

SE247887



NO.:
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

JASON HYDAMACKA

PLAINTIFF

AND

FCA CANADA INC. and FCA US LLC

DEFENDANTS

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

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff 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

- (c) 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
- (d) 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 were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

Nature of the Action

1. The Defendants design, develop, manufacture, distribute and sell sport utility vehicles in Canada. This action concerns a concealed, dangerous defect in the Defendants' "4xe" series of vehicles, which are plug-in hybrid electric versions of the Defendants' popular Jeep-brand models (the "**Subject Vehicles**"). The Subject Vehicles have a dangerous and defective high-voltage hybrid battery system that can cause, and has caused, deadly vehicle fires. Fires can occur while a Subject Vehicle is driving or parked, regardless of whether the vehicle is turned on or off. This defect renders the Subject Vehicles inherently dangerous for ordinary use.
2. The Plaintiff brings this proposed class proceeding for damages arising from the Defendants' negligent and wrongful conduct related to, *inter alia*, the design, research, development, testing, marketing, distribution and sale of the dangerously defective Subject Vehicles.

The Parties

Plaintiff

3. The Plaintiff, Jason Hydamacka, resides in Elkford, British Columbia and has an address for service of 820-980 Howe Street, Vancouver, BC V6Z 2Z8. Since August 2021, the Plaintiff has been the registered owner of a 2021 Jeep Wrangler 4xe vehicle.
4. The Plaintiff brings this action on his own behalf and on behalf of a class of all persons in Canada who are or were owners, lessees, users and/or passengers of the Subject Vehicles, to be further defined in the Plaintiff's application for class certification (the "**Class**" or "**Class Members**").

Defendants

5. The Defendant FCA US LLC, also doing business as Stellantis North America, is a North American automaker and a Delaware limited liability company organized and existing under the laws of the State of Delaware. FCA US LLC's principal place of business and headquarters is at 1000 Chrysler Drive, Auburn Hills, Michigan, 48326-2766. All references in this Notice of Civil Claim to FCA US LLC include all of its predecessor corporations and all of their divisions.
6. The Defendant FCA Canada Inc., also doing business as Stellantis Canada, is a wholly-owned subsidiary of FCA US LLC. It is a company incorporated pursuant to the laws of Canada under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 with its registered head office at 1 Riverside Drive West, Windsor, Ontario N9A 5K3. All references in this Notice of Civil Claim to FCA Canada Inc. include all of its predecessor corporations and all of their divisions.
7. This Notice of Civil Claim uses the term "**Defendants**" to refer collectively to FCA US LLC, FCA Canada Inc., and all of their related and/or predecessor corporations that were involved with the design, manufacture, marketing, distribution and sale of the Subject Vehicles.

8. FCA US LLC is a motor vehicle manufacturer of Jeep-brand motor vehicles. Through its various entities and agents, FCA designs, manufactures, markets, distributes and sells motor vehicles throughout the United States and worldwide. FCA US LLC controls and directs FCA Canada Inc. with respect to virtually all aspects related to the Subject Vehicles, including their distribution and sale in Canada.
9. FCA Canada Inc. operates numerous assembly and manufacturing facilities in Canada. FCA Canada Inc. also administers the warranties for Subject Vehicles sold in Canada.
10. FCA Canada Inc. was and is responsible for the distribution of the full line of Subject Vehicles in Canada, including in British Columbia, through its network of dealers who are its agents. Money received by its agents from the purchase or lease of a Subject Vehicle flows from the agent to FCA Canada Inc. The Defendants implicitly or expressly acknowledged that authorized dealerships are their agents in the sale of the Subject Vehicles and that dealers have accepted that undertaking, that they have the ability to control authorized dealerships, and that they act as the principal in that relationship.
11. If and to the extent that any related corporations designed, manufactured, marketed, distributed, leased or sold the Subject Vehicles in Canada, FCA US LLC and/or FCA Canada Inc. is responsible for their conduct as master, employer, partner, joint venturer or alter ego. To the extent that any predecessor corporations designed, manufactured, marketed, distributed, leased or sold the Subject Vehicles in Canada, FCA US LLC and/or FCA Canada Inc. is responsible for their conduct as successor.
12. The Defendants were organized in such a way that they functioned as an ongoing, inextricably interwoven and continuing business unit sharing common purposes and objectives in the design, manufacture, marketing, distribution and sale of the Subject Vehicles in Canada, including in British Columbia. Each of the Defendants

was the agent of the other and each is vicariously responsible for the acts and omissions of the others.

13. The particulars of the Defendants' common design include, but are not limited to:
- (a) licensing of trademarks to market the Subject Vehicles in Canada;
 - (b) cooperation in developing and maintaining websites, owner's manuals, warranty booklets, brochures, advertisements and other promotional materials related to the Subject Vehicles;
 - (c) sharing of data and information relevant to this proceeding, including results of safety studies and sales data; and
 - (d) global standards established by FCA US LLC for the conduct of its business, which applied to FCA Canada Inc. and all other subsidiaries that are or may be relevant to this proceeding.
14. In view of the close relationship between the Defendants, each of the Defendants is jointly and severally liable for the acts and omissions of the other.

