *MVSA* and *Regulations.*

34. Vehicle manufacturers are required to file a report with Transport Canada and NHTSA within five days of identifying any safety related defects in their vehicles pursuant to the

MVSA and *FMVSS*. The initial report is required to identify all vehicles potentially containing the defect and include a description of the manufacturer's basis for its determination of the recall population and a description of how the vehicles or items of equipment to be recalled differ from similar vehicles or items of equipment that the manufacturer has not included in the recall. Additionally, the report must contain a "description of the defect" and identify and describe the risk to motor vehicle safety reasonably related to the defect.

35. The purpose of these government regulations is to facilitate the notification of owners of defective and noncomplying motor vehicles, and the remedy of such defects and noncompliance, by equitably apportioning the responsibility for safety-related defects and noncompliance with *MVSA* and *FMVSS* among vehicle manufacturers.

ii. The high-voltage lithium-ion batteries poses a serious fire safety risk to vehicle occupants, bystanders and property

36. The Defendant, FORD, failed to adequately research, design, test, and/or manufacture the Affected Class Vehicles before warranting, advertising, promoting, marketing, and selling them as suitable and safe for use in an intended and reasonably foreseeable manner.

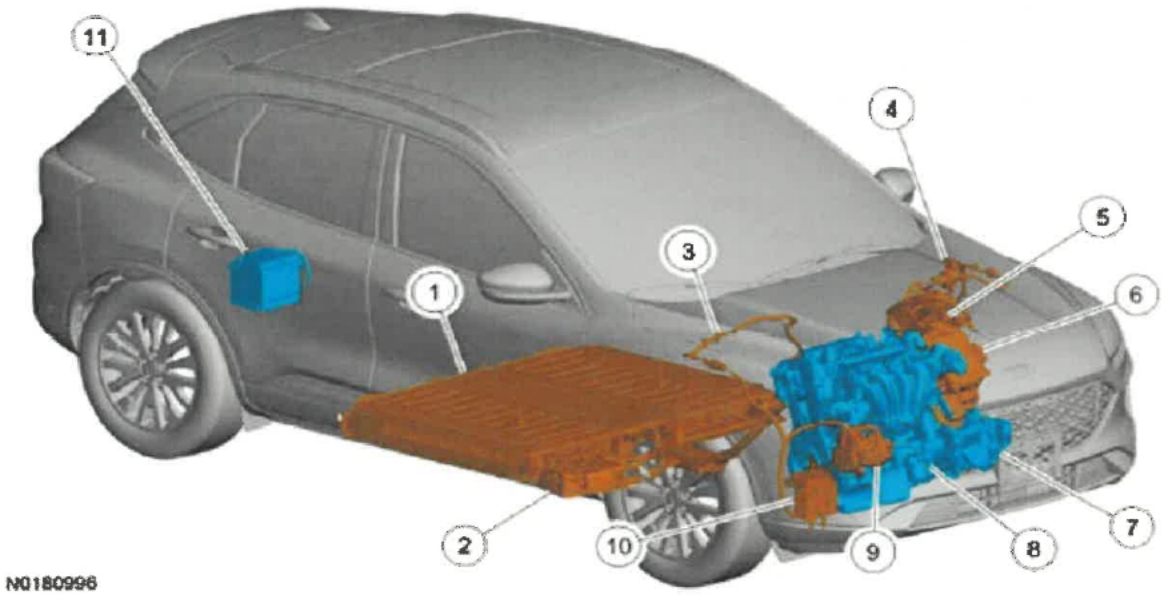
37. The high-voltage lithium-ion batteries in the Affected Class Vehicles are 14.4-kWh lithium-ion batteries that were manufactured by Samsung at its Hungary plant between July 1, 2019, and March 28, 2023.

38. The high-voltage lithium-ion batteries in the Affected Class Vehicles are made up of 84 prismatic-style cells arranged in 14 modules.

39. The high-voltage lithium-ion batteries are located under the Affected Class Vehicles and below the seats. They are labeled as part number 1 in the diagrams below.

Section 1: High Voltage Electrical System Information

PHEV Vehicles



Model Year 2020-2025 Ford Escape PHEV

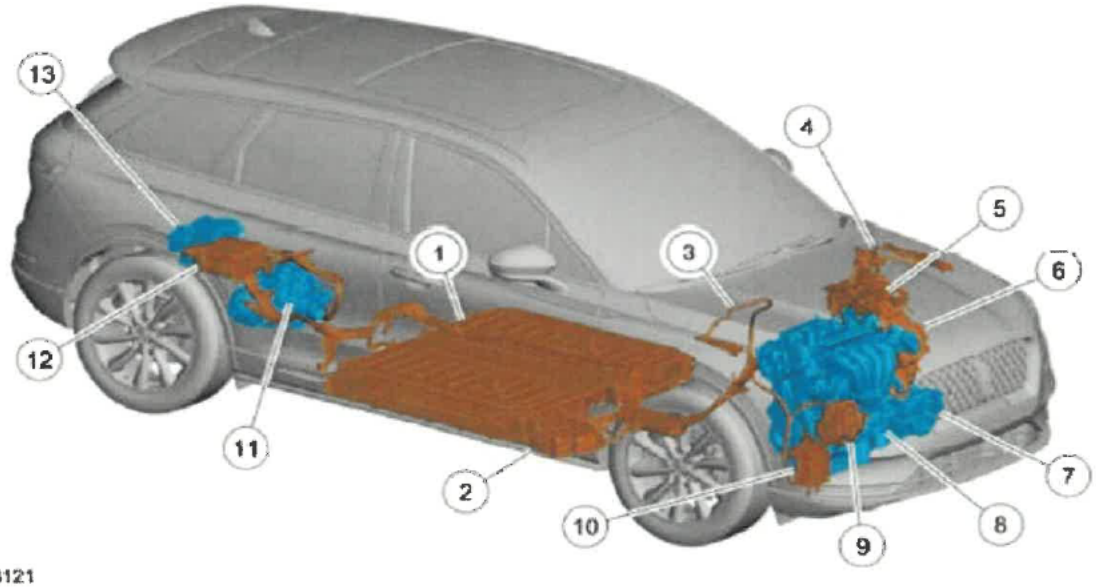
Section 1: High Voltage Electrical System Information

Component Location and Identification — PHEV Vehicles

The following illustrations provide the location, description and basic function of the High Voltage system components.

NOTE:
All High Voltage wires and harnesses are orange in color

PHEV Vehicles



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Model Year 2021-2025 Lincoln Corsair PHEV

40. The Affected Class Vehicles utilize a hybrid drivetrain that integrates a 2.5L four-cylinder gasoline engine and two electric motors. Together, these motors enable all-electric, hybrid, and gasoline-powered driving.

41. The high-voltage lithium-ion batteries support charging at both Level 1 (120-volt) and Level 2 (240-volt).

42. The high-voltage lithium-ion batteries in model year 2020 Ford Escape and 2021 Lincoln Corsair PHEVs retail for approximately $6,800 and those for the model year 2023-2025 Ford Escape and Lincoln Corsair PHEVs retail for approximately $7,200.

2024 NHTSA Recall of Affected Class Vehicles

43. On December 20, 2024, the Defendant, FORD US, issued a recall as to the Battery Defect (Manufacturer Recall No. 24S79, NHTSA Campaign No. 24V-954, "High Voltage Battery May Short Circuit") which impacted 20,484 Ford vehicles equipped with the 2.5L PHEV engines. Specifically, the recalled vehicles included MY 2020-2024 Escape and MY 2021-2024 Lincoln Corsair.

44. In its Part 573 Safety Recall Report ("**573 Report**") filed with NHTSA, the Defendant, FORD US, provided the following description as to the Battery Defect:

Description of the Defect:

> The high voltage cell's separator layer between its cathode and anode may be susceptible to damage as a result of the cell manufacturing process. Separator damage may result in a cell internal short circuit.

45. The Defendant, FORD US, acknowledged the fire safety risk created by the Battery Defect and stated the following in the 573 Report:

> Description of the Safety Risk:
>
> In the event of a high voltage battery cell internal short circuit, customers may experience shutdown of the vehicle's propulsion system. Loss of motive power increase the risk of crash and injury.
>
> In the event of a high voltage battery cell internal short circuit, the customer may also experience battery thermal venting potentially resulting in a vehicle fire, increasing the risk of injury.

46. The Defendant, FORD US, stated the following in the 573 Report as to the description of the cause of the Battery Defect:

> Variability in the battery cell supplier's production process may result in the cell's cathode inducing micro-defects and/or local stresses in the cell's separator layer. These micro-defects and local stresses may damage the separator.

47. As to the proposed "fix" or "remedy" for the Battery Defect, the Defendant, FORD US, stated the following in the 573 Report:

> Owners will be notified by mail and instructed to take their vehicle to a Ford or Lincoln dealer to have their vehicle's Battery Energy Control Module (BECM) software updated.
>
> Updated BECM software will have an enhanced capability to detect cell anomalies indicative of separator damage, providing advance warning to owners of a high-voltage battery issue before thermal venting occurs.

2022 Transport Canada Recall of Affected Class Vehicles

48. On December 20, 2024 Transport Canada issued a nearly identical recall (Recall #2024-781) with respect to 8,825 Ford MY 2020-2024 Escape and MY 2021-2023 Corsair 2.5L PHEVs and described the Battery Defect, fire safety risk and corrective actions as follows:

> Issue:
>
> On certain vehicles, a problem inside the high-voltage battery could cause a short circuit. If this happens, there could be a loss of power to the wheels and/or high-voltage battery could overheat.
>
> Note: This recall only affects certain plug-in hybrid vehicles (PHEV) equipped with a 2.5 L engine.
>
> Safety Risk:
>
> A loss of power to the wheels could increase the risk of a crash. A battery that overheats can create fire risk, even while the vehicle is parked and turned off.
>
> Corrective Actions:
>
> To reduce the safety risk, Ford advises not to charge your vehicle until the recall repairs have been completed. Ford will notify owners by mail and advise you to take your vehicle to a dealership to update the battery energy

> control module (BECM) software. The software will monitor the high-voltage battery and warn you if it detects a problem.

49. Between April and August 2024, three vehicles in Europe were reported to experience this battery thermal venting. The Defendant, FORD, and Samsung inspected these high-voltage battery packs to determine the root cause of their internal short circuits between September and November 2024.

50. In December 2024, the Defendant, FORD, learned of a fourth vehicle that experienced battery thermal venting suspected to be related to the Spontaneous Fire Risk.

51. Then, after the Defendant, FORD, approved the recall to address the Spontaneous Fire Risk on December 20, 2024, the Defendant, FORD, learned of three more battery thermal venting reports in the European vehicle population, one of which ignited a vehicle fire that caused property damage.

