



Court File No. **VLC-S-S-253786**
NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BEWEEN:

[REDACTED]

PLAINTIFF

AND:

VOLKSWAGEN GROUP OF CANADA INC.

DEFENDANT

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

NOTICE OF CIVIL CLAIM

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

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

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

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

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

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

TIME FOR RESPONSE TO CIVIL CLAIM

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

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

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

A. Nature of Claim

1. The within proposed auto defect multi-jurisdictional class proceeding involves certain model year Volkswagen (“**VW**”) and Audi-branded vehicles, defined below as “**Affected Class Vehicles**”, marketed, advertised, distributed, supplied, leased and/or sold by the Defendant, Volkswagen Group of Canada Inc. (“**VWGoC**”), in Canada, including the Province of British Columbia, equipped with defective autonomous emergency braking (“**AEB**”) systems. In particular, the Affected Class Vehicles have design, material, manufacturing and/or workmanship defects in the AEB system, including but not limited to, inadequate calibration of the software from multiple control modules, including the Anti-lock Braking System (“**ABS**”) Control Module, such that it is prone to activating the brakes when there are no obstacles in the vehicle’s path or failing to activate when there are obstacles in the vehicle’s path (the “**AEB System Defect**”). The AEB System Defect prevents the Affected Class Vehicles from behaving as designed and advertised in real-world driving conditions.
2. “Affected Class Vehicles” refers to the following model year VW and Audi-branded vehicles marketed, advertised, distributed, supplied, leased and/or sold by the Defendant, VWGoC, in Canada, including the Province of British Columbia, with the AEB System Defect:

VW	
MODEL	MODEL YEARS
Arteon	2019-2025
Atlas	2018-2025
Atlas Cross Sport	2020-2025
CC	2016-2017
Golf	2016-2021
Golf R	2016-2019 and 2022-2025
Golf Sportwagen	2016-2019
GTI	2016-2025
e-Golf	2016-2019
ID.4	2021-2025
Jetta	2016-2025
Passat	2016-2025
Taos	2022-2025
Tiguan	2018-2025
Touareg	2015-2017
AUDI	
MODEL	MODEL YEARS
A3	2015-2020 and 2022-2025
A4	2013-2025
A5	2013-2025
A6	2012-2025
A7	2012-2025
A8	2011-2025
Q3	2019-2025
Q5	2013-2025
Q7	2017-2025
Q8	2019-2025
e-tron	2019-2025
e-tron Sportback	2020-2025
e-tron quattro	2019-2025
e-tron GT	2022-2025
Q4 e-tron	2022-2025

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

3. AEB systems are one of the most highly touted advancements in vehicle safety. These systems utilize input from various sensors, such as cameras and radar, installed in a vehicle to monitor the vehicle's surroundings and detect obstacles in its path. If these systems detect any obstacles or dangers, they automatically apply the vehicle's brakes

by relaying this input from the vehicle's various sensors to the appropriate control modules, such as the ABS Control Module, the Transmission Control Module ("TCM"), the Powertrain Control Module ("PCM") (or Engine Control Module). With AEB systems a vehicle stops independently of driver input when it senses a crash is imminent to avoid a crash, or to reduce the severity of a crash that cannot be avoided. When working properly, AEB systems can reduce the incidence of collisions and resultant injuries. There are both forward systems, which activate when the vehicle is driving forward, and rear systems, which activate when the vehicle is in reverse.

4. The AEB system is becoming increasingly standard on nearly every VW and Audi-branded vehicle. Despite the Affected Class Vehicles having different versions of the AEB system, each utilizes the same or substantially identical core vehicle components, and as such, the AEB System Defect is the same for all Affected Class Vehicles.
5. In order to make sure the AEB system in the Affected Class Vehicles works as intended and advertised, the Defendant, VWGoC, must ensure that the component systems and/or sensors sourced from various third-party suppliers communicate properly. For example, sensors on the front of the vehicle, produced by parts suppliers such as Robert Bosch LLC, must communicate information to the ABS to apply the brakes, the TCM to shift the car into the proper gear, and the PCM to limit power from the engine so that the vehicle is no longer propelled forward. Calibrating these systems to work together properly is the responsibility of the vehicle manufacturer.
6. Due to the AEB System Defect, the Affected Class Vehicles are predisposed to slowing or stopping suddenly without driver input when there are no obstacles in front or behind the vehicle. These unexpected events increase the likelihood of collisions. Conversely, the AEB system in the Affected Class Vehicles can also fail to activate in the exact situations it was designed to detect and mitigate, such as when a pedestrian or vehicle stops abruptly in front of the vehicle. As a result, the AEB System Defect makes the AEB system unpredictable and driving the Affected Class Vehicles unsafe, while at the same time rendering the AEB system unresponsive when it is most needed.
7. Based on pre-production testing, including design failure mode analysis, early warranty claims, replacement part orders, and consumer complaints to the Defendant's, VWGoC's, authorized network of dealers, as well complaints to vehicle safety regulators such as the United States National Highway Traffic Safety Administration ("NHTSA") and

Transport Canada, the Defendant, VWGoC, was aware of the AEB System Defect in Audi-branded Affected Class Vehicles as early as 2013, and in the VW-branded Affected Class Vehicles as early as 2015. Despite being aware of the AEB System Defect, the Defendant, VWGoC, knowingly, actively and affirmatively omitted and concealed the existence of the AEB System Defect in advertising and manuals to increase profits by selling additional Affected Class Vehicles at inflated prices.

8. The Defendant, VWGoC, knew about the AEB System Defect present in the Affected Class Vehicles, along with the attendant safety problems, and concealed this information from the Plaintiff and putative class members at the time of sale, lease, repair, and thereafter. In fact, instead of repairing the Affected Class Vehicles, the Defendant, VWGoC, has insisted that the vehicles are working as designed. Moreover, information about the AEB System Defect was wrongfully, fraudulently and/or intentionally concealed from the Plaintiff and putative class members.
9. Further, the Defendant, VWGoC, acknowledged the AEB System Defect in the Affected Class Vehicles in a series of Technical Service Bulletins (“**TSBs**”), Technical Tips (“**TTs**”), and other such technical service publications, which described the issue to its exclusive network of authorized dealerships as early as February 2013.
10. The Defendant, VWGoC, has heavily advertised the safety of the Affected Class Vehicles equipped with the AEB system.
11. In marketing, advertising, distributing, supplying, leasing and/or selling the Affected Class Vehicles, the Defendant, VWGoC, engaged in unfair, deceptive, and/or misleading consumer practices, and further breached its express and/or implied warranties.
12. The AEB System Defect poses a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road, as it can impact the driver’s ability to control the Affected Class Vehicle, and though consumers have complained about it, the Defendant, VWGoC, has failed and/or refused to adequately address, remedy and/or fix the AEB System Defect.
13. As a result of the alleged misconduct of the Defendant, VWGoC, the Plaintiff and putative class members were harmed and suffered actual damages. The Plaintiff and putative class members did not receive the benefit of their bargain; rather, they

purchased and/or leased vehicles that are of a lesser standard, grade and quality than represented, and they did not receive vehicles that met ordinary and reasonable consumer expectations regarding safe and reliable operation. Purchasers and/or lessees of the Affected Class Vehicles paid more, either through a higher purchase price or lease payments, than they would have had the AEB System Defect been disclosed.

14. The Plaintiff and putative class members also suffered damages in the form of, *inter alia*, out-of-pocket costs of repair and/or replacement, rental car costs, towing costs, overpayment, and/or diminished value of the Affected Class Vehicles.
15. No reasonable consumer would have purchased and/or leased an Affected Class Vehicle had the Defendant, VWGoC, made full and complete disclosure of the AEB System Defect, or would have paid a lesser price. The Defendant, VWGoC, failed to disclose, at the time of purchase and/or lease, the AEB system's tendency to malfunction or function as intended.
16. The Plaintiff and putative class members expected that the Defendant, VWGoC, would disclose, and not actively conceal material facts about the safety of its Affected Class Vehicles and the existence of any defect that will result in expensive and non-ordinary repairs. The Defendant, VWGoC, failed to do so.
17. The Plaintiff seeks relief for all other current and/or former owners and/or lessees of the Affected Class Vehicles with the AEB System Defect, including, *inter alia*, recovery of damages, repair and/or buyback, under provincial consumer protection legislation, breach of express warranty, breach of implied warranty or conditions of merchantability, and reimbursement of all expenses associated with the repairing, remedying and/or repairing of the AEB System Defect in the Affected Class Vehicles.

B. The Parties

i. Representative Plaintiff

18. The Plaintiff, [REDACTED] has an address for service c/o 210 – 4603 Kingsway, Burnaby, British Columbia, V5H 4M4, Canada.
19. On December 27, 2024, the Plaintiff purchased a 2018 Volkswagen Golf R ("**Golf R**") from LP Auto, a third-party dealership, located in Richmond, British Columbia, Canada.

20. The Golf R had an odometer reading of approximately 38,000 kilometers (“km”) at the time of purchase. The Golf R currently has an odometer reading of approximately 40,000 km.
21. The Plaintiff purchased the Golf R primarily for personal, family, or household use.
22. Safety, reliability, and functionality were important factors in the Plaintiff’s consideration for purchasing the Golf R. The Plaintiff has owned VW and Audi vehicles in the past and expected a reasonable level of safety, reliability and functionality from his newly purchased Golf R.
23. Prior to purchasing the Golf R, the Plaintiff relied on the Defendant, VWGoC’s, website, archived articles and/or webpages, brochures of the vehicle, Google and YouTube searches and/or reviews, and other promotional materials, to determine the safety, reliability and functionality of the Golf R, including the vehicle’s AEB system.
24. In all of those promotional materials, the Plaintiff came across no representation by the Defendant, VWGoC, that the Golf R suffers from the AEB System Defect.
25. On one or more occasions, the Plaintiff experienced sudden and unexpected brake activation when there were no obstacles in the Golf R’s path, which posed a serious safety hazard.
26. As a result of the AEB System Defect, the Plaintiff has lost confidence in the safety, reliability and functionality of the Golf R, and its ability to perform as marketed and advertised.
27. At all times, the Plaintiff, like all putative class members, has driven his Golf R in a manner both foreseeable and in which it was intended to be used.

ii. The Defendant

28. The Defendant, VWGoC, is a company duly incorporated pursuant to the laws of Canada, registered within British Columbia under number A0005636, and has a registered agent, LML & S Services Inc. at 1500 Royal Centre, PO Box 11117, 1055 West Georgia Street, Vancouver, British Columbia, V6E 4N7, Canada.
29. The Defendant, VWGoC, is a wholly owned subsidiary, affiliate, agent and/or operating

unit of Volkswagen Aktiengesellschaft (“**VWAG**”), a German corporation. The Defendant, VWGoC, engages in business activities in furtherance of the interests of VWAG and Audi Aktiengesellschaft (“**Audi AG**”), including the advertising, marketing, distribution, supplying, leasing and/or sale of VW and Audi-branded vehicles, including the Affected Class Vehicles in Canada. The Defendant, VWGoC, also acts as the warrantor of VW and Audi-branded vehicles in Canada, distributes VW and Audi replacement parts and disseminates service publications, including TSBs, TTs, and other similar technical service publications, together with other service documents, including workshop and parts manuals.

30. Volkswagen Group of America, Inc. (“**VWGoA**”) is a wholly owned American subsidiary, affiliate, agent and/or operating unit of VWAG. VWGoA similarly engages in business activities in furtherance of the interests of VWAG and Audi AG, including the advertising, marketing, distribution, supplying, leasing and/or sale of VW and Audi-branded vehicles, including similar model type and model year Affected Class Vehicles in the United States. VWGoA, also acts as the warrantor of VW and Audi-branded vehicles in the United States, distributes VW and Audi replacement parts and disseminates service publications, including TSBs, TTs, and other similar technical service publications, together with other service documents, including workshop and parts manuals.
31. VWAG is one of the largest vehicle manufacturers in the world with its principal place of business in Wolfsburg, Germany and is in the business of engineering, designing, developing, testing, manufacturing, assembling and/or selling automobiles, including the Affected Class Vehicles. VWAG is the parent corporation of the Defendant, VWGoC, Audi AG, VWGoA, Audi of America, Inc. (“**Audi America**”) and Audi Canada Inc. (“**Audi Canada**”).
32. Audi AG is a German corporation with its principal place of business in Ingolstadt, Germany and is a wholly owned subsidiary, affiliate and/or operating unit of VWAG. Audi AG designs, develops, manufactures, and sells luxury automobiles under the Audi brand name, including certain Affected Class Vehicles.
33. Audi Canada is an operating unit of the Defendant, VWGoC. Audi Canada engages in the business of advertising, marketing, distribution, supplying, leasing and/or sale of Audi-branded vehicles in Canada on behalf of the Defendant, VWGoC.