52. The Affected Class Vehicles are not the only vehicles impacted by the Spontaneous Fire Risk. Samsung supplied the same or similar high-voltage lithium-ion battery in the Affected Class Vehicles for use in other hybrid-electric vehicles that have also recently been recalled by their manufacturers for fire risk, such as Stellantis Chrysler's Jeep Wrangler and Grand Cherokee vehicles and Volkswagen AG's Audi Q5 and A7 vehicles.

53. In response to these vehicle manufacturer recalls, on February 5, 2025, Samsung recalled 180,196 of these high-voltage lithium-ion batteries for fire risk, including the Affected Class Vehicles, along with those in 155,096 Stellantis Chrysler vehicles and 4,616 Volkswagen and AG Audi vehicles.

54. Samsung acknowledges these high-voltage lithium-ion batteries pose a serious fire risk that could result in personal injury and/or property damage.

55. According to Samsung's recall chronology, it learned of at least twenty fires in Stellantis Chrysler Jeep Grand Cherokee and Wrangler plug-in electric vehicles between May 2023 and July 2024, including some fires that occurred after implementation of the software

update that purported to remedy the fire risk. Samsung also learned of more than four fires in Audi plug-in electric vehicles between August 2023 and April 2024.

56. When the Defendant, FORD, first recalled the Affected Class Vehicles in December 2024, it explicitly told vehicles owners they did not need to stop driving the Affected Class Vehicles or otherwise stop using its hybrid-electric function.

57. But then, in February 2025, the Defendant, FORD, reversed course, re-issuing recall notices to Affected Class Vehicles owners and/or lessees that instructed them to immediately refrain from charging their vehicles to maintain a lower charge level in the high-voltage lithium-ion battery, reducing the risk of a vehicle fire until a remedy is available.

58. The Defendant, FORD's, directive prevents vehicle owners and/or lessees from using the primary feature they paid a premium for-the hybrid-electric propulsion system-while forcing them to incur greater fuel costs.

59. Further, the Defendant, FORD, currently has no remedy for the Battery Defect, and resulting Spontaneous Fire Risk. As reported to both NHTSA and Transport Canada, the Defendant, FORD, states a software update is forthcoming that will have an enhanced capability to detect cell anomalies indicative of separator damage.

60. However, a superior remedy is already available to the Defendant, FORD: replacing the high-voltage lithium-ion batteries in all Affected Class Vehicles. Yet the Defendant, FORD, purportedly plans to implement this remedy on a limited basis, stating it will only replace the high-voltage lithium-ion batteries where the recall software update detects a cell anomaly.

61. As recent history has shown, this approach is insufficient to remedy the fire risks arising from high-voltage lithium-ion batteries used in vehicle applications. For example, in July 2024, Stellantis Chrysler reported three additional vehicle fires in Jeep Wrangler PHEVs after receiving the purported software fix under NHTSA Recall No. 23V-787, leading to additional recalls. Likewise, certain Stellantis Chrysler Pacifica PHEVs were recalled twice, in February 2022 and July 2024, for fire risk arising from their LG Energy Solutions,

Ltd.-manufactured high-voltage lithium-ion batteries after the initial software remedy failed to prevent at least seven vehicle fires. In both instances, it remains to be seen whether the revised software updates are effective at preventing fires.

iii. Thermal runaway and fire were known risks of lithium-ion batteries and the Defendant, FORD, failed to adequately design around them

62. Most electric and hybrid-electric vehicles, such as the Affected Class Vehicles, use lithium-ion batteries due to their high power-to-weight ratios, high energy efficiency, good high-temperature performance, and low self-discharge.

63. Lithium-ion batteries are made up of multiple power-generating compartments called cells. Each cell contains the basic functional components of a simple battery: a positive electrode, a negative electrode, and an electrolyte. Each cell also contains a separator designed to keep the positive electrode from contacting and discharging into the negative electrode.

64. The active materials (either cathode or anode) store the lithium. The electrolyte carries the lithium-ions between electrodes. When lithium-ions flow from the negative electrode, or anode, to the positive electrode, or cathode, energy is discharged from the battery cell in the form of electricity. When the cell is charging, those ions flow in the opposite direction, or from cathode to anode.

65. Cells are then grouped into modules and packs. Those modules and packs, together with control systems, constitute the complete battery. A module ordinarily contains an array of cells, sensors, controls, protective safety devices, mounts, cooling elements or cooling provisions, and communications capabilities.

66. Beyond this, there are various methods of: (i) arranging the cells into arrays within the module; (ii) managing the flow of electrical current to and from the module or arrays within the module; and (iii) monitoring and managing the temperature of the cells within the module. Finally, there are various other necessary safety features, and integration with vehicles also plays an important role in the safety of the lithium-ion battery.

67. Thermal runaway and the resulting fire risk in lithium-ion batteries used in vehicles were well-documented at the time the Defendant, FORD, designed, manufactured, and sold the Affected Class Vehicles to the Plaintiff, Class Members and consumers.

68. In 2017, NHTSA released a report on lithium-ion battery safety issues that documented known battery fire risks, cited to the vast body of academic and engineering studies on those risks, and recommended rigorous design and testing protocols to protect against those risks. All of this would have been known to the Defendant, FORD, at the time it launched the Affected Class Vehicles.

69. Even before NHTSA released its comprehensive report on lithium-ion battery safety issues in 2017, many scientific and engineering articles discussed the thermal-runaway-related safety concerns of lithium-ion cells and battery packs and proposed solutions.

70. A central focus of the NHTSA report is the fire risk associated with the use of lithium-ion batteries, and recommended protection methods and rigorous testing required to mitigate that risk. It notes the major cause of these fires is the propagation of thermal runaway, including but not limited to, lithium plating-caused thermal runaway.

71. As the NHTSA Report stresses:

> Thermal runaway of a Lithium-ion cell is one of the fundamental failure mechanisms leading to safety hazards from Lithium-ion batteries. Cell heating is normal, but temperatures must be maintained within a predetermined safe operating level. Thermal runaway is most likely to be realized when an event occurs that results in rapid heating of the cell that outpaces the rate of heat dissipation by the cell. Rapid heating may be caused by internal or external short circuits, overcharging, and general use . . . or may be caused by heat from a source external to the cell, such as can be caused by radiant and conductive heating from adjacent cell heating, high ambient temperatures, and various types of mechanical shock.

72. The NHTSA Report further notes that the thermal and mechanical design of a cell strongly influences its ability to control and dissipate heat, thereby influencing its safety performance.

73. A lithium-ion cell can heat up and catastrophically fail under various scenarios: e.g., cell design and manufacturing defects, overcharging and over-discharging, mechanical damage such as crush or puncture, thermal abuse, internal short circuit, dendrite growth, and component failures. These scenarios generate local heating in the cell. The local heating induces locally high temperatures, which accelerate additional chemical reactions that can promote the degradation of the organic liquid electrolytes in the cell; these electrolytes and their decomposition products are volatile and flammable at high temperatures.

74. During thermal runaway, chemical reactions produce gases that cause the battery's internal pressure to rise, triggering the battery's vents to open and release the built-up gases. The battery cells may rupture where the cell design does not include pressure venting at all, if the venting component fails, or if heat generation outpaces the vent response time.

75. In the NHTSA 24V-954 Safety Recall, the Defendant, FORD, reported battery thermal venting in eight vehicles, and this venting was insufficient to prevent a fire in at least one instance. But even battery venting alone can damage or destroy a battery.

76. One well-known cause of internal short circuits in lithium-ion cells arises from the formation and growth of metallic dendrites (i.e., lithium plating). Dendrites are hard metallic lithium deposits that form on electrode surfaces and may continue to grow until they penetrate the separator and cause an internal electrical short, rapid increases in cell temperature, and thermal runaway. Overcharging, over-discharging, recharging in low temperatures, and metal particles in the cell, among other things, can cause dendrite growth over time. When an internal short circuit occurs (or the separator is breached), there is rapid energy release, and fire and explosion can result.

77. Dendrite formation occurs over time and the risk caused by it is cumulative, eventually resulting in catastrophic separator damage and thermal runaway propagation. While failure can sometimes occur very rapidly after a cell is damaged, damage may also sometimes

grow over many years and many duty cycles, causing delayed failure long after damage is initiated. In other words, the likelihood of failure continues to increase as the high-voltage batteries are subjected to more and more duty cycles, particularly where the battery system lacks appropriate use parameters.

78. In recalling the Affected Class Vehicles, the Defendant, FORD, acknowledges that separator damage causing an internal short circuit appears to be the root cause of the Spontaneous Fire Risk.

79. Troublingly, if separator damage is the root cause, the lurking internal physical damage to the battery has already been done or will be done after the Defendant, FORD, arbitrarily declares the Affected Class Vehicles once again safe to charge; it is unclear how the risk of fire will be resolved if the battery pack is not redesigned and replaced entirely.

80. The Defendant's, FORD's, selected lithium-ion cell design likely also contributed to the Spontaneous Fire Risk. Lithium-ion battery cells can take different forms for use in vehicles, including prismatic, pouch, cylindrical, elliptical, and large format. The high-voltage lithium-ion batteries utilize prismatic, large format-style cells.

81. As noted in the 2017 NHTSA report, prismatic cells designed for automotive applications can have much larger capacities than cylindrical cells. This increased capacity of these large format cells requires the protective devices to be designed and scaled accordingly.

82. The high-voltage 14.4-kWh battery cells in the Affected Class Vehicles are very large, making them more susceptible to runaway fire propagation because each cell contains more flammable material. In contrast, the electric vehicle manufacturer, Tesla, uses much smaller (1.5-kWh cells) in its EVs because, though more expensive, these smaller cells are less likely to kick off a runaway fire propagation event because if they fail they will not burn as hot for as long as the nearly ten times bigger 14.4-kWh battery cells in the Affected Class Vehicles.

83. Given the known, extreme hazards of runaway propagation in high-voltage lithium-ion batteries such as those used in the Affected Class Vehicles, it is incumbent on EV

manufacturers to implement strong safety measures in the high-voltage lithium-ion battery systems and conduct rigorous testing of these batteries.

84. It is critical, especially in automotive applications, to have sophisticated controls and safety monitoring features in lithium-ion battery systems. These include parameters that place limits on the state-of-charge, battery and individual cell voltage, current, and cell temperature, among other things to protect battery integrity. For example, setting low and high-end state of charge buffers prevents overcharging and over-discharging of batteries. In addition, appropriate controls to prevent individual cells from exceeding their maximum voltage can mitigate thermal runaway risk.

85. While a high-voltage lithium-ion battery itself may be manufactured separately by a third-party supplier, such as Samsung, the programming of the battery control system is made by the vehicle manufacturer.

86. As of 2017, there were many standards and testing protocols designed to guide vehicle manufacturers in constructing lithium-ion battery systems to be safely used in electric and plug-in hybrid electric vehicles, and many safety technologies and testing protocols existed at the time of the launch of the Affected Class Vehicles.

87. Appropriate safety measures to prevent thermal runaway at the cellular level included a range of electrical components and subsystems to prevent heating and overpressure to the cell by opening the circuit, increasing resistance, or changing the chemical composition of the cell.

88. Protection technology at the module level also existed, including technologies for charge and discharge management, designed to limit the electric current to and from the battery module or cellular arrays within a module. Such technologies also protect against the potential for abnormal discharge caused by failures, such as short circuiting due to separator damage, which can trigger thermal runaway and ultimately runaway propagation.

89. Also at the module level, vehicle manufacturers must ensure adequate thermal management to monitor and prevent the spikes in temperature associated with thermal runaway. Thermal management functions at the module level include, first monitoring, then cooling, and

various available technologies serve this function. Thermal management must also occur at the battery pack level in order to maintain an average temperature within the battery's specifications, and with even temperature distribution throughout the pack. Cooling and thermal barrier separation between cells can reduce the rate of thermal runaway propagation and can stop cell-to-cell propagation for properly sized cells and cooling systems.

90. Safety features at the module level include interlock circuits, pressure sensors, and communication architecture that allows the battery status to be monitored by the automobile electronic control unit. Other available safety measures operate at the battery pack level, including but not limited to, thermal management; an array of communication, control, and reporting functions; and the appropriate integration of the battery pack with the vehicle.

91. Any number of combinations of the above referenced safety protocols, in combination with effective safety testing, would have rendered the Affected Class Vehicles safe and fit for their intended purpose of operating as plug-in hybrid electric vehicles.

92. Rather, the programmed safety margins or modules that the Defendant, FORD, implemented in its design of the high-voltage lithium-ion battery system in the Affected Class Vehicles were inadequate to protect against premature battery degradation, lithium plating, and thermal runaway.

93. As the 2017 NHTSA report noted that vehicle manufacturers were not adequately designing and testing electric and plug-in hybrid electric systems powered by highly volatile lithium-ion batteries. Rather, the safety standards employed by vehicle manufactures, such as Defendant, FORD, appeared to trail—rather than lead—technology development.

94. The dilemma facing electric and plug-in hybrid electric vehicles is that incorporating adequate safety measures is not only expensive, but also is likely to reduce the vehicle's range because any protective materials means less space for the electricity-storing cells. The Defendant, FORD, skimped on available protection measures in order to promote the

high electric mode range and overall range, speed of charging, and other desirable features, of the Affected Class Vehicles—all to the benefit of the Defendant's, FORD's, bottom line and to the detriment of the Plaintiff, Class Members and consumers.

95. Regardless of the safety measures incorporated in the lithium-ion battery and related components designed to prevent runaway propagation, before launching an electric or plug-in hybrid electric vehicle, propagation testing is of the utmost importance.

96. In addition to the 2017 NHTSA report, at the time of the launch of the Affected Class Vehicles, there were a wide array of standards and safety testing procedures for lithium-ion batteries and vehicles that use them, including those promulgated by the Society for Automotive Engineers (SAE), the International Organization for Standardization, Underwriters Laboratories, the Institute for Electrical and Electronics Engineers, the United Nations Economic Commission for Europe, and Sandia National Laboratories for the Freedom CAR program.

97. Many of these standards and testing protocols protect against runaway propagation and the resulting catastrophe for vehicle owners and anyone or anything in their vicinity.

98. These standards and testing protocols provided the Defendant, FORD, with a wide range of guidelines on design and laboratory testing considerations to ensure the safety of the lithium-ion batteries in the Affected Class Vehicles.

99. Any adequate testing of the Affected Class Vehicles would have revealed the high-voltage lithium-ion batteries' propensity to fail and combust as the result of thermal runaway. Either the Defendant, FORD, followed these standards and testing protocols and discovered the risk, or it failed to follow these protocols and concealed these failures.

iv. The Defendant, FORD, knew about the fire risk in the high-voltage lithium-ion batteries

100. The Defendant, FORD, knew about the automotive industry's issues with the high-voltage lithium-ion battery packs it utilized in the Affected Class Vehicles and other vehicles.

101. As averred to above, starting in November 2023, two other vehicle manufacturers that used the same or similar high-voltage lithium-ion batteries as those in the Affected Class Vehicles began recalling their vehicles for separator damage and fire risk arising from the lithium-ion batteries. Then, in February 2025, Samsung recalled the high-voltage lithium-ion batteries themselves.

102. But Samsung's high-voltage lithium-ion battery fire issues go even further back, which the Defendant, FORD, certainly knew. For example, in August 2020, the Defendant, FORD, recalled its Kuga PHEV due to a fire risk defect and, in a familiar refrain, instructed owners not to charge the battery. The battery manufacturer was Samsung. Similarly, vehicle manufacturer BMW recalled over 26,000 vehicles due to a fire risk defect because the battery production process allowed impurities to enter the cells.

103. Further, in March 2022, Samsung recalled more than 1,100 of its high-voltage lithium-ion batteries—including some in the Defendant's FORD's, vehicles that may be the same or similar high-voltage lithium-ion batteries used in the Affected Class Vehicles as a result of poor manufacturing quality.

104. The Defendant, FORD, was also aware of the fire risk posed by lithium-ion batteries based on its recall of vehicles with high-voltage lithium-ion batteries produced by other manufacturers. For example, in June 2023, the Defendant, FORD, recalled certain Fusion PHEVs because a defect in their high-voltage lithium-ion batteries could cause excess voltage and current flow to the battery energy control module, damaging the component, and potentially resulting in loss of power and fire.

105. All these facts make it overwhelmingly likely that the Spontaneous Fire Risk is in fact the result of defectively designed, manufactured, or installed high-voltage lithium-ion batteries.

106. The Defendant, FORD, knew or ought to have known about the Battery Defect, and resulting Spontaneous Fire Risk, before the Affected Class Vehicles went to market. The Defendant, FORD, did not inform the Plaintiff, Class Members or consumers (or dealerships) of the Battery Defect, and resulting Spontaneous Fire Risk, but could have

done so through advertising, communication of information to dealerships to relay to consumers and/or written disclosures. Rather, as detailed herein, the Defendant, FORD, manufactured vehicles with the Battery Defect, and resulting Spontaneous Fire Risk, and fraudulently omitted this information from the Plaintiff, Class Members and consumers at the point of sale.

v. The Defendant, FORD, marketed the Affected Class Vehicles as safe and reliable PHEVs and knew these attributes were material to consumers

107. Plug-in hybrid-electric vehicles such as the Affected Class Vehicles have significant environmental and economic advantages over conventional vehicles with internal combustion engines.

108. While operating in electric-only mode, the Affected Class Vehicles do not produce any of the noxious tailpipe emissions—such as nitrogen oxides and other smog-forming pollutants, other pollutants harmful to human health, and greenhouse gases such as carbon dioxide and methane—that vehicles with internal combustion engines produce. When functioning properly, the Affected Class Vehicles can be beneficial for air quality and public health, and can help to reduce the overall ecological damage caused by using personal vehicles for transportation.

109. In addition to the environmental benefits of electric propulsion, the cost of the electricity necessary to enable the operation of the Affected Class Vehicles in electric mode vehicle is generally considerably less than the cost of fueling with gasoline or diesel.

110. The Plaintiff, Class Members and consumers paid a substantial premium for the plug-in hybrid propulsion system in the Affected Class Vehicles. In 2022, the base sticker price for the Corsair Grand Touring PHEV was $14,000 more than the price for a standard Corsair. Similarly, the Ford Escape PHEV sells for at least $7,500 more than its non-hybrid counterpart.

111. The only reason to pay the premium price commanded by the Affected Class Vehicles was because of the perceived environmental and financial benefits they offered because of their status as plug-in hybrid electric vehicles.

112. In marketing the Affected Class Vehicles, the Defendant, FORD, stressed both the economic and environmental perks of the hybrid propulsion system, which were material issues for prospective buyers. Indeed, a major selling point of the Affected Class Vehicles is their ability to run on electric power.

113. With the Escape PHEV, the Defendant, FORD, emphasized the vehicle's "advanced fourth-generation hybrid technology system" and "best-in-class EPA-estimated economy rating of 100 MPG combined and an EPA-estimated 37 miles of all-electric driving range:"

100 MPGE! ALL-NEW FORD ESCAPE PLUG-IN HYBRID BRINGS BEST-IN-CLASS EPA-ESTIMATED COMBINED FUEL ECONOMY

JUN 8, 2020 | DEARBORN, MICH.

All-new Ford Escape Plug-In Hybrid

- All-new Ford Escape Plug-In Hybrid with advanced fourth-generation hybrid technology system has a class-leading EPA-estimated fuel economy rating of 100 MPGe combined
- Ford Escape Plug-In Hybrid has an EPA-estimated all-electric range of 37 miles – 11 more miles than even Ford Fusion Energi, with more passenger space and up to four times the cargo volume behind its second-row seats
- In addition to potential savings at the pump, purchasing an Escape Plug-In Hybrid may qualify a customer for state tax incentives or rebates[1]; Escape Plug-In Hybrid starts under $35,000 MSRP

114. The Defendant, FORD, also touted the Escape's purported gas savings and tax incentives, stating the following:

> "Hybrids can serve as a hedge against rising gas prices. The Escape Plug-In Hybrid is available as gas prices are expected to rise, according to AAA, following the easing of stay-at-home mandates across the country. As consumers begin returning to work and taking weekend trips, demand for gasoline is expected to spike from the decades-low prices of the past two

months. Whether gas is $1.87 a gallon like today or $2.87 a gallon like this time last year, Escape Plug-In Hybrid is suited for both, with an EPA-estimated all-electric range of 37 miles and an EPA estimated rating of 41 miles per gallon combined when running strictly on gasoline."

And

"[i]n addition to potential savings at the pump, purchasing an Escape Plug-In Hybrid may qualify a customer for state tax incentives or rebates."

115. The Defendant's, FORD's, hybrid-electric powertrain in the Affected Class Vehicles is prominently marketed for its utility and versatility.

116. For example, with the Escape PHEVs, the Defendant, FORD, states the following:

"You can drive the Plug-in Hybrid in EV (Electric Vehicle) mode when the battery is charged, and continue seamlessly on your way as the vehicle switches to gas power when needed."

EMPOWERING.
YOUR CHOICE OF 4 WAYS TO GO.

With a variety of available engines, the Ford Escape® SUV is geared to suit your driving style. Turbocharged EcoBoost® engine models feature plenty of horsepower and torque for making the most of every ride. They also include Auto Start-Stop Technology that can help reduce fuel consumption and vehicle tailpipe emissions when the vehicle is fully stopped.