34. Audi America is an operating unit of VWGoA. Audi America engages in the business of advertising, marketing, distribution, supplying, leasing and/or sale of Audi-branded vehicles in the United States on behalf of VWGoA.
35. At all material times to the cause of action herein, the Defendant, VWGoC, and Audi Canada acted as authorized agents, representatives, servants, employees and/or alter egos of VWAG and Audi AG while performing various activities including, but not limited to, marketing, advertising, administering warranties and warranty repairs at authorized VW and Audi dealerships, dissemination of technical information and monitoring the performance of VW and Audi-branded vehicles in Canada. The Defendant, VWGoC, VWAG, Audi AG and Audi Canada have overlapping corporate management boards and cooperate to engineer, design, manufacture, test, assemble and/or sell VW and Audi-branded vehicles in Canada. They share employees, Affected Class Vehicle parts (which are often stamped with VW and Audi logos) and technical knowledge, including design patents.
36. At all material times to the cause of action herein, VWAG and Audi AG cooperated in engineering, designing, manufacturing, testing and/or assembling of the Affected Class Vehicles, including the component parts of the Affected Class Vehicles such as the AEB system. The Defendant, VWGoC, and its operating unit Audi Canada, market, advertised, distributed, sold, and warranted the Affected Class Vehicles throughout Canada through its authorized dealers. The Defendant, VWGoC, and Audi Canada in cooperation with VWAG and Audi AG published and disseminated the owner's manuals, warranty booklets, warranty and maintenance schedules, advertisements, and other promotional materials relating to the Affected Class Vehicles.
37. At all material times to the cause of action herein, the Defendant, VWGoC, VWAG, Audi AG and Audi Canada shared the common purpose of, *inter alia*, designing, developing, manufacturing, testing, assembling, marketing, distributing, supplying, leasing and/or selling VW and Audi-branded vehicles, including the Affected Class Vehicles, as averred to in paragraph two herein, equipped with the AEB system in Canada, and within the Province of British Columbia. Further, the business and interests of the Defendant, VWGoC, VWAG, Audi AG and Audi Canada are inextricably interwoven with that of the other as to the AEB System Defect in the Affected Class Vehicles, as averred to in paragraph two herein, such that each is the agent or alter ego of the other.

38. At all material times to the cause of action herein, the Defendant, VWGoC, and VWGoA, as subsidiaries, affiliates and/or operating units of VWAG, shared the common purpose of, *inter alia*, marketing, distributing, supplying, leasing and/or selling VW and Audi-branded vehicles, including the Affected Class Vehicles, as averred to in paragraph two herein, equipped with the AEB system in North America. The Defendant, VWGoC and VWGoA, in cooperation with VWAG and Audi AG, share, *inter alia*, dissemination of technical information and monitoring the performance of VW and Audi-branded vehicles, including the AEB system, advertising and other promotional materials relating to the Affected Class Vehicles.

C. The Class

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

D. Factual Allegations

i. AEB system and the AEB System Defect in the Affected Class Vehicles

40. VWAG is a designer and manufacturer of vehicles sold and distributed by the Defendant, VWGoC, under the VW-brand in Canada. VWAG and/or Audi AG are the designers and manufacturers of vehicles sold and distributed by the Defendant, VWGoC, under the Audi-brand in Canada. VWAG and/or Audi AG designed and manufactured the Affected Class Vehicles, and the Defendant, VWGoC, imported, distributed, marketed, sold and/or leased the Affected Class Vehicles in Canada. The Defendant, VWGoC, also provides service and maintenance for the Affected Class Vehicles through its extensive network of authorized dealers and service providers nationwide, using information provided by VWAG and/or Audi AG.
41. One of the newest pieces of technology in the Affected Class Vehicles is the AEB system, more particularly the “Front Assist” AEB system in the case of the VW-branded

vehicles, and “Audi Braking Guard,” “Pre Sense Front,” “Audi Pre Sense City,” and/or “Turn assist” AEB systems, in the case of Audi-branded vehicles. The AEB system features an autonomous braking system that is supposed to warn the driver of an obstacle on the road and also engage the brakes and/or limit power to the wheels independently of any driver input if the driver fails to react. This system is a part of other collision avoidance systems installed in the Affected Class Vehicles, which has the goal of preventing or reducing the severity of an impact.

42. The first vehicles with such a system in the VW lineup were model year 2008 vehicles, including certain models of the VW Passat and Touareg. This system was the Adaptive Cruise Control (“**ACC**”), which added a separate Front Assist function. While that Front Assist system could not yet brake automatically, it could warn the driver of an obstacle. Pre Sense was first introduced in the 2011 Audi A8. As with all Pre Sense systems, it utilized the radar and cameras from the ACC and Lane Assist systems.
43. Even in later VW and Audi model vehicles, the Front Assist and Pre Sense systems continued to use the same radar sensors in the front of the vehicle that were used by the ACC, the cameras used by the Lane Assist feature, and the sensors used by the parking features. This remains true of the current iterations of the AEB system.
44. As with other systems in a vehicle, the AEB system in the Affected Class Vehicles is run by a control module, built and programmed by a third-party supplier. This module is equipped with a proprietary algorithm that takes the data acquired from sensors, as well as other modules in the vehicle, such as the TCM, to determine the speed, acceleration, and distance for both the vehicle itself and the object ahead.
45. In any given vehicle model, integration and calibration of the AEB system typically occurs near the end of the research and development process, so that the control module can be given final values for vehicle weight and configuration. This is overseen by the vehicle manufacturer, often with assistance from the third-party suppliers’ engineers. Control modules as provided by the third-party supplier must be “tuned” both to achieve the desired goal of the vehicle manufacturer as well as to work with all the other control modules in the vehicle.
46. The AEB System Defect is caused in part by defects in design, materials, and/or workmanship in the manufacture and installation of the AEB system’s components; in

the code underlying the algorithms which control the AEB system response; and/or in the programming, calibration and/or integration of the AEB system software with the software that run related systems in the Affected Class Vehicles, including the steering, transmission, and braking systems.

47. In order to work as intended, the sensors used by the AEB system must be manufactured with materials that are free of impurities. Further, the sensors must be installed and centered precisely. Even tiny variations in materials or positioning can cause the AEB system to malfunction or fail. The AEB System Defect is caused in part by such manufacturing issues.
48. Further, the software which controls the AEB system response—the underlying coding and algorithm which discriminates between landscape and obstacles and then decides on the correct response—suffers from programming defects during manufacturing, which differ from the intended design of the software.
49. VWAG's desired goal with the AEB system in the Affected Class Vehicles is collision avoidance, as opposed to merely reducing the severity of the impact, which is achieved by properly tuning and/or calibrating the AEB system. As a result of the improper tuning and/or calibration of the AEB system software with the software that runs related systems in the Affected Class Vehicles, the AEB system activates the brakes prematurely and with unnecessary force when it detects anything stationary in front of the vehicle, even if the object is on the side of the road. Moreover, the AEB system does not always accurately identify what items are stationary.
50. These same sensors are unable to detect moving objects that cross in front of the vehicle, in contradiction to commercial advertisements the Defendant, VWGoC, and/or VWGoA have caused to be distributed in all major North American markets that show the vehicles stopping if an unexpected hazard appears in front of the vehicles.
51. Moreover, the testing and validation procedures used by VWAG and/or Audi AG were insufficient to properly mimic real-world conditions, including actual driver reaction time, the existence of large objects on the side of the road like garbage cans or metal guard rails, the presence of extreme curves in certain roads including on and off-ramps to highways and freeways, the many parked cars in a parking lot, and the inclination of the end of driveways and at entrances to parking lots.

52. The AEB System Defect in the Affected Class Vehicles is due in part to defects in the manufacturing and installation of the AEB system components, the inadequate calibration of the AEB system, including its sensors, and faulty programming of the AEB system control module. Moreover, each third-party supplier of the different vehicle components—the transmission, the brake system, and others—may use different software and provide a different electronic control module or software for a given vehicle component. Integration of software and controls modules for system components is the responsibility of the vehicle manufacturer, in this case, VWAG and/or Audi AG. If those systems are not properly integrated, the AEB system control module may interfere with the normal operation of the vehicle.

ii. Defendant's, VWGoC's, superior and exclusive knowledge of the AEB System Defect

53. The Defendant, VWGoC, had superior and exclusive knowledge of the AEB System Defect and knew, or ought to have known, that the AEB System Defect was not known or reasonably discoverable by the Plaintiff and Class Members before they purchased and/or leased the Affected Class Vehicles.

54. Well before the Plaintiff and Class Members purchased and/or leased their Affected Class Vehicles, and since at least 2013, the Defendant, VWGoC, knew, or ought to have known, about the AEB System Defect through sources not available to consumers, including the following: (1) pre-release testing data; (2) early consumer complaints about the AEB System Defect to the Defendant, VWGoC, and its dealers who are its agents for vehicle repairs; (2) warranty claims data related to the AEB System Defect; (3) aggregate data from dealers; (4) consumer complaints to NHTSA and/or Transport Canada and resulting notice from NHTSA and/or Transport Canada; (5) early consumer complaints on websites and internet forums; (6) data from the Car-Net and/or Audi Connect system (each a suite of connected car features) installed in the Affected Class Vehicles; (7) dealership repair orders; (8) testing conducted in response to owner or lessee complaints; and (9) other internal sources of aggregate information about the AEB System Defect.

a. Pre-production and Pre-sale Testing

55. As experienced vehicle manufacturers, VWAG and Audi AG, conduct extensive tests,

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

56. VWAG's and Audi AG's pre-production testing includes extensive road testing at its proving grounds in Ehra-Lessien, Germany. Such testing includes materials testing as well as rigorous review of its assembly procedures. VWAG and Audi AG are known to spend more on research and development than any other major vehicle manufacturer in the world and produce far more pre-production vehicles. The pre-production testing and quality control audits on the Affected Class Vehicles revealed the AEB System Defect to VWAG, Audi AG and the Defendant, VWGoC.

b. Warranty claims and consumer complaint monitoring

57. The Defendant's, VWGoC's, internal consumer relations department and/or online reputation management services acting on the Defendant's, VWGoC's, behalf routinely monitor the internet for complaints about its products, including complaints posted on consumer forums. From the avalanche of complaints related to the AEB System Defect, the Defendant, VWGoC, knew, or ought to have known, about the AEB System Defect.
58. Moreover, the Defendant's, VWGoC's, warranty department analyzes and collects data submitted by its dealerships to identify warranty trends in its vehicles. It is the Defendant's, VWGoC's, policy that the dealerships must provide the Defendant, VWGoC, with detailed documentation of the problem and a complete disclosure of the repairs employed to correct it when a repair is made under warranty. The Defendant's, VWGoC's, dealerships have an incentive to provide detailed information to the Defendant, VWGoC, because they will not be reimbursed for any repairs unless the justification for reimbursement is sufficiently detailed.
59. As a result of analyzing consumer complaints made to its dealers, particularly those related to, *inter alia*: (1) malfunctioning or inoperative driver assist systems; (2) non-functional parking aid systems; (3) parking aid systems that provide constant warnings or warnings of obstacles when none exist; (4) adaptive driver assistance systems that

are either unavailable or cannot be activated; (5) ACC that stops working; (6) errors with the Audi adaptive light, Pre Sense, and/or Adaptive Cruise Assist systems; (7) unexpected vehicle behavior, such as tightening of the seatbelt, or reductions in speed, without any obvious causes for such preventative or safety measures; and/or (8) various error messages, such as "ACC and braking guard: unavailable at this time. No sensor vision," "Emergency assist: active. Please take over!", or "Emergency assist: cancelled," the Defendant, VWGoC, would have learned about the ongoing nature of the AEB System Defect.

60. Additionally, in investigating customer complaints related to the AEB System Defect, the Defendant's, VWGoC's, dealers and technicians reviewed the Diagnostic Trouble Codes (**DTC**) logged in the various control modules of the Affected Class Vehicles, which confirmed the issues highlighted in these complaints.
61. Vehicle manufacturers have a legal obligation to identify and report emerging safety-related defects to NHTSA and Transport Canada. Moreover, vehicle manufacturers monitor the databases of such regulatory authorities for consumer complaints regarding their vehicles as part of their ongoing obligation to identify potential defects in their vehicles, including those which are safety related. As such, the Defendant, VWGoC, knew, or ought to have known, of the many complaints about the AEB System Defect lodged by consumers to these regulatory authorities. The content, consistency, and disproportionate number of those complaints alerted, or ought to have alerted, the Defendant, VWGoC, to the AEB System Defect as early as 2013.

c. TSBs and TTs issued in relation to the AEB System Defect

62. The Defendant, VWGoC, issues TSBs (which are associated with warranty claims), and TTs (which are used to address consumer complaints about vehicle function), among other communications, to its dealers to provide instructions on how to repair VW and Audi vehicles, or respond to particular consumer complaints. These communications standardize service throughout the Defendant's, VWGoC's, agent dealership network, and explicitly are not meant for consumer review. In fact, in the United States, it only became a requirement for vehicle manufacturers to provide NHTSA with a copy of these manufacturer communications in 2012, and in Canada, it was only made mandatory for vehicle manufacturers to do so in 2018. Further, these communications often do not reveal the cause of a problem, only describe a complaint and a remedy, frequently in

terms that a lay person would not understand.