Hybrid models use a 2.5L Atkinson-cycle I-4 engine and an electric traction motor for maximum range and fuel economy. The Plug-In Hybrid models have an EPA-estimated range of 481 miles[1,2] You can drive the Plug-In Hybrid in EV (Electric Vehicle) mode when the battery is charged, and continue seamlessly on your way as the vehicle switches to gas power when needed.

Whichever model you choose, you'll be able to move from Park to Reverse to Drive with the simple turn of the finely tuned rotary gear shift dial, standard on every 2022 Escape.

2022 Ford Escape brochure

[2.5L ATKINSON-CYCLE I-4 PLUG-IN HYBRID[3]]

EXTEND YOUR OPTIONS

With its driver's side charge port and standard charging cord, Escape Plug-In Hybrid gives you the option to plug in to charge up the electric battery – at home, work, and even out shopping.

Standard on SE, SEL and Titanium Plug-In Hybrid FWD

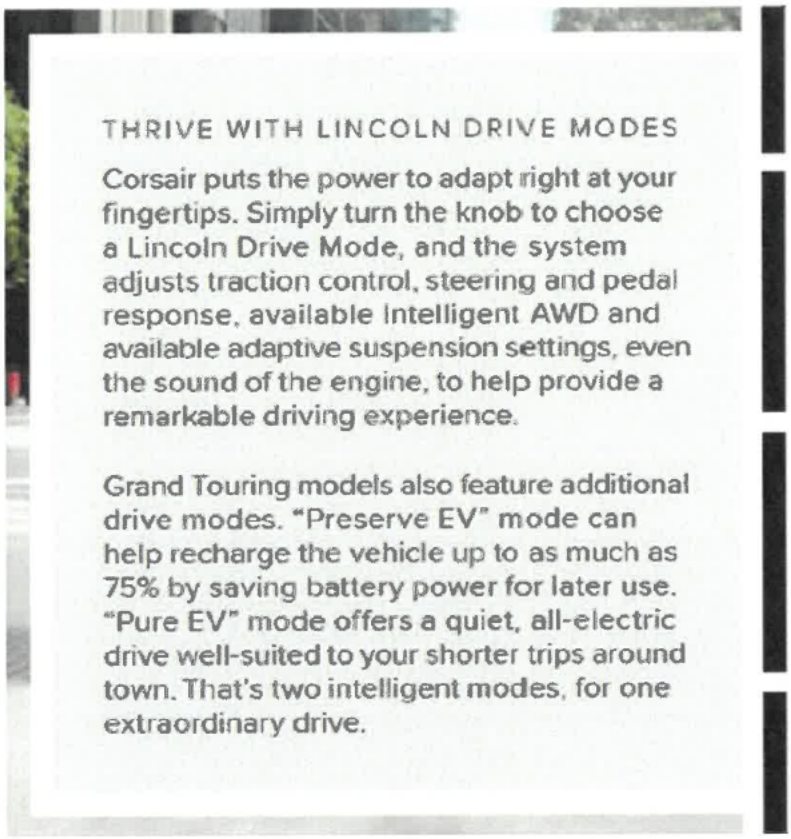
2020 Ford Escape brochure

117. Similarly, Lincoln advertises the Corsair Grand Touring's "advanced hybrid powertrain" and its benefits and states the following in its brochure:

SPARK YOUR SOPHISTICATED SIDE

When innovation sits at the table of luxury, astonishing things will happen. Introducing the Lincoln Corsair Grand Touring plug-in hybrid.[1] Agile but smooth. Sporty but elegant. Powerful but graceful. This is a hybrid in more ways than one. Corsair Grand Touring seamlessly blends an advanced hybrid powertrain with an impressively vigorous electric motor to offer you effortless acceleration, electric AWD, and a peaceful cabin. Go ahead, make a grand escape.

2021 Lincoln Corsair Grand Touring brochure



2021 Lincoln Corsair Grand Touring brochure

2.5-LITER I-4 GRAND TOURING PLUG-IN HYBRID
266 COMBINED HORSEPOWER[1]

Agile, sporty and a true pleasure to drive, the Lincoln Corsair® Grand Touring[2] SUV is a plug-in hybrid with the confidence of Intelligent all-wheel drive (AWD). It's easy to charge when you want electric power at the ready, and you can simply fuel it up. Experience the seamless convergence of modern technologies in Corsair Grand Touring.

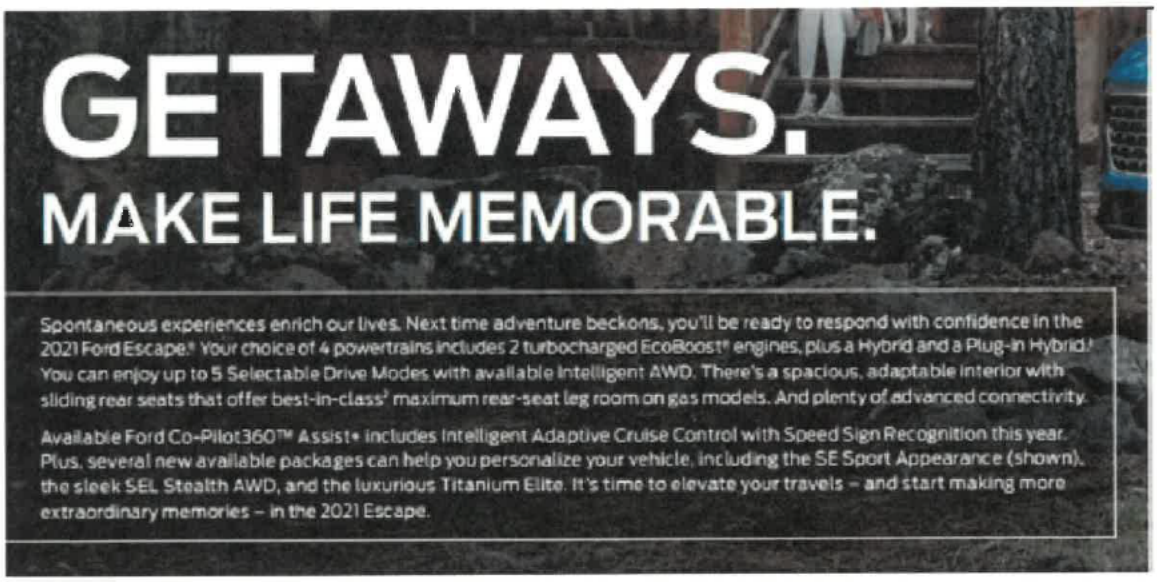
2022 Lincoln Corsair Grand Touring brochure

118. As the Defendant, FORD, proclaims in marketing for the model year 2023 Escape PHEV:

> "Ford is among the leading hybrid automakers in the U.S. because we understand that not all of our customers are ready to go all-electric,' said [brand manager Adrienne] Zaski. 'With two hybrid powertrain choices, customers can spend less time at the gas station and keep more money in their pockets.'"

119. Despite marketing the Escape as a "road-trip ready" vehicle fit for "the fun-loving freedom of spontaneous road trips," as the examples below demonstrate, the Spontaneous Fire Risk has left consumers unable to utilize their hybrid-electric feature at all, let alone for trips, and diminished the Affected Class Vehicles' overall reliability and utility.

2022 Ford Escape brochure



2021 Ford Escape brochure

120. Throughout its marketing brochures for the Affected Class Vehicles, the Defendant, FORD, also emphasizes the vehicles' safety features and reliability, evidencing the materiality of these qualities to consumers.

2021 Ford Escape brochure

MAKE YOUR WAY.
CONFIDENTLY.

Changing lanes. Keeping your distance. Parallel and perpendicular parking. Our extensive well-rounded collection of standard and available Ford Co-Pilot360™ technology features can help you with these everyday situations and so many more. Our advanced technologies are about supplementing your driving skills.[1] Helping you feel confidently in command on the road.

FORD CO-PILOT360™ TECHNOLOGY

FORD CO-PILOT360

Standard on every 2022 Ford Escape® SUV

- Pre-Collision Assist with Automatic Emergency Braking (AEB)
- BLIS® (Blind Spot Information System) with Cross-Traffic Alert
- Lane-Keeping System
- Auto High-Beam Headlamps
- Rear View Camera
- Autolamp (Automatic On/Off Headlamps)
- Post-Collision Braking

FORD CO-PILOT360 ASSIST+

Standard on Titanium; Available on SE and SEL

- Intelligent Adaptive Cruise Control with Stop-and-Go and Lane Centering Includes Speed Sign Recognition
- Evasive Steering Assist
- Voice-Activated Touchscreen Navigation System

AVAILABLE FEATURES

- Active Park Assist 2.0 *Standard on Titanium Elite Package*
- Front Parking Sensors *Standard on Titanium*
- Rear Parking Sensors *Standard on SEL and Titanium*
- Rain-Sensing Windshield Wipers *Standard on Titanium*
- Remote Start System *Standard on SEL and Titanium; Available on S and SE*

SE. Rapid Red Metallic Tinted Clearcoat. Available SE Sport Appearance Package. Available equipment.

1. Driver-assist features are supplemental and do not replace the driver's attention, judgment and need to control the vehicle. It does not replace safe driving. See Owner's Manual for details and limitations. 2. If vehicle is stopped for more than 3 seconds, driver must intervene and press "RES" button or accelerator pedal to resume system operation. 3. Additional charge.

2022 Ford Escape brochure

JOURNEY WITH CONFIDENCE

Our extensive collection of standard and available driver-assist technologies[2] utilizes a network of sensors and sophisticated cameras to offer you support during many scenarios. These advanced features are all aimed at helping you feel confident and in control.

2021 Lincoln Grand Corsair brochure

SAFETY & SECURITY

Personal Safety System™ for driver and front passenger with dual-stage front airbags,[8] safety belt pretensioners, safety belt energy-management retractors, safety belt usage sensors, driver's seat position sensor, crash severity sensor, restraint control module and Front-Passenger Sensing System

Driver's knee airbag[8]

Front- and rear-seat side airbags[8]

Glove-box-door-integrated knee airbag[8]

AdvanceTrac® with RSC® (Roll Stability Control™)

Individual Tire Pressure Monitoring System (excludes spare, when equipped)

Intelligent Access with push-button start

LATCH (Lower Anchors and Tether Anchors for Children)

MyKey® technology to help encourage responsible driving

Perimeter alarm

Safety Canopy® side-curtain airbags[8] with roll-fold technology and rollover sensor

SecuriCode™ invisible keypad

SecuriLock® Passive Anti-Theft System

SOS Post-Crash Alert System™

2021 Lincoln Grand Corsair brochure

There to help you stay on the course ahead or to take the guesswork out of what's behind, Corsair driver-assistance features[3] can help you in some tough situations. Take control of your travels with help from our Lincoln Co-Pilot360™ Technology.

STANDARD LINCOLN CO-PILOT360 1.5

Auto High-Beam Headlamps

Blind Spot Information System

Cross-Traffic Alert with Braking

Lane-Keeping System
Includes Lane-Keeping Aid, Lane-Keeping Alert and Driver Alert System

Pre-Collision Assist with Automatic Emergency Braking
Includes Pedestrian Detection, Forward Collision Warning and Dynamic Brake Support

Rear Parking Sensors

Rear View Camera

2022 Lincoln Grand Corsair brochure

121. Even as the Defendant, FORD, consistently and pervasively promoted the vehicles' safety, reliability, and hybrid-electric powertrains, the Defendant, Ford, never disclosed the Battery Defect, and resulting Spontaneous Fire Risk, to the Plaintiff, Class Members or consumers before they purchased and/or leased the Affected Class Vehicles.

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

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

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

(b) The relationships are indefinite;

(c) The Defendants are in the business of selling vehicles as are their dealers;

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

(e) The Defendants supervise their dealers regularly;

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

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

(i) Reporting of sales;

(ii) Computer network connection with the Defendants;

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

(iv) Use of the Defendants' supplied computer software;

(v) Participation in the Defendants' training programs;

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

(vii) Certification of Defendants' pre-owned vehicles;

(viii) Reporting to the Defendants with respect to vehicle delivery, including reporting Plaintiffs' names, addresses, preferred titles, primary and business

phone numbers, e-mail addresses, vehicle VIN numbers, delivery date, type of sale, lease/finance terms, factory incentive coding, if applicable, vehicles' odometer readings, extended service contract sale designations, if any, and names of delivering dealership employees; and

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

(h) Dealerships bind the Defendants with respect to:

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

(ii) Issuing service contracts administered by the Defendants.

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

(i) Financial incentives given to Ford dealer employees;

(ii) Locations of dealers;

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

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

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

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

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

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

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

(o) The Defendants require Ford dealers to perform the Defendants' warranty diagnoses and repairs, and to do the diagnoses and repairs according to the procedures and policies set forth in writing by the Defendants;

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

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

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

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

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

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

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

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

Part 2: RELIEF SOUGHT

1. The Plaintiff, on its own behalf and on behalf of Class Members, claims against the Defendants, FORD US and FORD CANADA, jointly and severally, as follows:

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

(b) a declaration that the Defendants, FORD US and FORD CANADA, were negligent in the manufacturing and/or design of the Affected Class Vehicles equipped with a defective lithium-ion battery causing the Plaintiff and Class Members to suffer damages;

(c) a declaration that the Defendants, FORD US and FORD CANADA:

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

(ii) breached express warranties as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages;

(iii) breached implied warranties or conditions of merchantability as to the Affected Class Vehicles and are consequently liable to the Plaintiff and

Class Members for damages pursuant to sections 18(a),(b) and 56 of the *Sale of Goods Act*, R.S.B.C. 1996 ("***SGA***"), 410; sections 16(2), (4) and 52 of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; sections 16(1), (2) and 52 of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; sections 16(a), (b) and 54 of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; sections 15(1), (2) and 51 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1; sections 16(a),(c) and 54 of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; sections 17(a), (b) and 54 of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; sections 20(a), (b) and 67 of the *Sale of Goods* Act, R.S.N.B. 2016, c. 110; sections 16(a), (b) and 53 of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; sections 15(a), (b) and 50 of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; sections 18(a),(b) and 60 of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and sections 18(a),(b) and 60 of *the Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2; and *Consumer Protection Act*, C.Q.L.R. c. P-40.1; 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*, C.C.S.M. c B120; Sections 14(1) and (2) of the *Consumer Protection Act,* 2002, S.O. 2002, c 30, Sch A, and Section 10 of the *Consumer Protection Act*, SNB 2024, c 1; *Consumer Protection Act*, C.Q.L.R. c. P-40.1, and are consequently liable to Class Members for damages;

(d) a declaration that it is not in the interests of justice to require that notice be given, where applicable, under the *BPCPA*; *Consumer Protection Act*, R.S.A. 2000, c. C-26.3*; The Consumer Protection and Business Practices Act,* S.S., 2013, c C-30.2; *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act,* 2002, S.O. 2002, c 30, Sch A*; Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; and *Consumer Protection Act*, S.N.B. 2024, c 1; *Consumer*

Protection Act, C.Q.L.R. c. P-40.1 and waiving any such applicable notice provisions;

(e) an Order for the statutory remedies available under the *BPCPA*; *Consumer Protection Act*, R.S.A. 2000, c. C-26.3;*The Consumer Protection and Business Practices Act,* S.S., 2013, c C-30.2;*The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act,* 2002, S.O. 2002, c 30, Sch A*; Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, SNB 2024, c 1; *Consumer Protection Act*, C.Q.L.R. c. P-40.1, including damages, cancellation and/or rescission of the purchase and/or lease of the Affected Class Vehicles;

(f) an order directing the Defendants, FORD US and FORD CANADA, to advertise any adverse findings against them pursuant to section 172(3)(c) of the *BPCPA*; Section 19 *of the Consumer Protection Act*, R.S.A. 2000, c. C-26.3;Section 93(1)(f) *of The Consumer Protection and Business Practices Act,* S.S., 2013, c C-30.2; Section 23(2)(f) of *The Business Practices Act*, C.C.S.M. c B120; Section 18(11) of the *Consumer Protection Act,* 2002, S.O. 2002, c 30, Sch A and Section 15 of the *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, SNB 2024, c 1; and *Consumer Protection Act*, C.Q.L.R. c. P-40.1;

(g) a declaration that the Defendants, FORD US and FORD CANADA, breached sections 36 and/or 52 of the *Competition Act,* R.S.C 1985, c. C-34 ("***Competition Act***") and are consequently liable to the Plaintiff and Class Members for damages;

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

(i) injunctive and/or declaratory relief requiring the Defendants, FORD US and FORD CANADA, to recall, repair and/or replace the defective lithium-ion battery equipped in the Affected Class Vehicles and/or buy back all Affected Class

Vehicles and to fully reimburse and make whole all Class Members for all costs and economic losses associated therewith;

(j) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("***CPA***") directing an aggregate assessment of damages;

(k) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;

(l) damages, including actual, compensatory, incidental, statutory and consequential damages;

(m) special damages;

(n) punitive damages;

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

(p) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and

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

Part 3: LEGAL BASIS

A. Jurisdiction

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

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

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

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

(g) concerns a tort committed in British Columbia;

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

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

B. Causes of Action

i. Negligence

2. The Defendant, FORD, at all material times owed a duty of care to the Plaintiff and Class to provide a product that did not have a manufacturing and/or design defect. The Affected Class Vehicles equipped with a defective high-voltage lithium-ion battery poses a real, substantial and imminent risk of harm or injury to Class Members, and catastrophic damage to the vehicle itself, on account of the Battery Defect, and resulting Spontaneous Fire Risk.

3. The Defendant, FORD, as the designer, engineer, manufacturer, promoter, marketer and/or distributor of the Affected Class Vehicles and their counterparts, intended for use by ordinary consumers, owed a duty of care to the Plaintiff and Class to ensure that the Affected Class Vehicles and their component parts, including the high-voltage lithium-ion battery, were reasonably safe for use.

4. At all material times, the Defendant, FORD, owed a duty of care to the Plaintiff and Class Members and breached that standard of care expected in the circumstances. It knew that its high-voltage lithium-ion battery equipped in the Affected Class Vehicles was defective due to an internal short circuit resulting in a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting so as to create a risk of fire, all of which posed

a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves. Despite such knowledge, the Defendant, FORD, continued to equip the defective high-voltage lithium-ion battery in the Affected Class Vehicles.

5. The Defendant, FORD, owed the Plaintiff and Class Members a duty to carefully monitor the safety and post market performance of the high-voltage lithium-ion battery equipped in the Affected Class Vehicles. The Defendant, FORD, had a duty to warn, or promptly warn, the Plaintiff and Class Members that its high-voltage lithium-ion battery equipped in the Affected Class Vehicles was defective due to an internal short circuit resulting in a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting so as to create a risk of fire, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves, and which it failed to do.

6. The circumstances of the Defendant, FORD, being in the business of engineering, designing, manufacturing and placing the Affected Class Vehicles and their component parts, including the vehicle's high-voltage lithium-ion battery, into the Canadian stream of commerce are such that the Defendant, FORD, is in a position of legal proximity to the Plaintiff and Class Members, and therefore is under an obligation to be fully aware of safety when engineering, designing, manufacturing, assembling and selling a product such as the Affected Class Vehicles equipped with the defective high-voltage lithium-ion battery.

7. It was reasonably foreseeable that a failure by the Defendant, FORD, to engineer, design, manufacturer and/or install a high-voltage lithium-ion battery in the Affected Class Vehicles that did not internally short circuit resulting in a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting and thereafter to monitor the performance of the high-voltage lithium-ion battery following market introduction, and take corrective measures when required, would lead to vehicles becoming inoperable while in motion, creating an unreasonable risk of fire and cause harm to the Plaintiff and Class Members and catastrophic damage to the Affected Class Vehicles themselves.

8. The Defendant, FORD, through its employees, officers, directors, and agents, failed to meet the reasonable standard of care or conduct expected of a vehicle manufacturer in the circumstances in that:

(a) it knew, or ought to have known, about the Battery Defect, and resulting Spontaneous Fire Risk, in the Affected Class Vehicles and should have timely warned the Plaintiff and Class Members;

(b) it engineered, designed, developed, manufactured, tested, assembled, marketed, advertised, distributed, supplied and/or sold vehicles equipped with a defective high-voltage lithium-ion battery due to an internal short circuit resulting in a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting so as to create a risk of fire, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves;

(c) it failed to timely warn the Plaintiff, Class Members and/or consumers about the Battery Defect, and resulting Spontaneous Fire Risk, in the Affected Class Vehicles causing a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting so as to create a risk of fire, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves;

(d) it failed to change matters relating to the manufacture and/or assembly of the defective high-voltage lithium- ion battery equipped in the Affected Class Vehicles in a reasonable and timely manner;

(e) it failed to provide a safe high-voltage lithium-ion battery equipped in the Affected Class Vehicles that that did not internally short circuit resulting in a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting creating an unreasonable risk of fire, all of which posed a real, substantial and

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

(f) it failed to properly inspect and test the high-voltage lithium-ion battery equipped in the Affected Class Vehicles;

(g) it knew, or ought to have known, about the Battery Defect, and resulting Spontaneous Fire Risk, 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 high-voltage lithium-ion battery;

(i) the high-voltage lithium-ion battery presented a serious safety hazard to drivers and passengers as the Affected Class Vehicles could experience a sudden and complete loss of motive power and an unreasonable risk of fire due to the Battery Defect, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves;

(j) notwithstanding that it foresaw personal injury and the loss of life and property of the drivers and passengers in the Affected Class vehicles, it failed or failed to promptly eliminate, correct, fix or remedy the Battery Defect; and

(k) it failed to exercise reasonable care and judgment in matters of engineering, design, manufacture, materials, workmanship and/or quality of product which would reasonably be expected of them as an automobile manufacturer.