63. On February 5, 2013, the Defendant, VWGoC, and/or VWGoA, re-issued a TSB for Audi-branded Affected Class Vehicles entitled “**91 Parking assistance provides false warnings.**” This TSB was applicable when a customer complained that the “[p]arking aid sporadically warns of obstacles when none exist” or “[p]arking aid is inoperative or provides constant warning.” In addition to trying to find damage, correcting if the sensor is even slightly off-center, wiring issues, and other technical details, the TSB notes that “various environmental factors can cause incorrect warnings,” including “high plants and curbs; gravel or cobble stone paths, pot holes, grates, sharp bends in the road, slopes, driveways, ramps; water is on the parking sensor, ice or snow on the sensor; exhaust gases under certain weather conditions; conflicting ultrasound sources including pneumatic brakes on trucks or the parking aid system of other vehicles, or fluorescent lighting.” This TSB was re-issued again on January 5, 2015, July 26, 2017, and September 12, 2019, January 25, 2021, and ultimately covered all Audi vehicles from 2005 through 2023 model years.
64. On March 15, 2013, the Defendant, VWGoC, and/or VWGoA, issued a TSB entitled “**91 ACC and braking guard warning message (DTC C110BF0).**” This TSB was applicable when the instrument panel read “ACC and braking guard: unavailable at this time” and when the DTC C110BF0 (Adaptive cruise control sensor restricted view) was found in the vehicle’s distance regulation control module, part number J428. The TSB informed dealerships that when any of the radar sensors does not detect an object for an extended duration, the ACC system deactivates. Conditions that could cause this included, “[l]eaves, snow, strong water spray, or direct in the field of vision or either of the radar sensors,” if “radar sensors [were] pulled out of their plastic mounting clips in a minor collision which produces no visible external damage,” “[w]hen the vehicle is driven through a long tunnel, reflection off the walls to the radar sensors can lead to ACC deactivation,” or “[w]hen the vehicle is driven on desolate roads, the sensors do not receive reflected signals for an extended time.” The dealerships were instructed to “[a]void any unnecessary replacement of the radar sensors,” but instead to clean the sensors, replace the mounting clips on the sensors and recalibrate the ACC system, or advise that the system is operating as designed. This TSB was reissued on July 17, 2014, to update models and model years, and again on June 16, 2017 for the same reason. Ultimately, this TSB was applicable to 2014-2018 A3, A3 Cabriolet, A4, A4

Allroad, S4, A5, S5, S5 Cabriolet, S5 Sport, RS 5 Cabriolet, and R8, 2016-2018 Q5 and SQ5, and 2011-2018 A6, A7, A8, S8, TT, and Q7 vehicles.

65. On May 5, 2017, the Defendant, VWGoC, and/or VWGoA, issued a TT entitled “**27-17-01TT – Adaptive Cruise Control Radar Sensor Function.**” This TT was applicable to the 2015-2017 Jetta, Passat, Golf, GTI, Golf R, Sportwagen, Beetle, Tiguan, and Toureg vehicles. It informed dealerships that the radar sensor used by the ACC and the forward collision system (or AEB system), J428, may be impaired by environmental issues including “heavy rain or spray.” In cases like these, the Forward Collision Warning system (Front Assist) will not work.” It further warned that “[t]he function of the Forward Collision Warning system may also be impaired when the radar signal radiation is reflected, for example, in multilevel parking structures, or by nearby metallic objects such as rails or metal plates in the road.”
66. On November 10, 2017, the Defendant, VWGoC, and/or VWGoA, issued a TT entitled “**27-17-03TT – Driver Assist – Errors While Attempting Radar Sensor Calibration.**” This TT was applicable to the 2015-2018 Volkswagen Golf, GTI, eGolf, Sportwagen, Jetta, Passat, Beetle, Beetle Convertible, Tiguan, Tiguan LWB, Atlas, and Touareg. It warned dealerships that calibration of the radar system could be affected by the interference from ultrasonic transceivers, including those used by automatic doors.
67. On March 15, 2018, the Defendant, VWGoC, and/or VWGoA, issued a TSB entitled “**91 Laser for Audi Cruise Assist is restricted, DTC C12EBF3 stored in distance control module.**” This TSB addressed customer complaints that the driver assistance system stopped working and may also have DTC C12EBF2 (laser for distance control, range recognition restricted) in the control module for distance control, J428. The only service offered pursuant to this TSB was to check if the driver assistance system was being affected by a “third-party ‘Car-Bra’” or another protective cover, but did nothing further. No other instructions were given. This TSB was reissued on August 14, 2019, adding models and model years, such that the TSB was ultimately applicable to the 2019-2020 A6, A7, A8, Q8, and Audi e-tron quattro.
68. On August 17, 2018, the Defendant, VWGoC, and/or VWGoA, issued a TT entitled “**27-18-06TT – Adaptive Cruise Control DTC C110300 Resulting from Grille Removal.**” This TT was applicable to the 2018 Volkswagen Atlas. It warned that removing, replacing, or adjusting the front grille of the vehicle could cause the Front Assist and

ACC systems to become misaligned, and that doing so meant that the dealership also had to go through the ACC Calibrating process. It also noted that a code could be generated – Distance Control (ACC) fault code “C110300: Adaptive cruise control sensor misadjusted.”

69. On August 24, 2018, the Defendant, VWGoC, and/or VWGoA, issued a TT entitled “**27-18-07TT – Replacing the Adaptive Cruise Control (ACC) Module – J428.**” This TT was applicable to the 2015-2018 Jetta, Passat, Golf, Golf R, and Golf Sportwagen, 2018 Atlas and Tiguan LWB, and the 2019 Jetta. It warned that ACC sensor, J428, will not calibrate after replacement if there were various data faults in the driver assistance systems. As a result, it instructed dealerships to run the guided fault-finding diagnosis, then control module software configuration, then “commissioning,” before the calibration could be completed.
70. On September 7, 2018, the Defendant, VWGoC, and/or VWGoA, issued a TT entitled “**27-18-08TT – Cruise Control not Available, -R242- Module Camera.**” This TT was applicable to all models from 2014 to 2019. It warned that the R242 module front sensor for driver assistant systems may not calibrate, including “[i]n some instances, the camera will calibrate only to return shortly with a calibration fault or limit value exceeded fault.” The TT instructed dealerships to check to see if the module or the windshield had been replaced. If the module had been replaced, it required configuration and a “FES #2 test plan” to be completed before calibration. If the windshield had been replaced, dealers were instructed to check to make sure it was a VW replacement windshield and then centered correctly, as apparently either issue could cause the system to fail calibration.
71. On November 2, 2018, the Defendant, VWGoC, and/or VWGoA, issued a TT entitled “**45-18-03TT – Autonomous Braking Event – Data Gathering.**” This TT was applicable to the 2015-2017 Touareg, 2016-2019 CC, Golf, GTI, Sportwagen, Golf R, Jetta, Passat, and Tiguan, and 2018-2019 Altas and Tiguan LWB. It warned that “[t]he customer may have a concern their vehicle performed an unwarranted autonomous braking event.” It instructed the dealerships to check the J428 sensor for misalignment, gather data from three separate control modules, including the distance control module and the front sensors driver assistance system, conduct a visual inspection of the vehicle, and have the customer complete a Front Assist Questionnaire. That data was to be compiled and sent to the Defendant, VWGoC, via the creation of a VTA case, or a Volkswagen

Technical Assistance case. This TT was reissued multiple times to include additional service instructions and additional model year applicability. The final version was issued on August 28, 2020, and applied to the 2015-2017 Touareg, 2016-2020 CC, Golf, GTI, Sportwagen, Golf R, Jetta, Passat, and Tiguan, and 2018-2020 Atlas and Tiguan LWB

72. On February 1, 2019, the Defendant, VWGoC, and/or VWGoA, issued a TSB entitled **"91 Adaptive Cruise Assist is not available."** This TSB addressed customer complaints that the adaptive driving assistance is not available or cannot be activated, and certain DTCs were stored in the adaptive cruise control module, J1122, including DTC C12EBF1 (laser for adaptive cruise control, malfunction), DTC B200042 (control unit faulty), or DTC B200047 (control unity faulty). The TSB instructed dealerships to update the software. This TSB was applicable to 2019 A7, A8, and Q8. It was later updated on March 6, 2020, and was finally applicable to 2019-2020 A7, A8, Q8, and Audi e-tron quattro, and the 2020 Q7.
73. Between April 4, 2019, and April 12, 2019, the Defendant, VWGoC, and/or VWGoA, issued four versions of **"Service Action Code: 90L2"** with the subject **"Driver Assist System Software."** This Service Action addressed software issues with certain 2019 A6, A7, A8, and Q8. These issues included "loss of target object at close range and erroneous drive-off warning in stop-and-go traffic" and "occasional restrictions to comfort when driving over crests and through dips." The dealerships were instructed to perform a software update to correct the conditions.
74. On June 18, 2019, the Defendant, VWGoC, and/or VWGoA, issued a TSB entitled **"PSS 91 Adaptive Cruise Assist is not available."** This TSB addressed customer complaints that the ACC system was not available but could become available again without the driver restarting the car, with the DTC 12EBF1 (laser for adaptive cruise control, malfunction) present. The TSB instructed dealerships that a software bug in the control module for the laser scanner was the issue and to tell the customer "a solution is forthcoming and that no repairs are necessary at this point." It further provided, "[d]o not replace any components for this condition since this will not resolve the customer's concern. This TSB was updated on October 29, 2019, and was finally applicable to the 2019-2020 A6, A7, A8, Q8, and Audi e-tron quattro.
75. On August 14, 2019, the Defendant, VWGoC, and/or VWGoA, issued a TSB entitled **"PSS 90 Audi adaptive light, pre sense, or Adaptive Cruise Assist malfunction,**

DTC B200FF9 stored in the driver assist." This TSB was in response to complaints that an Audi adaptive light or Pre Sense malfunction is displayed, or if the ACC does not work. The DTC would also be stored in the control module for driver assist systems, J1121 "DTC B200FF9 (internal problem with symptom code 2117711 and is sporadic." The issue is that "the software diagnostic is too sensitive," and no fix is currently available. According to a September 11, 2020 update to the TSB, a software patch is projected to be available in the first quarter of 2021. The codes are to be cleared and the vehicle returned to the customer. This TSB is applicable to the 2019-2020 A6, A7, A8, Q8, and Audi e-tron quattro. The final update of this TSB was issued on February 26, 2021, and added 2020 A6 Allroad, S6, S7, SQ8, RS, Q8, and Audi e-tron Sportback.

76. On August 30, 2019, the Defendant, VWGoC, and/or VWGoA, issued a TSB entitled "**90 Audi adaptive light, pre sense, or vehicle assistance does not work, DTC C12B3F2 stored in the driver assist systems.**" This TSB addressed customer complaints that the Audi adaptive light, Audi Pre Sense system error, or adaptive vehicle assistance does not work, with the DTC C12B3F2 (front camera for driver assist systems, wrong vehicle identification number, static) present in the control module for driver assist systems J1121. The TSB instructed dealerships that the software needed to be recalibrated. This TSB was applicable for the 2019-2020 A6, A7, Q6, Audi e-tron quattro, and A8. This TSB was updated on September 18, 2020, to revise the instructions to technicians.
77. On September 30, 2019, the Defendant, VWGoC, and/or VWGoA, issued a TSB for Audi vehicles entitled "**90 Emergency Assist: unexpected seatbelt tugging with brief reductions in speed.**" This TSB was a response to customers complaining that the vehicle was tugging on the seatbelts and reducing speed with "[n]o obvious causes for those symptoms like vehicles driving in front of the customer's vehicle are apparent." Some DTCs might be stored in the driver assistance control module, J1121. According to the TSB, "[i]f too little steering input is observed over speed and environment depending on the time interval, the system assumes the driver to be incapacitated and started a warning cascade in order to regain the driver's attention...it can falsely determine the driver to be incapacitated if not enough momentum is perceived on the steering wheel. This might happen on long straight roads or if the driver does not firmly grip the steering wheel." The TSB cautioned dealerships not to perform repairs, and that any repairs for this concern may be denied. Instead, the dealerships were instructed to

“explain the behavior of the emergency assist to the customer. The vehicle is functioning as designed.” This TSB was updated in February 14, 2020, and ultimately applied to 2019-2021 A6, A7, A8, Q8, and Audi e-tron quattro, and the 2020-2021 Q7.