9. As a result of the Battery Defect, and resulting Spontaneous Fire Risk, in the Affected Class Vehicles by reason of the Defendant's, FORD's, negligence and its failure to disclose and/or adequately warn of the Battery Defect, the Plaintiff and Class Members have suffered damages and will continue to suffer damages. The value of each of the Affected Class Vehicles is reduced or diminished. The Plaintiff and each Class Member must expend the time to have his/her vehicle repaired and be without their vehicle. The Defendant, FORD, should compensate the Plaintiff and each Class Member for their incurred out of

pocket expenses for, *inter alia*, repair, towing, alternative transportation and vehicle payments as a result of the Battery Defect and/or buy back the Affected Class Vehicles.

ii. Breach of Express Warranty

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

11. As an express warrantor, manufacturer, supplier and/or merchant, the Defendant, FORD, had certain obligations to conform the Affected Class Vehicles with the defective high-voltage lithium-ion battery to its express warranties.

12. The Defendant, FORD, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable plug-in hybrid electric vehicles with economic and environmental advantages over conventional vehicles with internal combustion engines. Such representations formed the basis of the bargain in the Plaintiff's and Class Members' decisions to purchase and/or lease the Affected Class Vehicles.

13. When the Plaintiff and Class Members purchased and/or leased their Affected Class Vehicles equipped with the defective high-voltage lithium-ion battery (either as new vehicles or as used vehicles with remaining warranty coverage), the Defendant, FORD, 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, FORD, provided an express three-year/60,000-kilometer written basic warranty on the Affected Class Vehicles it manufactured.

14. Further, the Defendant, FORD, provides a comprehensive "Hybrid Unique and Electric Vehicle Unique Component coverage for eight years or 160,000 kilometers (whichever occurs first). Depending on the vehicle, the electrical drivetrain system components covered by this warranty include, and are not limited to: high-voltage battery, high-voltage battery connector, battery energy control module (BECM), on-board charger, inverter

system controller (ISC), DC/DC converter, hybrid continuously variable transmission or electric driveline motor and transmission range sensor.

15. The comprehensive Hybrid Unique and Electric Vehicle Unique Component Coverage provides that if an electrical drivetrain system component, including its high-voltage lithium-ion batteries, require replacement, it will be replaced with a new, factory remanufactured, or factory refurbished component, at the sole discretion of the Defendant, FORD.

16. The express warranties, including the comprehensive warranties unique to the Affected Class Vehicles, of the Defendant, FORD, formed a basis of the bargain that was reached when the Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles.

17. The Battery Defect at issue in this litigation was present at the time the Affected Class Vehicles were sold and/or leased to Plaintiff and Class Members.

18. The Defendant, FORD, breached its express warranties (and continues to breach these express warranties) because it did not and has not corrected the Battery Defect in the Affected Class Vehicles.

19. Pursuant to its express warranties, the Defendant, FORD, was obligated to correct any high-voltage lithium-ion battery defect in the Affected Class Vehicles owned and/or leased by the Plaintiff and Class Members.

20. Although the Defendant, FORD, was obligated to correct the Battery Defect, none of the purported updated BECM software fixes to the high-voltage lithium-ion battery equipped in the Affected Class Vehicles are adequate under the terms of the warranty, as they did not cure the Battery Defect.

21. The Defendant, FORD, has failed and/or refused to conform the Affected Class Vehicles with the defective high-voltage lithium-ion battery to its express warranties. The Defendant's, FORD's, conduct, as averred to herein, has voided any attempt on its part to disclaim liability for its actions.

22. In particular, the Defendant, FORD, breached its express warranties by:

(a) knowingly providing the Plaintiff and Class Members with Affected Class Vehicles containing defects in material that were never disclosed to the Plaintiff and Class Members;

(b) failing to repair or replace the Affected Class Vehicles' high-voltage lithium-ion battery at no cost with a non-defective lithium-ion battery within the warranty period;

(c) ignoring, delaying responses to and denying warranty claims in bad faith; and

(d) supplying products and materials that failed to conform to its representations and the industry standards.

23. The Plaintiff and Class Members have performed each and every duty required of them under the terms of the warranties, except as may have been excused or prevented by the conduct of the Defendant, FORD, or by operation of law in light of the Defendant's, FORD's, conduct as described herein.

24. The Plaintiff and Class Members have given the Defendant, FORD, 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, FORD, can neither cure the Battery Defect in the Affected Class Vehicles nor resolve the incidental and consequential damages flowing therefrom.

25. The Defendant, FORD, received timely notice regarding the Battery Defect from the Plaintiff and Class Members when they brought their vehicles to their dealerships. The Defendant, FORD, also received notice through complaints made by other consumers, to, *inter alia*, NHTSA and/or Transport Canada. Notwithstanding such notice, the Defendant, FORD, has failed and refused to offer an effective and/or adequate fix or remedy

26. In its capacity as a manufacturer, supplier and/or warrantor, and by the conduct described herein, any attempt by the Defendant, FORD, to limit its express warranties in a manner

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

27. Further, because the Defendant, FORD, has not been able to fix or remedy the Battery Defect, the limitation on remedies included in the warranty fails its essential purpose and is null and void.

28. The Plaintiff and Class Members have suffered damages caused by the Defendant, FORD's, breach of its express warranties and are entitled to recover damages, including but not limited to, diminution of value and/or buy back of the Affected Class Vehicles.

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

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

30. The Defendant, FORD, is a "seller" with respect to motor vehicles within the meaning of the *SGA*, *Sale of Goods Act*, R.S.A. 2000, c. S-2; *Sale of Goods Act*, R.S.S. 1978, c. S-1; *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; *Sale of Goods Act*, R.S.O. 1990, c. S.1; *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; *Sale of Goods Act*, R.S.N.S. 1989, c. 408; *Sale of Goods* Act, R.S.N.B. 2016, c. 110; *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; *Sale of Goods Act*, R.S.Y. 2002, c. 198; *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2, pursuant to its agency relationship with its authorized dealers, distributors, resellers, retailers and/or intermediaries.

31. The Defendant, FORD, is and was at all relevant times a seller with respect to Affected Class Vehicles equipped with the defective high-voltage lithium-ion battery. The

Defendant, FORD, directly sold and marketed vehicles equipped with the defective high-voltage lithium-ion battery to customers through authorized dealers, like those from whom the Plaintiff and Class Members bought and/or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. The Defendant, FORD, knew that the Affected Class Vehicles equipped with the defective high-voltage lithium-ion battery would and did pass unchanged from the authorized dealers to the Plaintiff and Class Members, with no modification to the high-voltage lithium-ion battery.

32. The high-voltage lithium-ion battery equipped in the Affected Class Vehicles is inherently defective due to an internal short circuit resulting in a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting so as to create a risk of fire, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves.

33. A warranty that the Affected Class Vehicles were in merchantable condition was implied by law pursuant to sections 18(a) and/or (b) of the *SGA*, sections 16(2) and/or (4) of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; sections 16(1) and (2) of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; sections 16(a) and/or (b) of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; sections 15(1) and/or (2) of the *Sale of Goods Act*, RSO 1990, c. S.1; sections 16(a) and/or (c) of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; sections 17(a) and/or (b) of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; sections 20(a) and/or (b) of the *Sale of Goods* Act, R.S.N.B. 2016, c. 110; sections 16(a) and/or (b) of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; sections 15(a) and/or (b) of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; sections 18(a) and/or (b) *of the Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and sections 18(a) and (b) of the *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2.

34. The Defendant, FORD, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable plug-in hybrid electric vehicles with economic and environmental advantages over conventional vehicles with internal combustion engines. Such representations formed the basis of the bargain in Class Members' decisions to purchase and/or lease the Affected Class Vehicles.

35. Affected Class Vehicles equipped with the said high-voltage lithium-ion battery were defective at the time they left the possession of the Defendant, FORD. The Defendant, FORD, knew of this defect at the time these transactions occurred. Thus, Affected Class Vehicles equipped with the defective high-voltage lithium-ion battery, when sold and/or leased and at all times, thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

36. The Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles from the Defendant, FORD, 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, FORD, was the manufacturer, distributor, warrantor and/or seller of the Affected Class Vehicles. As such, there existed privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendant, FORD, as to its Affected Class Vehicles. Alternatively, privity of contract need not be established nor is it required because the Plaintiff and Class Members are intended third party beneficiaries of contracts between the Defendant, FORD, and its resellers, authorized dealers and/or distributors and, specifically, of the Defendant's, FORD's, implied warranties.

37. The Defendant's, FORD's, resellers, authorized dealers and/or distributors are intermediaries between the Defendant, FORD, 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, FORD, with respect to the Plaintiff's and Class Members' acquisition of the Affected Class Vehicles. The Defendant's, FORD's, warranties were designed to influence consumers who purchased and/or leased the Affected Class Vehicles.

38. The Defendant, FORD, knew or had reason to know of the specific use for which the Affected Class Vehicles were purchased and/or leased.

39. As a result of the Battery Defect, and resulting Spontaneous Fire Risk, 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.

40. The Defendant, FORD, knew about the Battery Defect in the Affected Class Vehicles, allowing it to cure its breach of warranty if it chose.

41. At all times that the Defendant, FORD, warranted and sold its Affected Class Vehicles, it knew or ought to 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, FORD, delivered them to its resellers, authorized dealers and/or distributors which sold the Affected Class Vehicles and the Affected Class Vehicles were, therefore, still defective when they reached Plaintiff and Class Members.

42. The Defendant's, FORD's, attempt to disclaim or limit the implied warranty of merchantability *vis-à-vis* the Plaintiff, Class Members and/or consumers is unconscionable and unenforceable. Specifically, the Defendant's, FORD's, warranty limitation is unenforceable because it knowingly sold and/or leased a defective product without informing the Plaintiff, Class Members and/or consumers about the Battery Defect in the Affected Class Vehicles. The time limits contained in the Defendant, FORD's, warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. Among other things, the Plaintiff and Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendant, FORD. A gross disparity in bargaining power existed between the Defendant, FORD, and the Plaintiff and Class Members, and the Defendant, FORD, knew that the Affected Class Vehicles were equipped with a high-voltage lithium-ion battery which were defective due to an internal short circuit resulting in a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting so as to create a risk of fire, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves.

43. The Plaintiff and Class Members have complied with all obligations under the warranty or otherwise have been excused from performance of said obligations as a result of the

Defendant's, FORD's, conduct alleged herein, affording the Defendant, FORD, a reasonable opportunity to cure its breach of written warranties, therefore, would be unnecessary and futile as there is no adequate fix or remedy for the Battery Defect.

44. As a direct and proximate result of the Defendant's, FORD's, breach of implied warranties or conditions of merchantability, the Plaintiff and Class Members have suffered loss, diminution and/or damage as a result of the Battery Defect in the Affected Class Vehicles pursuant to sections 56 of the *SGA*, section 52 of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; section 52 of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; section 54 of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; section 51 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1; section 54 of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; section 54 of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; section 67 of the *Sale of Goods* Act, R.S.N.B. 2016, c. 110;section 53 of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1;section 60 of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; section 60 of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and section 60 of the *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2.

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

45. The Plaintiff and Class Members in British Columbia hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.

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

47. 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".

48. 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".

49. The purchase and/or lease of the Affected Class Vehicles by Class Members in British Columbia for personal, family or household purposes, and not for resale or for carrying on business constitutes a "consumer transaction" within the meaning of section 1(1) of the *BPCPA*, and provinces with parallel consumer protection legislation, as described in Schedule "A".

50. The Defendant, FORD, 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, FORD, is the vehicle manufacturer of the Affected Class Vehicles and distributes, markets and/or supplies such vehicles to consumers including Class Members in British Columbia. At all relevant times, the Defendant, FORD, 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, FORD.

51. By failing to disclose and actively concealing the Battery Defect, and resulting Spontaneous Fire Risk, in the Affected Class Vehicles, the Defendant, FORD, 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, FORD, knew that the Affected Class Vehicles equipped with a defective lithium-ion battery caused the Affected Class Vehicles to suddenly lose complete motive power, short circuit and create an unreasonable risk of fire. The Battery Defect poses a real, substantial and/or imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves. The Defendant, FORD, and made misleading statements or omissions concerning the Battery Defect but yet failed to adequately warn consumers.

52. As alleged herein, the Defendant, FORD, made misleading representations and omissions

concerning the quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles, including its hybrid-electric powertrain and high-voltage lithium-ion battery, as to reliability, safety, operability and function.

53. In purchasing and/or leasing the Affected Class Vehicles, Class Members were deceived by the Defendant's, FORD's, failure to disclose its knowledge of the Battery Defect and associated safety risk.

54. The Defendant, FORD, engaged in a pattern of unfair or deceptive acts or practices in failing to disclose to Class Members that the Affected Class Vehicles were equipped with a defective lithium-ion battery, which due to an internal short circuit can result in a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting so as to create a risk of fire, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves. In particular, the Defendant, FORD, engaged in the following unfair or deceptive acts:

(a) failing to disclose that the Affected Class Vehicles equipped with the defective lithium-ion battery were not of a particular standard, quality, or grade;

(b) failing to disclose before, during and/or after the time of purchase, lease and/or repair, any and all known material defects or material nonconformity of the Affected Class Vehicles, including the Battery Defect;

(c) failing to disclose at the time of purchase and/or lease that the Affected Class Vehicles, including the defective lithium-ion battery, were not in good working order, defective, not fit for their intended, and ordinary purpose, and created a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves;

(d) failing to give adequate warnings and/or notices regarding the use, defects, and problems with the defective lithium-ion battery equipped in the Affected Class Vehicles to consumers who purchased and/or leased the Affected Class Vehicles,

even though the Defendant, FORD, possessed exclusive knowledge of the inherent defect in the lithium-ion battery equipped in the Affected Class Vehicles before and at the time of purchase and/or lease;

(e) failing to disclose, either through warnings and/or recall notices, and/or actively concealing, the fact that the lithium-ion battery equipped in the Affected Class Vehicles was defective, even though the Defendant, FORD, knew about the Battery Defect, and resulting Spontaneous Fire Risk; and

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

55. In purchasing and/or leasing the Affected Class Vehicles, Class Members in British Columbia were deceived by the Defendant's, FORD's, failure to disclose its exclusive knowledge that the defective lithium-ion battery equipped in the Affected Class Vehicles was prone to internal short circuiting resulting in a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting so as to create a risk of fire, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves.

56. By failing to disclose and actively concealing the Battery Defect, the Defendant, FORD, 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".

57. Further, as alleged herein, the Defendant, FORD, made misleading representations and/or omissions concerning the quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles, including its hybrid-electric powertrain and high-voltage lithium-ion battery, 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 lithium-ion battery which was prone to internal short circuiting resulting in a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting so as to create a risk of fire, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves;

(b) advertisements which uniformly omitted any information about the Battery Defect and which misled consumers into believing that the lithium-ion battery would function properly and, in a hazard-free manner; and

(c) emphasizing and extolling in brochures and press releases that the Affected Class Vehicles equipped with the defective lithium-ion battery were dependable, technologically advanced, safe, of the highest quality.

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

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

(b) representing that the Affected Class Vehicles, including its lithium-ion battery, were of a particular standard, quality or grade, when they were not;

(c) advertising the Affected Class Vehicles, including its lithium-ion battery, with the intent not to sell them as advertised; and

(d) representing that the Affected Class Vehicles, including its lithium-ion battery, have been supplied in accordance with a previous representation as to quality, advanced technology, reliability, durability, performance and/or safety, when they have not.

59. In purchasing and/or leasing the Affected Class Vehicles, Class Members in British Columbia were deceived by the Defendant's, FORD's, failure to disclose its exclusive knowledge of the Battery 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.

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

61. In purchasing and/or leasing the Affected Class Vehicles, Class Members were deceived by the Defendant's, FORD's, failure to disclose its knowledge of the Battery Defect and associated safety risk.

62. Class Members had no way of knowing of the Defendant's, FORD's, representations were false, misleading and incomplete or knowing the true nature of the Battery Defect in the Affected Class Vehicles. As alleged herein, the Defendant, FORD, engaged in a pattern of deception in the face of a known lithium-ion battery defect in the Affected Class Vehicles. Class Members did not, and could not, unravel the Defendant's, FORD's, deception on their own.

63. The Defendant, FORD, 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".

64. The Defendant, FORD, owed Class Members a duty to disclose the truth about the Battery Defect in the Affected Class Vehicles as it created a serious safety hazard and the Defendant, FORD:

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

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

(c) failed to warn consumers or to publicly admit that the Affected Class Vehicles had a lithium-ion battery defect.

65. The Defendant, FORD, had a duty to disclose that the lithium-ion battery equipped in the

Affected Class Vehicles was fundamentally flawed, as described herein, because it created a serious safety hazard as it was prone to internal short circuiting resulting in a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting so as to create a risk of fire, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves. Class Members relied on the Defendant's, FORD's, material misrepresentations and omissions regarding the Affected Class Vehicles and the Battery Defect.

66. The Defendant's, FORD's, conduct proximately caused injuries to Class Members that purchased and/or leased the Affected Class Vehicles and suffered harm as alleged herein.

67. Class Members were injured and suffered ascertainable loss, injury in fact and/or actual damage as a proximate result of the Defendant's, FORD's, conduct in that Class Members incurred costs related the Battery Defect including, *inter alia*, repair, service and/or replacement costs, rental car and towing costs and overpaid for their Affected Class Vehicles and have suffered a diminution in value.

68. The Defendant's, FORD's, violations cause continuing injuries to Class Members. The Defendant's, FORD's, unlawful acts and practices complained of herein affect the public interest.

69. The Defendant, FORD, knew of the defective lithium-ion battery equipped in the Affected Class Vehicles and which were materially compromised by the Battery Defect.

70. The facts concealed and omitted by the Defendant, FORD, from Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase an Affected Class Vehicle or pay a lower price. Had Class Members known about the defective nature of the lithium-ion battery equipped in the Affected Class Vehicles, they would not have purchased and/or leased the Affected Class Vehicles or would not have paid the prices they paid.

71. Class Members' injuries were directly or proximately caused by the Defendant's, FORD's, unlawful and deceptive business practices.

72. As a result of the Defendant's, FORD's, conduct as alleged herein, Class Members in British Columbia are entitled to a declaration under section 172(1)(a) of the *BPCPA* that an act or practice engaged in by the Defendant, Porsche, 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".

73. 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's, FORD's, failure to disclose and/or actively conceal the Battery Defect from Class Members in British Columbia and its misrepresentations as to quality, advanced technology, reliability, durability, performance, and/or safety of the Affected Class Vehicles.

v. Breach of the *Competition Act*

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

75. By making representations to the public as to quality, advanced technology. reliability, durability, performance, and/or safety of the Affected Class Vehicles, the Defendant, FORD, 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.

76. At all relevant times, the Defendant, FORD, was the seller and/or supplier of the Affected Class Vehicles. As such, there existed contractual privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendant, FORD, 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, FORD.

77. The Defendant, FORD, engaged in unfair competition and unfair or unlawful business practices through the conduct, statements and omissions described herein and by knowingly and intentionally concealing the Battery Defect in the Affected Class Vehicles from the Plaintiff and Class Members, along with concealing the safety risks, costs, and monetary damage resulting from the Battery Defect. The Defendant, FORD, should have disclosed this information because it was in a superior position to know the true facts related to the Battery Defect and the Plaintiff and Class Members could not reasonably be expected to learn or discover the true facts related to the Battery Defect.

78. The Battery Defect in the Affected Class Vehicles constitutes a serious safety issue. The Defendant, FORD, knew that the Affected Class Vehicles equipped with the defective lithium-ion battery which was prone to internal short circuiting resulting in a shutdown of the vehicle's propulsion system, loss of motive power and battery thermal venting so as to create a risk of fire, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Affected Class Vehicles themselves, and which triggered the Defendant's, FORD's, duty to disclose the safety issue to consumers.

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

80. Further, the Plaintiff and Class Members relied upon the Defendant's, FORD's, misrepresentations as to quality, advanced technology, reliability, durability, performance

and/or safety of the Affected Class Vehicles to their detriment in purchasing and/or leasing the Affected Class Vehicles so as to cause loss and/or damage to the Plaintiff and Class Members.

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

vi. Fraudulent Concealment and Omission

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

83. The Plaintiff's and Class Members' claim for fraudulent concealment and omission arises from Defendant's, FORD's, affirmative representations about the safety, reliability, durability, performance and safety of the Affected Class Vehicles, and simultaneous concealment and omission of the Battery Defect, as more specifically outlined herein and described more fully throughout this Notice of Civil Claim.