78. On November 1, 2019, the Defendant, VWGoC, and/or VWGoA, issued an update to the TT entitled “**27-17-01TT Adaptive Cruise Control Radar Sensor Function.**” It updated model and model year applicability, such that the TT was now applicable to the 2015-2019 Jetta, Passat, Golf, GTI, Golf R, Sportwagen, Beetle, Beetle Convertible, Tiguan, Touareg, Atlas, Tiguan, LWB, and Arteon. Again, it warned that heavy rain or snow, being in a multilevel parking structure, or near metallic objects like rails or metal plates could impair the radar signal radiation of the sensor and thus interfere with the ACC and Front Assist.

d. Prior knowledge of the limitations of the AEB system

79. In 2019, the Defendant, VWGoC, also provided its dealerships with information from non-publicly available sources, such as Production (PR) codes, Webservice, Customer Care, Training at the VW Academy, and TSBs. The system components of Front Assist were identified as the J428 and the R242. It also noted system limitations for Front Assist, which are not listed in the owners’ manuals including:
- May not detect narrow vehicles (bicycles, motorcycles)
 - Heavy rain and snow will impede sensor view.
 - Will not detect stopped traffic.
 - [Unwanted warnings may occur] when vehicle turns off the road or when overtaking another vehicle.
80. Further, even prior to bringing the Affected Class Vehicles to market, the Defendant, VWGoC, was cognizant of the difficulty in integrating the software of all systems required for the AEB system to function as advertised and integrating the different modules involved, including the driver assist control module, the ACC module, and the distance control module. As a result, despite producing commercials and brochures that overstate the effectiveness and functionality of its AEB system, warnings in the Owners’ Manuals for the Affected Class Vehicles are vague and incompletely describe the limitations of the AEB system.
81. These warnings include that the Front Assist system “can issue unnecessary warnings in

certain complex traffic situations, for example, at traffic islands” and that “[u]nder certain circumstances and complex traffic situations the Autonomous Emergency Braking function can perform unwanted braking maneuvers, like in construction sites.”

82. However, these warnings are issued in Owners’ Manuals, and do not inform the Plaintiff and Class Members that the AEB system in the Affected Class Vehicles will frequently engage without cause, jerking the vehicles to a stop and leaving the driver and passengers more susceptible to a collision from traffic. Indeed, unlike many vehicle manufacturers, the Defendant, VWGoC, does not make its Owners’ Manuals available online to consumers until after the vehicle is purchased. These vague warnings, buried in Owners’ Manuals hundreds of pages long, are not specific or prominent enough to overcome the perception of functionality and reliability of the AEB system that the Defendant, VWGoC, has promulgated in its brochures and commercials.
83. Moreover, these warnings do not inform the Plaintiff and Class Members that the Affected Class Vehicles may react differently each time they encounter the same situation, so that they are unable to even learn when the Affected Class Vehicles may malfunction. These warnings do not inform the Plaintiff and Class Members that the AEB system may stop the vehicle unnecessarily even when the vehicle is driving past a home that has a trash can in front of it, exiting a driveway, driving onto a freeway, or navigating a curve in the road.

e. Lawsuits in other jurisdictions relating to substantially similar issues involving the AEB system

84. The Defendant, VWGoC, has also been alerted to the widespread problems with the AEB system from various lawsuits filed both in the United States and in other countries where VW, Skoda, and Audi-branded vehicles, with substantially similar AEB systems installed, are sold. VWGoA, has had to buyback many VW and Audi vehicles in the United States due to lawsuits brought under Lemon Law statutes, and VWAG and Audi AG are aware of many lawsuits in other countries, including Ireland, related to the malfunctioning of the AEB systems in VW, Skoda, and Audi vehicles. Many of the hardware and software components in VW, Skoda and Audi vehicles are substantially similar, if not identical.
85. The existence of the AEB System Defect is a material fact that a reasonable consumer

would consider when deciding whether to purchase and/or lease a VW or Audi vehicle that was equipped with the AEB system. Had the Plaintiff and Class Members known that the Affected Class Vehicles had the AEB System Defect, they would not have purchased and/or leased the Affected Class Vehicles or would have paid less for them.

86. Consumers, like the Plaintiff and Class Members, reasonably expect that the AEB system will function in a manner that will not pose a safety hazard and is free from defects that actually interfere with its role as a safety feature and make the vehicle unsafe. The Plaintiff and Class Members further reasonably expect that the Defendant, VWGoC, will not sell and/or lease vehicles with known safety defects, such as the AEB System Defect, and will disclose any such defects to consumers when it learns of them. The Plaintiff and Class Members did not expect the Defendant, VWGoC, to fail to disclose the AEB System Defect to them and to continually deny the existence of the AEB System Defect.

iii. The Defendant, VWGoC, actively concealed the AEB System Defect

87. Despite its knowledge of the AEB System Defect in the Affected Class Vehicles, the Defendant, VWGoC, actively concealed the existence and nature of the AEB System Defect from the Plaintiff and Class Members. Specifically, the Defendant, VWGoC, failed to disclose, and/or actively concealed, at and after the time of purchase, lease, and/or repair:
- (a) any and all known material defects or material nonconformity of the Affected Class Vehicles, including the defects relating to the Affected Class Vehicles;
 - (b) that the Affected Class Vehicles, including the AEB system, were not in good working order, were defective, and were not fit for their intended purposes; and
 - (c) that the Affected Class Vehicles were defective, despite the fact that the Defendant, VWGoC, learned of such defects through alarming failure rates, customer complaints, and other internal sources, as early as 2013.
88. In fact, even before releasing the Affected Class Vehicles to the market, the Defendant, VWGoC, knew about the AEB System Defect. Nevertheless, the Defendant, VWGoC, never disclosed the AEB System Defect to Class Members.

89. As a result of the AEB System Defect, the Defendant, VWGoC, and its authorized dealers were inundated with complaints regarding the AEB System Defect.
90. The Defendant, VWGoC, has not made fixing the software issues that cause the AEB system malfunctions, as described herein, a priority, instead devoting significant resources to the software concerns of future vehicles.
91. When consumers present the Affect Class Vehicles to authorized VW and Audi dealers for repair of the AEB System Defect, rather than to repair the problem under warranty, the Defendant, VWGoC, has instructed dealers to deny that the AEB System Defect exists. Moreover, because the AEB System Defect is software related, the VW and Audi-authorized dealerships are neither equipped nor trained to provide a remedy.
92. To this day, the Defendant, VWGoC, still has not notified the Plaintiff and Class Members that the Affected Class Vehicles suffer from a systemic defect that causes the AEB system to malfunction, to the detriment of the safety of drivers, passengers, and the general public.

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

93. Government regulations in Canada (*Motor Vehicle Safety Act*, R.S.C. 1993, c.16) require vehicle manufacturers to disclose to Transport Canada respectively of “early warning reporting” data, including claims relating to property damage received by the automotive manufacturer; warranty claims paid by the automotive manufacturer; consumer complaints; incidents involving injury or death; and field reports prepared by the automotive manufacturer’s employees or representatives concerning failure, malfunction, lack of durability, or other performance issues.
94. Furthermore, these government regulations require immediate action when a vehicle manufacturer determines or should determine that a safety defect exists. A safety defect is defined by regulation to include any defect that creates an “unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle” or “unreasonable risk of death or injury in an accident.” Within a period of time of learning about a safety defect, a manufacturer must notify NHTSA and Transport

Canada and provide a description of the vehicles potentially containing the defect, including “make, line, model year, [and] the inclusive dates (month and year) of manufacture,” a description of how these vehicles differ from similar vehicles not included in the recall, and “a summary of all warranty claims, field or service reports, and other information” that formed the basis of the determination that the defect was safety related. Then, “within a reasonable time” after deciding that a safety issue exists, the vehicle manufacturer must notify the owners of the defective vehicles. Violating these notification requirements can result in a substantial civil penalty.

95. The AEB System Defect causes unsafe conditions for the vehicle occupants by improperly engaging the brakes, failing to engage the braking system at all when the obstacles do appear in front of the vehicles, and distracting drivers with false warnings when no obstacles exist. This safety risk increases the risk of collisions and fails to reduce the incidence and severity of collisions as the AEB system was designed to do.
96. No reasonable consumer expects a vehicle to contain a defect in design, manufacture, materials, and/or workmanship, such as the AEB System Defect, that creates a dangerous situation putting the vehicle occupants and others on the road at risk.

v. Representations as to the Safety, Reliability and Dependability of the Affected Class Vehicles

97. The Defendant, VWGoC, has heavily advertised the safety of the Affected Class Vehicles equipped with the AEB system. As described by the Defendant, VWGoC, on its website, the “Front Assist” system “takes the Forward Collision Warning system a step further by braking automatically if the sensors detect a potential collision.” The Defendant, VWGoC, further states on its web page:

Autonomous Emergency Braking will initiate a short active braking maneuver should the driver not react to the Forward Collision Warning. This is done with short, jerky braking of the vehicle. If the driver should again fail to react to the alert, Autonomous Emergency Braking will initiate an automatic braking maneuver which will slow down the vehicle, gradually increasing braking force. Shortly before a collision, the system will initiate emergency braking to bring the vehicle to a full stop, or to mitigate the effects of a collision.

98. Further, Audi AG maintains an “Audi Technology Lexicon” on its website, which provides

detailed explanations of the technologies used by the Audi vehicles, including but not limited to the driver assistance systems. As described by Audi AG on its website, the “Pre Sense” system in the Audi-branded Affected Class Vehicles “detects collision hazards all around the car and initiates specific safety measures.” Audi Pre Sense Front (alternatively called Audi Pre Sense City) is a forward AEB system that shares components and functionality with the Adaptive Cruise Control and Lane Assist features and uses shared radar sensors and cameras. The Audi Pre Sense Rear system, which is a rear AEB system, shares components and functionality with the Side Assist feature and uses shared radar sensors.

99. Audi AG further states that the Audi Pre Sense Front/City:

utilize[s] the data of radar sensors and/or the front camera, depending on the car model, to compute the probability of a collision. Within the limitations of the system, it warns of collision threats and initiates braking at specific vehicle speeds. Vehicles are detected in the driving speed range of up to 250 km/h (155.3 mph), pedestrians up to around 65 km/h (40.4 mph) or 85 km/h (52.8 mph) depending on the model, as well as cyclists, depending on the system.

100. Similarly, regarding Audi Pre Sense Rear, Audi AG states:

Audi pre sense rear uses radar sensors in the rear bumper to detect an impending rear-end collision, and it initiates preventive safety measures. These include pretensioning the front seat belts by electric power and closing the windows and sliding sunroof. In addition, the system activates the hazard warning lights to alert following traffic to the critical situation. In this process, the Rear-end collision alert signal (RECAS) is triggered, which flashes the hazard warning lights at a high frequency. Audi pre sense rear is active in background over the car’s entire driving speed range with the exception of trailer towing situations.

101. Accordingly, the Defendant, VWGoC, and/or VWGoA, have heavily advertised the safety provided by the AEB system available in the Audi-branded Affected Class Vehicles, like the Audi A4, as stated in its brochure material:

What we do is make sense of this, so you don’t have to

Complex systems helping to solve simple problems. Our comprehensive portfolio of available driver assistance technologies help enhance your drive, and hopefully, make it a little easier to navigate.

102. The Audi A4 brochure also states:

This standard innovation monitors vehicles and pedestrians ahead to prevent collisions. It uses the front camera on the windshield to sense potential obstacles. If there is an imminent threat, it alerts the driver first with a warning—then if no action is taken—gives a warning jolt and finally, activates automatic emergency braking if needed.

103. Similarly, regarding the safety of the 2018 VW Tiguan, the Defendant, VWGoC, states:

Rest assured, the 2018 Tiguan is engineered with safety features we hope you will never need. There are also many available driver assistance features we're sure you'll want, helping make it safer and easier to park, change lanes, and maintain a good distance from vehicles and pedestrians alike.

104. In the same brochure, the Defendant, VWGoC, states regarding the "Front Assist with Autonomous Emergency Braking" feature:

The engine isn't the only thing that's responsive in the 2018 Tiguan. If a vehicle ahead slows down or suddenly brakes, or a pedestrian is within 170 metres of your front bumper, this system instantly alerts you to slow down, and automatically brakes if you don't.

105. Moreover, regarding the "Adaptive Cruise Control" feature, the Defendant, VWGoC, states:

Finally, cruising in any traffic is a cinch. Automatic braking kicks in when traffic slows, and your set cruising speed resumes when traffic is moving again. No fancy footwork required. In fact, no footwork at all.

106. Lastly, regarding the "Blind Spot Detection with Rear Traffic Alert" feature, the Defendant, VWGoC, states:

It seems no matter how careful you are, there's often a vehicle creeping up beside you when changing lanes, or behind you when parking. Radar and sonar trigger driver alerts and initiate braking to help prevent dangerous driving situations.

107. In the major North American markets, VWAG and Audi AG, through its North American subsidiaries, VWGoA, and the Defendant, VWGoC, have also produced and widely distributed videos and commercials describing and/or depicting how the Front Assist and the Pre Sense systems operate and can prevent a collision when obstacles appear in

the vehicle's path, without highlighting the limitations of the systems or the tendency of the Affected Class Vehicles to suffer from the AEB System Defect.

108. Despite the insufficient calibration and tuning process that fails to account for real world driving conditions, the Defendant, VWGoC, and/or VWGoA have touted the improved safety of its vehicles that are equipped with Front Assist and stated in its commercials that the Pre Sense system provides an "elevated level of safety for vehicle occupants." Despite the AEB System Defect, the Defendant's, VWGoC's, and/or VWGoA's commercials often showcase exactly how fast the AEB System can react.
109. In both systems, the Front Assist and Pre Sense Front, the improper tuning and calibration means that the system does not allow drivers enough time to react before applying the full braking force of the vehicle and does not properly account for the size and speed of the object in front, and perhaps to the side, of the vehicle; in other words, the driver has no way of overriding a false positive and preventing this full-force application of the brakes.
110. Similarly, Pre Sense Rear alerts the driver of potential rear collision via the use of sensors it shares with the "Side Guard" system. "If the system senses the risk of a rear collision, it will automatically react..." up to and including engaging the brakes if the vehicle is moving in reverse.
111. The sensors and/or the module which controls Pre Sense can be tuned to a certain degree by the driver, by changing the sensitivity to one of three settings between "early" (the most sensitive) or "late," or the "braking guard" system can be turned off completely. However, even the lowest sensitivity cannot prevent the frequent unnecessary braking and the alternative of turning the system off must be done every time the driver starts the vehicle. As a result, the Class Members who own and/or lease the Audi-branded Affected Class Vehicles have no way of repairing the AEB System Defect themselves. Moreover, the Plaintiff and Class Members who own the VW-branded Affected Class Vehicles do not even have this limited ability.
112. In contrast to the reviews provided by the Defendant, VWGoC, and/or VWGoA in its advertisements, such as the videos, commercials, and brochures, the AEB system in Affected Class Vehicles activate without cause, startling drivers with alarms and lights, and then applying the brakes and potentially causing collisions when their vehicles

suddenly stop in the road. Conversely, the AEB Systems can fail to activate when they are most needed—when obstacles or pedestrians suddenly appear in front of a vehicle and the driver requires assistance to avoid or mitigate a collision.

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

113. The Defendant, VWGoC, provides warranties directly to the Plaintiff and Class Members. This New Vehicle Limited Warranty (“**NVLW**”) covers “defects in manufacturer’s material and workmanship,” and is limited to four years and/or 80,000 km from the vehicle’s in-service date, whichever occurs first. This coverage includes coverage for defects in the Affected Class Vehicle’s control modules and other electrical components.
114. Despite the fact that the NVLW is provided by the Defendant, VWGoC, the copyright to the warranty terms is held by VWAG and Audi AG. As such, the warranty booklets provided to the Plaintiff and Class Members by the Defendant, VWGoC, are done so with the explicit permission and direction of VWAG and Audi AG. Moreover, VWAG and Audi AG are the author of the warranty terms.
115. The Defendant, VWGoC also provides Certified Pre-Owned (CPO) Limited Warranty to vehicles purchased as “certified pre-owned” from authorized VW or Audi dealerships.
116. For VW-branded CPO vehicles, the Defendant, VWGoC, offers the “Premium Assurance Program” that provides a 2-year/40,000 km limited extended warranty in addition to the remaining NVLW.
117. For Audi-branded CPO vehicles, the Defendant, VWGoC, offers the two-tiered “Audi Certified :plus” Limited Warranty. When the Audi NVLW expires, the Audi Certified :plus warranty becomes effective and provides coverage for a period of up to five years and/or up to 100,000 km, whichever occurs first. (Maximum coverage period of five years and/or 100,000 km from the original in-service date of the vehicle).
118. Under the Tier One Audi Certified :plus limited warranty, If there is not at least one year or 20,000 km available at time of purchase and/or lease, the Defendant, VWGoC, offers extended coverage for at least one year and/or 20,000 km beyond the five-year/100,000 km warranty period.

119. Under the Tier Two Audi Certified :plus limited warranty, If there is not at least two years or 40,000 km available at time of purchase and/or lease, the Defendant, VWGoC, offers extended coverage for at least one year and/or 20,000 km beyond the five-year/100,000 km warranty period.
120. The coverage terms of the CPO Limited Warranty are similar to the terms of the NVLW.
121. Unlike many vehicle manufacturers, VWAG and Audi AG do not make their Owners' Manuals and warranty booklets available online prior to purchase. In order to access such materials on the Defendant's, VWGoC's, websites, a consumer needs a Vehicle Identification Number. As such, the full warranty terms were only presented to the Plaintiff and Class Members after the purchase and/or lease of the Affected Class Vehicles, on a take-it-or-leave-it basis.

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

122. VW and Audi-authorized dealerships are sales agents of the Defendant, VWGoC, as the vehicle distributor, supplier and/or manufacturer. The dealerships have accepted that undertaking. The Defendant, VWGoC, have the ability to control authorized VW and Audi dealers, and acts as the principal in that relationship, as is shown by the following:
- (a) the Defendant, VWGoC, can terminate the relationship with its dealers at will;
 - (b) the relationships are indefinite;
 - (c) the Defendant, VWGoC, is in the business of selling vehicles as are its dealers;
 - (d) the Defendant, VWGoC, provides tools and resources for VW and Audi dealers to sell vehicles;
 - (e) the Defendant, VWGoC, supervises its dealers regularly;
 - (f) without the Defendant, VWGoC, the relevant VW and Audi dealers would not exist;
 - (g) the Defendant, VWGoC, requires the following of its dealers:
 - (i) reporting of sales;

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

procedures; and

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

trained by it in the methods of repair of VW- and Audi-branded vehicles;

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

Part 2: RELIEF SOUGHT

1. The Plaintiff, on his own behalf and on behalf of Class Members, claims against the Defendant, VWGoC, as follows:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the named representative;
 - (b) a declaration that Affected Class Vehicles suffer from the AEB System Defect;
 - (c) a declaration that the Defendant, VWGoC, was negligent in the design, material,

manufacturing and/or workmanship of the Affected Class Vehicles equipped with the AEB system causing the Plaintiff and Class Members to suffer damages;

- (d) a declaration that the Defendant, VWGoC:
- (i) breached its duty of care to the Plaintiff and Class Members;
 - (ii) breached express warranties as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages;
 - (iii) breached implied warranties or conditions of merchantability as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages pursuant to sections 18(a),(b) and 56 of the *Sale of Goods Act*, R.S.B.C. 1996 ("**SGA**"), 410; sections 16(2), (4) and 52 of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; sections 16(1), (2) and 52 of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; sections 16(a), (b) and 54 of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; sections 15(1), (2) and 51 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1; sections 16(a),(c) and 54 of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; sections 17(a), (b) and 54 of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; sections 20(a), (b) and 67 of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; sections 16(a), (b) and 53 of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; sections 15(a), (b) and 50 of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; sections 18(a),(b) and 60 of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and sections 18(a),(b) and 60 of *the Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2; and articles 1458, 1725 and 1730 of the *Civil Code of Québec*, CQLR, c. CCQ-1991;
 - (iv) breached articles 37, 38, 40, 41, 53, 54 of the *Consumer Protection Act*, C.Q.L.R. c P-40.1;
 - (v) breached the duty to act in good faith and with honesty in representations and in the performance of obligations, pursuant to articles 6, 7, and 1375 of the *Civil Code of Québec*, C.Q.L.R., c C.C.Q.-1991; and
 - (vi) engaged in unfair practices contrary to sections 4 and 5 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004 ("**BPCPA**");

Sections 5 and 6 of the *Consumer Protection Act*, RSA 2000, c. C-26.3; Sections 6 and 7 of *The Consumer Protection and Business Practices Act*, SS, 2013, c C-30.2; Sections 2 and 3 of *The Business Practices Act*, C.C.S.M. c B120; Sections 14(1) and (2) of the *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A, and Section 10 of the *Consumer Protection Act*, SNB 2024, c 1; articles 215, 219, and 228 of the *Consumer Protection Act*, C.Q.L.R. c. P-40.1, and are consequently liable to Class Members for damages;

- (e) a declaration that it is not in the interests of justice to require that notice be given, where applicable, under the *BPCPA*; *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; and *Consumer Protection Act*, SNB 2024, c 1; *Consumer Protection Act*, C.Q.L.R. c. P-40.1 and waiving any such applicable notice provisions;
- (f) an Order for the statutory remedies available under the *BPCPA*; *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, SNB 2024, c 1; and article 272 of the *Consumer Protection Act*, C.Q.L.R. c. P-40.1, including damages, cancellation and/or rescission of the purchase and/or lease of the Affected Class Vehicles;
- (g) an Order directing the Defendant, VWGoC, to advertise any adverse findings against it pursuant to section 172(3)(c) of the *BPCPA*; Section 19 of the *Consumer Protection Act*, R.S.A. 2000, c. C-26.3; Section 93(1)(f) of *The Consumer Protection and Business Practices Act*, S.S., 2013, c C-30.2; Section 23(2)(f) of *The Business Practices Act*, C.C.S.M. c B120; Section 18(11) of the *Consumer Protection Act*, 2002, S.O. 2002, c 30, Sch A and Section 15 of the *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, SNB 2024, c 1; and *Consumer Protection Act*, C.Q.L.R. c. P-40.1;

- (h) a declaration that the Defendant, VWGoC, breached sections 36 and/or 52 of the *Competition Act*, R.S.C 1985, c. C-34 ("**Competition Act**") and is consequently liable to the Plaintiff and Class Members for damages;
- (i) an Order enjoining the Defendant, VWGoC, from continuing its unlawful and unfair business practices as alleged herein;
- (j) a declaration that the Defendant, VWGoC, fraudulently concealed the AEB System Defect in the Affected Class Vehicles from the Plaintiff and Class Members;
- (k) injunctive and/or declaratory relief requiring the Defendant, VWGoC, to recall, repair and/or replace the defective AEB systems equipped in the Affected Class Vehicles and to fully reimburse and make whole all Class Members for all costs and economic losses associated therewith;
- (l) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("**CPA**") directing an aggregate assessment of damages;
- (m) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;
- (n) damages, including actual, compensatory, incidental, statutory and consequential damages;
- (o) special damages;
- (p) punitive damages;
- (q) costs of investigation pursuant to section 36 of the *Competition Act*;
- (r) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (s) such further and other relief as to this Honorable Court may seem just.

Part 3: LEGAL BASIS

E. Jurisdiction

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

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

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

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

(g) concerns a tort committed in British Columbia;

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

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

F. Causes of Action

i. Negligence

2. The Defendant, VWGoC, at all material times owed a duty of care to the Plaintiff and Class Members to provide a product that did not have a design, material, manufacturing, and/or workmanship defect. The Affected Class Vehicles pose a real, substantial and imminent risk of harm or injury to Class Members, and others on the road, on account of the AEB System Defect.

3. The Defendant, VWGoC, as the promoter, marketer and/or distributor of the Affected Class Vehicles and their counterparts, intended for use by ordinary consumers, owed a duty of care to the Plaintiff and Class Members to ensure that the Affected Class Vehicles were reasonably safe for use.
4. At all material times, the Defendant, VWGoC, owed a duty of care to the Plaintiff and Class Members and breached that standard of care expected in the circumstances. The Defendant, VWGoC, knew that Affected Class Vehicles were defective resulting in sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist, placing the vehicle at an increased risk of a collision, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road. Despite such knowledge, the Defendant, VWGoC, continued to distribute, sell and/or lease the Affected Class Vehicles with the AEB System Defect.
5. The Defendant, VWGoC, owed the Plaintiff and Class Members a duty to carefully monitor the safety and post-market performance of the Affected Class Vehicles. The Defendant, VWGoC, had a duty to warn, or promptly warn, the Plaintiff and Class Members that the Affected Class Vehicles were defective resulting in sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist, placing the vehicle at an increased risk of a collision, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road, and which it failed to do.
6. The circumstances of the Defendant, VWGoC, being in the business of distributing, selling, leasing and/or placing the Affected Class Vehicles into the Canadian stream of commerce are such that the Defendant, VWGoC, is in a position of legal proximity to the Plaintiff and Class Members, and therefore is under an obligation to be fully aware of safety when distributing and/or selling a product such as the Affected Class Vehicles.
7. It was reasonably foreseeable by the Defendant, VWGoC, that defects in an important and critical driver assist safety system like the AEB system would cause sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting

drivers with false warnings when no obstacles exist, and as such placing the vehicle at an increased risk of a collision.