84. The Defendant, FORD, had a duty to disclose material facts as to the Battery Defect, and resulting Spontaneous Fire Risk, in connection with the sale and/or lease of the Affected Class Vehicles. The Defendant, FORD, knowingly made a false representation concerning material information in-connection with the sale and/or lease of the Affected Class Vehicles, knowingly concealed material information in connection with the sale and/or lease of the Affected Class Vehicles, knowingly failed to disclose material information in connection with the sale and/or lease of the Affected Class Vehicles and as a result of its conduct, the Plaintiff and Class Members suffered economic damages.

85. The Defendant, FORD, concealed and suppressed material facts concerning the serious safety defect in the Plaintiff's vehicle.

86. The Defendant, FORD, sold and/or leased the Affected Class Vehicles to the Plaintiff and Class Members without disclosing the true nature of the Affected Class Vehicles, including the Battery Defect, and resulting Spontaneous Fire Risk, and concealed and suppressed the defect from government safety regulators and consumers.

87. The Defendant, FORD, concealed and suppressed the true nature of the Affected Class Vehicles, as well as the Battery Defect, and resulting Spontaneous Fire Risk, with the intent to deceive the Plaintiff and Class Members

88. The Defendant, FORD, did so to falsely assure purchasers, lessees, and owners of the Affected Class Vehicles that the vehicles they were purchasing and/or leasing were safe and could be operated in electric mode in order to cut costs and avoid the requisite safety technology and rigorous testing of the hybrid-electric propulsion system and its volatile high-voltage lithium-ion batteries prior to launching the Affected Class Vehicles, and then to avoid the cost and negative publicity of a recall. The concealed information was material to consumers, both because it concerned the quality and safety of the Affected Class Vehicles and because the information would have significantly decreased the value and sales price of the vehicles.

89. The Defendant, FORD, had a duty to disclose the true nature of the Affected Class Vehicles because it was known and only knowable to the Defendant, FORD.

90. The Defendant, FORD, had superior knowledge and access to the facts; and the Defendant, FORD, knew the facts were not known to, or reasonably discoverable by the Plaintiff and Class Members. The Defendant, FORD, also had a duty to disclose because it made many affirmative representations about the safety and quality of the Affected Class Vehicles and touted the ability of the vehicles to operate as plug-in hybrid electric vehicles, as set forth herein; these representations were misleading, deceptive, and incomplete without the disclosure of the Battery Defect, and resulting Spontaneous Fire Risk. Having provided information to the Plaintiff and Class Members, the Defendant, FORD, had a duty to disclose not just the partial truth, but the entire truth. Finally, once the Affected Class Vehicles were on the road, the Defendant, FORD, had a duty to monitor the Affected Class Vehicles under the *MVSA* and *FMVSS* and implementing regulations, including the duty to promptly notify consumers of known safety defects.

91. The Defendant, FORD, concealed and suppressed these material facts, in whole or in part, to protect its profits and avoid recalls that would hurt the Defendant's, FORD's, image,

and cost the Defendant, FORD, money, and it did so at the expense of the Plaintiff and Class Members.

92. The Defendant, FORD, has still not made full and adequate disclosure and continues to defraud the Plaintiff and Class Members and conceal material information regarding the Battery Defect, and resulting Spontaneous Fire Risk.

93. The Plaintiff and Class Members were unaware of these omitted material facts and would not have purchased the Affected Class Vehicles and paid the high premium as the result of the Defendant's, FORD's, claims that they could be safely operated as a plug-in hybrid electric vehicle. The Defendant, FORD, was in exclusive control of the material facts and such facts were not known to the Plaintiff and Class Members.

94. As a result of the Defendant's, FORD's, concealment, suppression, and/or omission of the facts, which the Plaintiff and Class Members relied on, the Plaintiff and Class Members sustained damage. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and Class Members did not get the benefit of the bargain since their vehicles were worth less than they would have been without the Battery Defect, and further the Affected Claas vehicles have diminished in value as a result of the Defendant's, FORD's, concealment of, and failure to timely disclose and remedy, the Battery Defect. Class Members who sold their catastrophically dangerous Affected Class Vehicles at a substantial loss have also suffered quantifiable damages, as will all those who sell between now and the time the Defendant, FORD, implements an adequate recall repair (if it ever does). Had the Plaintiff and Class Members been aware of the concealed Battery Defect that existed in the Affected Class Vehicles, they would have paid less for the vehicle or would not have purchased or leased it at all.

95. Through its omissions regarding the Battery Defect, and resulting Spontaneous Fire Risk, in the Affected Class Vehicles, the Defendant, FORD, intended to induce, and did induce, the Plaintiff and Class Members to either purchase and/or lease the Affected Class Vehicles that they otherwise would not have purchased and/or pay more for the Affected Class Vehicles than they otherwise would have paid.

96. Accordingly, the Defendant, FORD, is liable to the Plaintiff and Class Members for damages in an amount to be proven at trial.

97. The Defendant's, FORD's, acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of the Plaintiff's and Class Members' rights and well-being to enrich the Defendant, FORD. The Defendant's, FORD's, conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

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

98. The Plaintiff and Class Members had no way of knowing about the Battery Defect, and Spontaneous Fire Risk, in the Affected Class Vehicles. The Defendant, FORD, concealed its knowledge of the Battery Defect while continuing to market, sell and/or lease, the Affected Class Vehicles equipped with the defective lithium-ion battery.

99. Within the *Limitation Act,* and to equivalent legislative provisions in the rest of Canada as described in Schedule "B", the Plaintiff and Class Members could not have discovered through the exercise of reasonable diligence that the Defendant, FORD, was concealing the conduct complained of herein and misrepresenting the true qualities of the Affected Class Vehicles.

100. The Plaintiff and Class Members did not know facts that would have caused a reasonable person to suspect or appreciate that there was a defect in the lithium-ion battery equipped in the Affected Class Vehicles.

101. For these reasons, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada, as described in Schedule "B", has been tolled by operation of the discovery rule with respect to the claims in this proposed class proceeding.

102. Further, due to Defendant's, FORD's, knowledge and active concealment of the Battery Defect throughout the time period relevant to this proposed class proceeding, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada as described in Schedule "A" has been tolled.

103. Instead of publicly disclosing the Battery Defect in the Affected Class Vehicles, the Defendant, FORD, kept the Plaintiff and Class Members in the dark as to the Battery Defect and the serious safety hazards it presented.

104. The Defendant, FORD, was under a continuous duty to disclose to the Plaintiff and Class Members the existence of the Battery Defect in the Affected Class Vehicles.

105. The Defendant, FORD, knowingly, affirmatively and actively concealed or recklessly disregarded the true nature, quality and character of the Affected Class Vehicles.

106. As such, the Defendant, FORD, is estopped from relying on the *Limitation Act*, and equivalent legislative provisions in the rest of Canada as described in Schedule "B", in defense of this proposed class proceeding.

Plaintiff's address for service:

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

Fax number address for service (if any):

(604) 436-3315

E-mail address for service (if any):

ksgarcha@dusevicgarchalaw.ca

Place of trial:

Vancouver, BC, Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: April 9, 2025

Signature of K.S. Garcha

lawyer for plaintiff(s)

Schedule "A"

Consumer Protection Legislation Across Canada

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

Province or Territory	Legislation
New Brunswick	*Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1 "Consumer Product" - Section 1(1); "Buyer" - Section 1(1); "Contract for the sale or supply of a consumer product" - Section 1(1); and "Seller" - Section 1(1); *Consumer Protection Act,* SNB 2024, c1 "Consumer" – Section 1; "Consumer Agreement" – Section 1; "Consumer Transaction" – Section 1; and "Unfair Practices" – Part 2, Section 10
Québec	*Consumer Protection Act*, CQLR c. P-40.1 "Goods" - Article 1(d); "Consumer" - Article1(e); "Manufacturer" - Article 1(g); and "Merchant" - Article 1

Schedule "B"

Limitation Act Legislation Across Canada

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

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

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

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

Appendix

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The proposed multi-jurisdictional class action involves certain Class Vehicles designed, manufactured, assembled, tested, marketed, distributed, supplied, leased, and/or sold by the Ford Defendants which are equipped with defective high-voltage lithium-ion batteries due to internal short circuit resulting in shutdown of the vehicle's propulsion system, loss of motive power, and battery thermal venting, which creates a risk of fire during operation or while parked, all of which poses a real, substantial, and imminent risk of harm or injury to vehicle occupants, to people and property nearby and catastrophic damage to the Class Vehicles themselves.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:
[ ] motor vehicle accident
[ ] medical malpractice
[ ] another cause

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

Part 3: THIS CLAIM INVOLVES:

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

Part 4:

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

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

3. *Business Practices and Consumer Protection Act,* S.B.C. 2004; *Consumer Protection Act*, RSA 2000, c. C-26.3*; The Consumer Protection and Business Practices Act,* SS, 2014, c C-30.2;*The Business Practices Act*, CCSM c B120; *Consumer Protection Act,* 2002, SO 2002, c 30, Sch A*; Consumer Product Warranty and Liability Act*, and SNB 1978, c C-18.1; *Consumer Protection Act*, CQLR c. P-40.1

4. *Sale of Goods Act*, R.S.B.C 1996, c. 410; *Sale of Goods Act*, RSA 2000, c. S-2; *Sale of Goods Act*, RSS 1978, c. S-1; *The Sale of Goods Act*, CCSM 2000, c. S10; *Sale of Goods Act*, RSO 1990, c. S.1; *Sale of Goods Act*, RSNL 1990, c. S-6 ;*Sale of Goods Act*, RSNS 1989, c. 408; *Sale of Goods* Act, RSNB 2016, c. 110; *Sale of Goods Act*, RSPEI 1988, c. S-1; *Sale of Goods Act*, RSY 2002, c. 198; *Sale of Goods Act*, RSNWT 1988, c. S-2; and *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2; and *Consumer Protection Act,* CQLR c. P-40.1

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

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

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

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

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

10. *Limitation Act*, S.B.C. 2012, c.13; *Limitations Act*, RSA 2000, c. L-12; *The Limitations Act,* SS 2004, c. L-16.1;*The Limitations Act,* SS 2004, c. L-16.1;*The Limitation of Actions Act*, CCSM c. L150;*Limitations Act,* 2002, SO 2002, c. 24, Sch. B; *Limitations Act*, SNL 1995, c. L-16.1; *Limitation of Actions Act,* SNS 2014, c. 35; *Limitation of Actions Act*, SNB 2009, c. L-8.5; *Statute of Limitations,* RSPEI 1988, c. S-7; *Limitation of Actions Act,* RSY 2002, c. 139; *Limitation of Actions Act*, RSNWT 1988, c. L-8; *Limitation of Actions Act,* RSNWT (Nu) 1988, c. L-8; and *Civil Code of Quebec*, CQLR, c. C-1991, art. 2908