8. The Defendant, VWGoC, through its employees, officers, directors, and agents, failed to meet the reasonable standard of care or conduct expected of a vehicle supplier, distributor and/or manufacturer in the circumstances in that:
 - (a) it knew, or ought to have known, about the AEB System Defect in the Affected Class Vehicles and should have timely warned the Plaintiff and Class Members;
 - (b) it marketed, advertised, distributed, supplied, sold and/or leased vehicles with the AEB System Defect, placing the vehicle at risk of a collision, which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road;
 - (c) it failed to timely warn the Plaintiff, Class Members and/or consumers about the AEB System Defect in the Affected Class Vehicles causing sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist, and as such placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road;
 - (d) it failed to change the design, manufacture, materials and/or assembly of the Affected Class Vehicles, including the sensors, radar and other electronic modules that provide input to the AEB system, in a reasonable and timely manner;
 - (e) it failed to properly inspect and test the Affected Class Vehicles;
 - (f) it knew, or ought to have known, about the AEB System Defect in the Affected Class Vehicles but failed to disclose it;
 - (g) it failed to issue timely and implement safety, repair and/or replacement recalls of the Affected Class Vehicles;
 - (h) the AEB System Defect posed a serious safety hazard to vehicle occupants as

the Affected Class Vehicles could suffer from sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist, and as such placing the vehicle at risk of a collision, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road;

- (i) notwithstanding that it foresaw personal injury and the loss of life and property of the drivers and passengers in the Affected Class Vehicles, it failed or failed to promptly adequately eliminate, fix or correct the AEB System Defect; and
- (j) it failed to exercise reasonable care and judgment in matters of design, manufacture, materials, workmanship, and/or quality of product which would reasonably be expected of them as an automobile supplier, distributor and/or manufacturer.

9. As a result of the AEB System Defect in the Affected Class Vehicles by reason of the Defendant's, VWGoC's, negligence and its failure to disclose and/or adequately warn of the AEB System Defect, the Plaintiff and Class Members have suffered damages and will continue to suffer damages. Moreover, the value of each of the Affected Class Vehicles is reduced or diminished. The Plaintiff and each of the Class Members must expend the time to have his/her vehicle repaired and be without their vehicle. The Defendant, VWGoC, should compensate the Plaintiff and Class Members for their incurred out-of-pocket expenses for, *inter alia*, repair, towing, alternative transportation and vehicle payments as a result of the AEB System Defect.

ii. Breach of Express Warranty

- 10. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
- 11. As an express warrantor, manufacturer, distributor, supplier and/or merchant, the Defendant, VWGoC, had certain obligations to conform the Affected Class Vehicles with the AEB System Defect to its express warranties.
- 12. The Defendant, VWGoC, marketed, distributed and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles

through authorized dealerships and/or independent retail dealers. Such representations formed the basis of the bargain in the Plaintiff and Class Members' decisions to purchase and/or lease the Affected Class Vehicles.

13. The Defendant, VWGoC, provided the Plaintiff and Class Members with one or more express warranties. For illustrative purposes, the Defendant, VWGoC, provided an NVLW that includes coverage for four years or 80,000 km, whichever occurs first. Under express warranties provided to Class Members, the Defendant, VWGoC, promised to repair or replace covered defective components arising out of defects in design, materials and/or workmanship, including the AEB system, at no cost to owners and/or lessees of the Affected Class Vehicles. However, the Defendant, VWGoC, concealed, or failed to disclose, the AEB System Defect in an attempt to not have to deal with the repairs under warranty.
14. The Defendant, VWGoC, also marketed the Affected Class Vehicles as high quality, reliable, and safe vehicles and that the Defendant, VWGoC, would stand behind the quality of its products and promptly repair any defects. These statements helped conceal the existence of the AEB System Defect and its associated safety risks from the Plaintiff and Class Members in order to shift the expense of repairs to the Plaintiff and Class Members.
15. Under the express warranties provided to the Plaintiff and Class Members, the Defendant, VWGoC, promised to repair or replace covered components arising out of defects in materials and/or workmanship, including the AEB System Defect, at no cost to owners and/or lessees of Affected Class Vehicles and within a reasonable time. As alleged herein, the Defendant, VWGoC, breached its express warranties.
16. The Defendant, VWGoC's, express warranties formed a basis of the bargain that was reached when the Plaintiff and Class Members purchased and/or leased their respective Affected Class Vehicles. Given the latent nature of the AEB System Defect, the Defendant, VWGoC, knew, or ought to have known, that AEB system failures may occur during the warranty periods, yet it actively concealed, or failed to disclose, the AEB System Defect to the Plaintiff and Class Members in order to avoid paying for the repairs.
17. Class Members experienced the existence of the AEB System Defect within the

warranty periods but had no knowledge of the existence of the AEB System Defect and associated safety risk, which were known and concealed by the Defendant, VWGoC. Despite the existence of the express warranties, the Defendant, VWGoC, failed to adequately inform the Plaintiff and Class Members that Affected Class Vehicles suffered from the AEB System Defect and failed to provide a suitable remedy and/or fix within a reasonable time.

18. The failure to provide a suitable remedy and/or fix for the AEB System Defect constitutes futility of the warranty.
19. In addition, the AEB System Defect was substantially certain to cause the AEB system to malfunction.
20. The Defendant, VWGoC, breached the express warranty promising to adequately repair and correct a design and/or manufacturing defect or defect in materials or workmanship of any parts it supplied.
21. The Defendant, VWGoC, has not suitably remedied and/or fixed the AEB System Defect for the Plaintiff and Class Members despite its knowledge, and the existence, of the AEB System Defect in Affected Class Vehicles at the time of sale and/or lease.
22. Affected Class Vehicles were not of merchantable quality and were unfit for the ordinary purposes for which passenger vehicles are used because of the materials, workmanship, design and/or manufacturing defects and/or failure to perform as warranted.
23. The Plaintiff and Class Members had sufficient direct dealings with the Defendant, VWGoC, and its agents and/or its authorized dealerships, to establish privity of contract between the Defendant, VWGoC, on the one hand, and the Plaintiff and Class Members, on the other hand. Nonetheless, privity is not required here because the Plaintiff and Class Members are intended third-party beneficiaries of contracts between the Defendant, VWGoC, and its dealers, and specifically, of its warranties. The authorized VW and Audi dealers were not intended to be the ultimate users of the Affected Class Vehicles and have no rights under the warranty agreements provided with the Affected Class Vehicles; the warranty agreements were designed for and intended to benefit purchasers of the Affected Class Vehicles only.

24. The Defendant, VWGoC, was provided notice of the AEB System Defect by numerous consumer complaints made to its authorized VW and Audi dealers and through testing, affording the Defendant, VWGoC, a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile here because the Defendant, VWGoC, has known of and concealed the AEB System Defect and has failed to provide a suitable remedy and/or fix within a reasonable time.
25. Any attempt by the Defendant, VWGoC, to disclaim or limit recovery to the terms of the express warranties is unconscionable and unenforceable here. Specifically, the Defendant's, VWGoC's, warranty limitation is unenforceable because it knowingly sold a defective product without informing consumers of the AEB System Defect. The time limits incorporated in the Defendant's, VWGoC's, warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. The Plaintiff and Class Members did not determine these time limitations, the terms of which unreasonably favored the Defendant, VWGoC. A gross disparity in bargaining power existed between the Defendant, VWGoC, and Class Members, and the Defendant, VWGoC, knew, or ought to have known, that Affected Class Vehicles were defective at the time of sale and/or lease and that the AEB System Defect posed a safety risk.
26. The limited warranty promising to repair and/or correct a design and/or manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and Class Members whole because the Defendant, VWGoC, failed and/or has refused to adequately provide the promised remedies and/or fixes within a reasonable time.
27. The Defendant, VWGoC, knew that Affected Class Vehicles were inherently defective and did not conform to its warranties and the Plaintiff and Class Members were induced to purchase and/or lease Affected Class Vehicles under false and/or fraudulent pretenses.
28. Class Members experienced the existence of the AEB System Defect within the warranty periods but had no knowledge of the existence of the AEB System Defect, which was known and concealed by the Defendant, VWGoC. Despite the existence of express warranties, the Defendant, VWGoC, failed to inform the Plaintiff and Class Members that Affected Class Vehicles suffered from the AEB System Defect during the warranty periods and wrongfully transferred the costs of repair or replacement of the

AEB system and other related components to the Plaintiff and Class Members.

29. As a result of the AEB System Defect, Affected Class Vehicles are not reliable, and owners and/or lessees of these vehicles have lost confidence in the ability of Affected Class Vehicles to perform the function of safe and reliable transportation.
30. The Plaintiff and Class Members could not have reasonably discovered the AEB System Defect.
31. As a direct and proximate result of the Defendant's, VWGoC's, breach of express warranties, the Plaintiff and Class Members have suffered damages.
32. Finally, as a result of the Defendant's, VWGoC's, breach of express warranty as set forth herein, the Plaintiff and Class Members assert, as additional and/or alternative remedies, the revocation of acceptance of goods and the return to the Plaintiff and Class Members the purchase price and/or lease payments of all Affected Class Vehicles currently owned and/or leased, and for such other incidental and consequential damages as allowed.

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

33. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
34. The Defendant, VWGoC, is a "seller" with respect to motor vehicles within the meaning of the *SGA, Sale of Goods Act*, R.S.A. 2000, c. S-2; *Sale of Goods Act*, R.S.S. 1978, c. S-1; *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; *Sale of Goods Act*, R.S.O. 1990, c. S.1; *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; *Sale of Goods Act*, R.S.N.S. 1989, c. 408; *Sale of Goods Act*, R.S.N.B. 2016, c. 110; *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; *Sale of Goods Act*, R.S.Y. 2002, c. 198; *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2, pursuant to its agency relationship with its authorized dealers, distributors, resellers, retailers and/or intermediaries.
35. The Defendant, VWGoC, is and was at all relevant times a seller with respect to Affected Class Vehicles with the AEB System Defect. The Defendant, VWGoC, directly sold and

marketed vehicles with the AEB System Defect to customers through authorized dealers, like those from whom Class Members bought and/or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. The Defendant, VWGoC, knew that the Affected Class Vehicles with the AEB System Defect would and did pass unchanged from the authorized dealers to Class Members.

36. The defective AEB system in the Affected Class Vehicles causes sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist, and as such placing the vehicle at an increased risk of a collision, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and others on the road.
37. A warranty that the Affected Class Vehicles were in merchantable condition was implied by law pursuant to sections 18(a) and/or (b) of the *SGA*, sections 16(2) and/or (4) of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; sections 16(1) and (2) of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; sections 16(a) and/or (b) of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; sections 15(1) and/or (2) of the *Sale of Goods Act*, RSO 1990, c. S.1; sections 16(a) and/or (c) of the *Sale of Goods Act*, R.S.N.L. 1990, c. S-6 ; sections 17(a) and/or (b) of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; sections 20(a) and/or (b) of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; sections 16(a) and/or (b) of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; sections 15(a) and/or (b) of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; sections 18(a) and/or (b) of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and sections 18(a) and (b) of the *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2.
38. The Defendant, VWGoC, marketed, distributed, leased and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through authorized dealerships and/or independent retail dealers. Such representations formed the basis of the bargain in Class Members' decisions to purchase and/or lease the Affected Class Vehicles.
39. Affected Class Vehicles were defective at the time they left the possession of the Defendant, VWGoC. The Defendant, VWGoC, knew of the AEB System Defect at the time these transactions occurred. Thus, Affected Class Vehicles, when sold and/or leased and at all times, thereafter, were not in merchantable condition or quality and were not fit for their ordinary intended purpose.

40. The Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles from the Defendant, VWGoC, through its subsidiaries, authorized agents for retail sales, through private sellers or were otherwise expected to be the eventual purchasers and/or lessees of the Affected Class Vehicles when bought and/or leased from a third party. At all relevant times, the Defendant, VWGoC, was the manufacturer, distributor, warrantor and/or seller of the Affected Class Vehicles. As such, there existed privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendant, VWGoC, as to its Affected Class Vehicles. Alternatively, privity of contract need not be established nor is it required because the Plaintiff and Class Members are intended third-party beneficiaries of contracts between the Defendant, VWGoC, and its resellers, authorized dealers and/or distributors and, specifically, of the Defendant's VWGoC's, implied warranties.
41. The Defendant's, VWGoC's, resellers, authorized dealers and/or distributors are intermediaries between the Defendant, VWGoC, and consumers. These intermediaries sell the Affected Class Vehicles to consumers and are not, themselves, consumers of the Affected Class Vehicles and, therefore, have no rights against the Defendant, VWGoC, with respect to the Plaintiff's and Class Members' acquisition of the Affected Class Vehicles. The Defendant's, VWGoC's, warranties were designed to influence consumers who purchased and/or leased the Affected Class Vehicles.
42. The Defendant, VWGoC, knew or had reason to know of the specific use for which the Affected Class Vehicles were purchased and/or leased.
43. As a result of the AEB System Defect, the Affected Class Vehicles were not in merchantable condition when sold and/or leased and are not fit for the ordinary purpose of providing safe and reliable transportation.
44. The Defendant, VWGoC, knew about the AEB System Defect in the Affected Class Vehicles, allowing it to cure its breach of warranty if it chose.
45. At all times that the Defendant, VWGoC, warranted, leased and/or sold its Affected Class Vehicles, it knew or should have known that its warranties were false and yet it did not disclose the truth or stop selling its Affected Class Vehicles and, instead, continued to issue false warranties and continued to insist the products were safe. The Affected Class Vehicles were defective when the Defendant, VWGoC, delivered them to its

resellers, authorized dealers and/or distributors which leased and/or sold the Affected Class Vehicles and the Affected Class Vehicles were, therefore, still defective when they reached the Plaintiff and Class Members.

46. The Defendant, VWGoC's, attempt to disclaim or limit the implied warranty of merchantability *vis-à-vis* the Plaintiff, Class Members and/or consumers is unconscionable and unenforceable. Specifically, the Defendant, VWGoC's, warranty limitation is unenforceable because it knowingly sold and/or leased a defective product without informing the Plaintiff, Class Members and/or consumers about the AEB System Defect in the Affected Class Vehicles. The time limits contained in the Defendant, VWGoC's, warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. Among other things, the Plaintiff and Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendant, VWGoC. A gross disparity in bargaining power existed between the Defendant, VWGoC, and the Plaintiff and Class Members, and the Defendant, VWGoC, knew that the Affected Class Vehicles suffered from the AEB System Defect that causes sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist, and as such placing the vehicle at an increased risk of a collision, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants.
47. The Plaintiff and Class Members have complied with all obligations under the warranty or otherwise have been excused from performance of said obligations as a result of the Defendant, VWGoC's, conduct alleged herein, affording the Defendant, VWGoC, a reasonable opportunity to cure its breach of written warranties, therefore, would be unnecessary and futile.
48. As a direct and proximate result of the Defendant's, VWGoC's, breach of implied warranties or conditions of merchantability, the Plaintiff and Class Members have suffered loss, diminution and/or damage as a result of the AEB System Defect in the Affected Class Vehicles pursuant to sections 56 of the SGA, section 52 of the *Sale of Goods Act*, R.S.A. 2000, c. S-2; section 52 of the *Sale of Goods Act*, R.S.S. 1978, c. S-1; section 54 of *The Sale of Goods Act*, C.C.S.M. 2000, c. S10; section 51 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1; section 54 of the *Sale of Goods Act*, R.S.N.L. 1990, c.

S-6 ; section 54 of the *Sale of Goods Act*, R.S.N.S. 1989, c. 408; section 67 of the *Sale of Goods Act*, R.S.N.B. 2016, c. 110; section 53 of the *Sale of Goods Act*, R.S.P.E.I. 1988, c. S-1; section 60 of the *Sale of Goods Act*, R.S.Y. 2002, c. 198; section 60 of the *Sale of Goods Act*, R.S.N.W.T. 1988, c. S-2; and section 60 of the *Sale of Goods Act*, R.S.N.W.T. (Nu) 1988, c. S-2.

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

49. The Plaintiff and Class Members in British Columbia hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
50. The Defendant, VWGoC, is in British Columbia for the purposes of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in **Schedule “A”**.
51. The Affected Class Vehicles are consumer “goods” within the meaning of section 1(1) of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in **Schedule “A”**.
52. Class Members in British Columbia who purchased and/or leased the Affected Class Vehicles primarily for personal, family or household purposes, and not for resale or for the purposes of carrying on business, are “consumers” within the meaning of section 1(1) of the *BPCPA*, and provinces with parallel consumer protection legislation, as described in **Schedule “A”**.
53. The purchase and/or lease of the Affected Class Vehicles by the Class Members in British Columbia for personal, family or household purposes, and not for resale or for carrying on business constitutes a “consumer transaction” within the meaning of section 1(1) of the *BPCPA*, and provinces with parallel consumer protection legislation, as described in **Schedule “A”**.
54. The Defendant, VWGoC, is a “supplier” within the meaning of section 1(1) of the *BPCPA*, and in provinces with parallel consumer protection legislation, as described in **Schedule “A”**, as it carried on business in British Columbia and who in the course of business participated in a consumer transaction by: (1) supplying goods to a consumer, or (2) soliciting, offering, advertising or promoting with respect to a consumer transaction, whether or not privity of contract exists between that person and the

consumer, and includes an assignee of, any rights or obligations of the supplier under the *BPCPA*. The Defendant, VWGoC, is the vehicle supplier and/or manufacturer of the Affected Class Vehicles and distributes, markets and/or supplies such vehicles to consumers including the Class Members in British Columbia. At all relevant times, the Defendant, VWGoC, was a supplier and/or seller of the Affected Class Vehicles as its resellers, authorized dealers and/or distributors were acting as the agents of the Defendant, VWGoC.

55. By failing to disclose and actively concealing the AEB System Defect in the Affected Class Vehicles, the Defendant, VWGoC, engaged in unfair and deceptive trade practices prohibited by sections 4 and 5 of the *BPCPA*, and provinces with parallel consumer protection legislation, as described in **Schedule "A"**. The Defendant, VWGoC, knew that the Affected Class Vehicles with the AEB System Defect caused sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist.
56. The Defendant, VWGoC, made misleading statements or omissions concerning the safety, reliability, and functionality of the AEB system, yet failed to adequately warn consumers.
57. As alleged herein, the Defendant, VWGoC, made misleading representations and omissions concerning the quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles. In particular, the Defendant, VWGoC, advertised that the Affected Class Vehicles were reliable and dependable, touting the advanced safety capabilities of its driver assist systems, without ever mentioning the AEB system suffers from inherent defects that cause it to malfunction and which posed a real, substantial and imminent risk of harm or injury to the vehicle occupants, and others on the road.
58. In other words, the Defendant, VWGoC, emphasized the driver assistance capabilities of the Affected Class Vehicles without ever mentioning the tendency of the AEB system to malfunction, which could render such system useless.
59. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and Class Members were deceived by the Defendant's, VWGoC's, failure to disclose its knowledge

of the AEB System Defect and associated safety risks as averred to herein.

60. In particular, the Defendant, VWGoC, engaged in a pattern of unfair or deceptive acts or practices in failing to disclose to Class Members that the Affected Class Vehicles suffered from the AEB System Defect that caused sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants and others on the road, and ending in a costly repair and/or replacement process that the Defendant, VWGoC, will not cover, as follows:
- (a) failing to disclose that the Affected Class Vehicles were not of a particular standard, quality, or grade;
 - (b) failing to disclose before, during and/or after the time of purchase, lease and/or repair, any and all known material defects or material nonconformity of the Affected Class Vehicles, including the AEB System Defect;
 - (c) failing to disclose at the time of purchase and/or lease that the Affected Class Vehicles were not in good working order, defective, not fit for their intended, and ordinary purpose, and created a real and substantial danger or harm to occupants of the Affected Class Vehicles, and to others on the road;
 - (d) failing to give adequate warnings and/or notices regarding the use, defects, and problems in the Affected Class Vehicles to consumers who purchased and/or leased the Affected Class Vehicles, even though the Defendant, VWGoC, possessed exclusive knowledge of the AEB System Defect before and at the time of purchase and/or lease;
 - (e) failing to disclose, either through warnings and/or recall notices, and/or actively concealing, the fact that the Affected Class Vehicles was defective, even though the Defendant, VWGoC, knew about the AEB System Defect; and
 - (f) representing that the AEB System Defect in the Affected Class Vehicles would be covered under its warranty program.

61. In purchasing and/or leasing the Affected Class Vehicles, Class Members in British Columbia were deceived by the Defendant's, VWGoC's, failure to disclose its exclusive knowledge that the AEB System Defect in the Affected Class Vehicles caused sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and to others on the road.
62. By failing to disclose and actively concealing the AEB System Defect, the Defendant, VWGoC, engaged in unfair or deceptive acts or practices prohibited by sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in **Schedule "A"**.
63. Further, as alleged herein, the Defendant, VWGoC, made misleading representations and/or omissions concerning the safety, reliability, and/or functionality of the Affected Class Vehicles, including the AEB system, by:
 - (a) publishing owners' manuals that made materially misleading omissions as to claims of advanced technology, safety and dependability but which uniformly omitted any warning to consumers that the Affected Class Vehicles suffered from the AEB System Defect, which caused sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist, placing the vehicle at risk of a collision or loss of control, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and to others on the road;
 - (b) advertisements which uniformly omitted any information about the AEB System Defect, and which misled consumers into believing that the Affected Class Vehicles would function properly; and
 - (c) emphasizing and extolling in brochures and press releases that the Affected Class Vehicles were dependable, safe, and reliable.
64. The Defendant's, VWGoC's, conduct as alleged herein was, and is, in violation of

sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in **Schedule "A"**, in particular, by:

- (a) representing that the Affected Class Vehicles were defect-free and did not pose a safety hazard, which they were not;
 - (b) representing that the Affected Class Vehicles were of a particular standard, quality or grade, when they were not;
 - (c) advertising the Affected Class Vehicles with the intent not to sell them as advertised; and
 - (d) representing that the Affected Class Vehicles have been supplied in accordance with previous statements concerning the safety, reliability, and/or functionality of the Affected Class Vehicles, including the AEB system, when they have not.
65. In purchasing and/or leasing the Affected Class Vehicles, Class Members in British Columbia were deceived by the Defendant, VWGoC's, failure to disclose its exclusive knowledge of the AEB System Defect and/or its representations concerning the safety, reliability, and/or functionality of the Affected Class Vehicles, including the AEB system, in its sales brochure materials, manuals, press releases and/or websites.
66. The Defendant, VWGoC, intentionally and knowingly misrepresented and omitted material facts regarding its Affected Class Vehicles, specifically regarding the AEB System Defect, with an intent to mislead Class Members.
67. In purchasing and/or leasing the Affected Class Vehicles, Class Members were deceived by the Defendant, VWGoC's, failure to disclose its knowledge of the AEB System Defect and associated safety risks.
68. Class Members had no way of knowing that the Defendant's, VWGoC's, representations were false, misleading and incomplete or knowing the true nature of the AEB System Defect in the Affected Class Vehicles. As alleged herein, the Defendant, VWGoC, engaged in a pattern of deception in the face of a known manufacturing and/or design defect in the Affected Class Vehicles. Class Members did not, and could not, unravel the Defendant's, VWGoC's, deception on their own.
69. The Defendant, VWGoC, knew, or ought to have known, that its conduct violated

sections 4 and 5 of the *BPCPA*, and parallel provincial consumer protection legislation, as described in **Schedule "A"**.

70. The Defendant, VWGoC, owed Class Members a duty to disclose the truth about the AEB System Defect in the Affected Class Vehicles as it created a serious safety hazard and the Defendant, VWGoC,:
 - (a) possessed exclusive knowledge of the AEB System Defect in the Affected Class Vehicles;
 - (b) intentionally concealed the foregoing from Class Members; and/or
 - (c) failed to warn consumers or to publicly admit that the Affected Class Vehicles suffered from the AEB System Defect.
71. The Defendant, VWGoC, had a duty to disclose that the Affected Class Vehicles were fundamentally flawed as described herein because the AEB System Defect created a serious safety hazard and Class Members relied on the Defendant, VWGoC's, material misrepresentations and omissions regarding the Affected Class Vehicles and the AEB System Defect.
72. The Defendant's, VWGoC's, conduct proximately caused injuries to Class Members that purchased and/or leased the Affected Class Vehicles and suffered harm as alleged herein.
73. Class Members were injured and suffered ascertainable loss, injury-in-fact and/or actual damage as a proximate result of the Defendant, VWGoC's, conduct in that Class Members incurred costs related to the AEB System Defect including, *inter alia*, repair, service and/or replacement costs, rental car costs and overpaid for their Affected Class Vehicles that have suffered a diminution in value.
74. The Defendant's, VWGoC's, violations cause continuing injuries to Class Members. The Defendant's, VWGoC's, unlawful acts and practices complained of herein affect the public interest.
75. The Defendant, VWGoC, knew, or ought to have known, that the Affected Class Vehicles were materially compromised by the AEB System Defect.

76. The facts concealed and omitted by the Defendant, VWGoC, from Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase an Affected Class Vehicle or pay a lower price. Had Class Members known about the AEB System Defect in the Affected Class Vehicles, they would not have purchased and/or leased the Affected Class Vehicles or would not have paid the prices they paid.
77. Class Members' injuries were directly or proximately caused by the Defendant's, VWGoC's, unlawful and deceptive business practices.
78. As a result of the Defendant's, VWGoC's, conduct as alleged herein, Class Members in British Columbia are entitled to a declaration under section 172(1)(a) of the *BPCPA* that an act or practice engaged in by the Defendant, VWGoC, in respect to the purchase and/or lease of the Affected Class Vehicles contravenes the *BPCPA*, an injunction under section 172(1)(b) of the *BPCPA* to restrain such conduct and/or damages under section 171 of the *BPCPA*, and to such remedies under parallel provincial consumer protection legislation, as described in **Schedule "A"**.
79. Class Members in British Columbia are entitled, to the extent necessary, a waiver of any notice requirements under section 173(1) the *BPCPA*, and parallel provincial consumer protection legislation, as described in **Schedule "A"**, as a result of the Defendant, VWGoC's, failure to disclose and/or actively conceal the AEB System Defect from Class Members in British Columbia and its misrepresentations concerning the safety, reliability, and/or functionality of the Affected Class Vehicles, including the AEB system.

v. Breach of the *Competition Act*

80. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
81. By making representations to the public as to quality, advanced technology, reliability, durability, performance and/or safety of the Affected Class Vehicles, in particular the AEB system, the Defendant, VWGoC, breached sections 36 and/or 52 of the *Competition Act*, in that its representations:
 - (a) were made to the public in the form of advertising brochures, manuals, statements and/or other standardized statements as to safety, reliability and

functionality of the Affected Class Vehicles, in particular the AEB system;

- (b) were made to promote the supply or use of a product or for the purpose of promoting its business interests;
 - (c) stated safety of the Affected Class Vehicles; and
 - (d) were false and misleading in a material respect.
82. At all relevant times, the Defendant, VWGoC, was the seller and/or supplier of the Affected Class Vehicles. As such, there existed contractual privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendant, VWGoC, as to the Affected Class Vehicles as its resellers, authorized dealers and/or distributors at all material times were acting as the agents of the Defendant, VWGoC.
83. The Defendant, VWGoC, engaged in unfair competition and unfair or unlawful business practices through the conduct, statements and omissions described herein and by knowingly and intentionally concealing the AEB System Defect in the Affected Class Vehicles from Plaintiff and Class Members, along with concealing the safety risks, costs, and monetary damage resulting from the AEB System Defect. The Defendant, VWGoC, should have disclosed this information because it was in a superior position to know the true facts related to the AEB System Defect and Plaintiff and Class Members could not reasonably be expected to learn or discover the true facts related to the AEB System Defect.
84. The AEB System Defect in the Affected Class Vehicles constitutes a serious safety issue. The Defendant, VWGoC, knew that the AEB System Defect in the Affected Class Vehicles caused sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist, all of which posed a real, substantial and imminent risk of harm or injury to vehicle occupants, and to others on the road, which triggered the Defendant's, VWGoC's, duty to disclose the safety issue to consumers.
85. These acts and practices have deceived the Plaintiff and Class Members. In failing to disclose the AEB System Defect and suppressing other material facts from the Plaintiff and Class Members, the Defendant, VWGoC, breached its duty to disclose these facts,

violated the *Competition Act* and caused damage to the Plaintiff and Class Members. The Defendant, VWGoC's, omissions and concealment pertained to information that was material to the Plaintiff and Class Members, as it would have been to all reasonable consumers.

86. Further, the Plaintiff and Class Members relied upon the Defendant's, VWGoC's, misrepresentations as to the safety, reliability and functionality of the Affected Class Vehicles, in particular the AEB system, to their detriment in purchasing and/or leasing the Affected Class Vehicles so as to cause loss and/or damage to the Plaintiff and Class Members.
87. The Plaintiff and Class Members have, therefore, suffered damages and are entitled to recover damages pursuant to section 36(1) and/or 52 of the *Competition Act*.

vi. Fraudulent Concealment

88. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Notice of Civil Claim.
89. The Defendant, VWGoC, intentionally and knowingly concealed, suppressed, and/or omitted material facts including the standard, quality, or grade of class vehicles and the fact that Affected Class Vehicles contain a defect as to the AEB system and associated safety risks, with the intent that the Plaintiff and Class Members rely on these omissions. As a direct result of this fraudulent conduct, the Plaintiff Class Members have suffered actual damages.
90. The Defendant, VWGoC, knew (at the time of sale and thereafter) as a result of pre-release testing that Affected Class Vehicles incorporated the AEB System Defect, concealed the AEB System Defect and never intended to repair or replace the Affected Class Vehicles during the warranty periods. To date, the Defendant, VWGoC, has not provided Class Members with adequate or complete repair, remedy and/or fix for the AEB System Defect.
91. The Defendant, VWGoC, owed a duty to disclose the AEB System Defect and its associated safety risks to the Plaintiff and Class Members because the Defendant, VWGoC, possessed superior and exclusive knowledge concerning the AEB System Defect. The Defendant, VWGoC, had a duty to disclose any information relating to the

safety, reliability and functionality of the Affected Class Vehicles, in particular the AEB system, because it consistently marketed Affected Class Vehicles as safe.

92. As the Defendant, VWGoC, made representations to the public concerning Affected Class Vehicle safety, reliability and functionality, in particular the AEB system, it was under a duty to disclose the omitted facts as to the AEB System Defect. Rather than disclose the AEB System Defect, the Defendant, VWGoC, intentionally and knowingly concealed, suppressed, and/or omitted material facts including the standard, quality, or grade of the Affected Class Vehicles and the presence of the AEB System Defect and associated safety risks, to sell additional Affected Class Vehicles and avoid the cost of repair or replacement of the AEB system.
93. No reasonable consumer expects a vehicle to contain a concealed defect in design, manufacture, materials, or workmanship, such as the AEB System Defect, that will lead to thousands of dollars in repair or replacement costs, and will cause sudden and unnecessary brake activation when there are no obstacles in the vehicle's path, failing to activate the brakes when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist.
94. The Defendant, VWGoC, intended to conceal the material facts concerning the AEB System Defect with the intent to deceive. This intent was manifested by the Defendant, VWGoC, concealing the AEB System Defect from prospective purchasers, owners and/or lessees during the warranty period while issuing TSBs, TTs, and other internal communications, to its dealers. The Defendant, VWGoC, benefitted by concealing the defect in that it could charge a higher price premium by concealing the information and was therefore motivated to do so.
95. The Plaintiff and Class Members would not have purchased and/or leased the Affected Class Vehicles but for the Defendant's, VWGoC's, omissions and concealment of material facts concerning the nature and quality of Affected Class Vehicles and existence of the AEB System Defect and associated safety risks, or would have paid less for the Affected Class Vehicles. The Defendant, VWGoC, knew its concealment and suppression of material facts was false and misleading and knew the effect of concealing those material facts. The Defendant, VWGoC, knew its concealment and suppression of the AEB System Defect would sell more Affected Class Vehicles and would discourage the Plaintiff and Class Members from seeking replacement or repair of

the AEB System Defect during the applicable warranty periods. The Defendant, VWGoC, intended to induce the Plaintiff and Class Members into purchasing and/or leasing the Affected Class Vehicles and to discourage them from seeking replacement or repair of the AEB System Defect in order to decrease costs and increase profits.

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

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

98. The Plaintiff and Class Members had no way of knowing about the AEB System Defect in the Affected Class Vehicles. The Defendant, VWGoC, concealed its knowledge of the AEB System Defect while continuing to market, sell and/or lease, the Affected Class Vehicles with the AEB System Defect.
99. Within the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada as described in **Schedule "B"**, the Plaintiff and Class Members could not have discovered through the exercise of reasonable diligence that the Defendant, VWGoC, was concealing the conduct complained of herein and misrepresenting the safety, reliability and functionality of the Affected Class Vehicles, in particular the AEB system
100. The Plaintiff and Class Members did not know facts that would have caused a reasonable person to suspect or appreciate that there was a defect in the design and/or manufacturing of the Affected Class Vehicles.
101. For these reasons, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada, as described in **Schedule "B"**, has been tolled by operation of the discovery rule with respect to the claims in this proposed class proceeding.
102. Further, due to Defendant's, VWGoC's, knowledge and active concealment of the AEB System Defect throughout the time period relevant to this proposed class proceeding, the *Limitation Act*, and to equivalent legislative provisions in the rest of Canada as

described in **Schedule “B”** has been tolled.

103. Instead of publicly disclosing the AEB System Defect in the Affected Class Vehicles, the Defendant, VWGoC, kept the Plaintiff and Class Members in the dark as to the AEB System Defect and the serious safety hazard it presented.
104. The Defendant, VWGoC, was under a continuous duty to disclose to the Plaintiff and Class Members the existence of the AEB System Defect in the Affected Class Vehicles.
105. The Defendant, VWGoC, knowingly, affirmatively and actively concealed or recklessly disregarded the true nature, quality, character and safety of the Affected Class Vehicles, in particular the AEB system.
106. As such, the Defendant, VWGoC, is estopped from relying on the *Limitation Act*, and equivalent legislative provisions in the rest of Canada as described in **Schedule “B”**, in defense of this proposed class proceeding.

Plaintiff's(s') address for service:

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Barristers & Solicitors
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Burnaby, BC V5H 4M4
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E-mail address for service (if any):

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Place of trial:

Vancouver, BC, Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: May 20, 2025



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



Signature of Aydin Mahmood
lawyer for plaintiff(s)

Schedule "A"

Consumer Protection Legislation Across Canada

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

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

Schedule "B"

Limitation Act Legislation Across Canada

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

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

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

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

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

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

- (g) concerns a tort committed in British Columbia;

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

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

Appendix

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The within proposed automobile defect multi-jurisdictional class proceeding involves certain model year Volkswagen and Audi-branded vehicles marketed, advertised, distributed, supplied, leased and/or sold by the Defendant, Volkswagen Group of Canada Inc., in Canada, including the Province of British Columbia, equipped with a defective autonomous emergency braking system such that it is prone to activating the brakes when there are no obstacles in the vehicle's path, failing to activate when there are obstacles in the vehicle's path, and/or distracting drivers with false warnings when no obstacles exist, all of which poses a real, substantial and imminent risk of harm or injury to vehicle occupants.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

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

Part 3: THIS CLAIM INVOLVES:

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

Part 4:

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50
2. *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003 c. 28

3. *Business Practices and Consumer Protection Act*, S.B.C. 2004; *Consumer Protection Act*, RSA 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, SS, 2014, c C-30.2; *The Business Practices Act*, CCSM c B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, and SNB 1978, c C-18.1
4. *Sale of Goods Act*, R.S.B.C 1996, c. 410; *Sale of Goods Act*, RSA 2000, c. S-2; *Sale of Goods Act*, RSS 1978, c. S-1; *The Sale of Goods Act*, CCSM 2000, c. S10; *Sale of Goods Act*, RSO 1990, c. S.1; *Sale of Goods Act*, RSNL 1990, c. S-6 ;*Sale of Goods Act*, RSNS 1989, c. 408; *Sale of Goods Act*, RSNB 2016, c. 110; *Sale of Goods Act*, RSPEI 1988, c. S-1; *Sale of Goods Act*, RSY 2002, c. 198; *Sale of Goods Act*, RSNWT 1988, c. S-2; and *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2; and *Consumer Protection Act*, CQLR c. P-40.1
5. *Motor Vehicle Safety Act* , R.S.C. 1993, c.16
6. 49 U.S. Code 301 - *Motor Vehicle Safety Act*
7. *Court Order Interest Act*, R.S.B.C., c. 79
8. *Competition Act*, R.S.C 1985, c. C-34
9. *Limitation Act*, S.B.C. 2012, c.13; *Limitations Act*, RSA 2000, c. L-12; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitation of Actions Act*, CCSM c. L150; *Limitations Act*, 2002, SO 2002, c. 24, Sch. B; *Limitations Act*, SNL 1995, c. L-16.1; *Limitation of Actions Act*, SNS 2014, c. 35; *Limitation of Actions Act*, SNB 2009, c. L-8.5; *Statute of Limitations*, RSPEI 1988, c. S-7; *Limitation of Actions Act*, RSY 2002, c. 139; *Limitation of Actions Act*, RSNWT 1988, c. L-8; *Limitation of Actions Act*, RSNWT (Nu) 1988, c. L-8; and *Civil Code of Quebec*, CQLR, c. C-1991, art. 2908