Factual Background

The Subject Vehicles

15. This Notice of Civil Claim uses the term "**Subject Vehicle(s)**" to refer to all "4xe" series vehicles designed, developed, tested, manufactured, marketed, distributed, and sold by the Defendants, including but not limited to the following:

Model Year	Model
2020-2024	Jeep Wrangler 4xe
2022-2024	Jeep Grand Cherokee 4xe

16. The Subject Vehicles are plug-in hybrid electric vehicle ("**PHEV**") models of the Defendants' iconic sport utility vehicles, the gas-powered Jeep Wrangler and Jeep Grand Cherokee.

17. At all material times, the Defendants promoted the Subject Vehicles as safe, reliable and high-performing PHEV alternatives. The Defendants marketed the Subject Vehicles as offering similar reliability and safety as their gas-powered counterparts, but with all the benefits a plug-in hybrid electric battery: the ability for Subject Vehicles to be driven in all-electric mode, greater mileage, enhanced performance, and less emissions (“**PHEV Benefits**”).
18. The Subject Vehicles’ plug-in hybrid electric battery—and the ability for the Subject Vehicles to be driven in all-electric mode or hybrid mode—was central to their value proposition. To this end, the Defendants’ brochures for the Subject Vehicles explicitly proclaimed: “You’re in E-CONTROL.” The Defendants promoted the convenience of charging the Subject Vehicles inside or near the home and also sold additional products to owners and lessees of the Subject Vehicles to facilitate charging at home. The Defendants also implicitly represented to consumers that frequent charging was safe and to be expected.
19. The Defendants repeatedly and uniformly presented the PHEV Benefits in the specifications, brochures and other marketing and promotional literature directed at potential buyers.
20. For example, when working together, the hybrid and electric power sources are supposed to provide more power and torque than the gas-powered alternatives, giving the Subject Vehicles superior acceleration and performance. The 2021-2024 Jeep Wrangler 4xe vehicles’ total powertrain output was specified as capable of 470 pound-feet (lb.-ft.) of torque at 3,000 revolutions per minute (rpm) and 375 horsepower (hp) at 5,250 rpm. Meanwhile, the lower-cost, gas-powered 2021-2024 Jeep Wrangler vehicles’ 2.0L turbocharged four-cylinder gas engine could only put out a 295 lb.-ft. of torque and 270 hp, *with substantially lower mileage estimates*. These superior specifications, among others, were uniformly presented in literature directed at potential buyers.
21. Alongside the specifications at paragraph 20, the Defendants uniformly highlighted an all-electric range of up to 35 km for the 2021-2024 Jeep Wrangler 4xe vehicles.

22. Similarly, the eco-friendliness of the Subject Vehicles was repeated in all of the Defendants' consumer-facing marketing. For example, the Defendants marketing materials for the Subject Vehicles touted that they were "easier on the environment" and offered "fewer emissions".
23. In introducing the Subject Vehicles, the global president of the Jeep brand stated: "Our Jeep 4xe vehicles will be the most efficient, responsible and capable that the brand has ever created."
24. The purported benefits of the PHEV design came at a premium to consumers. The Subject Vehicles costed substantially more than similarly equipped gas-powered Jeep Wranglers and Jeep Grand Cherokees that came with conventional, non-hybrid internal combustion engines.

The Electrical Defect

25. The Subject Vehicles are equipped with high-voltage lithium-ion battery packs composed with nickel-manganese-cobalt. Without proper manufacturing and an appropriate design, these types of batteries are susceptible to heating up and catastrophically failing, leading to combustion and fires.
26. While the Defendants highlighted the plug-in hybrid electric battery and its features to justify the premium cost of the Subject Vehicles, the Defendants' marketing never disclosed that these batteries have a defect in their electrical system which can cause catastrophic vehicle fires ("**Electrical Defect**").
27. The Subject Vehicles pose a real and substantial risk of injury to persons and property on account of the Electrical Defect. As a result of the Electrical Defect, vehicle fires can occur while an affected Subject Vehicle is driving or parked, regardless of whether the vehicle ignition is turned on or off. Fires caused by the Electrical Defect have resulted in, and are likely to result in, damage to the Subject Vehicles, and damage and injury to other property and persons.

28. The Electrical Defect has rendered the Subject Vehicles inherently dangerous in their ordinary and intended use.

Recalls of the Subject Vehicles

29. On November 22, 2023, Transport Canada issued Recall #2023-627 for thousands of Subject Vehicles, corresponding with manufacturer's recall B9A ("**2023 Recall**"). The 2023 Recall noted that "there could be a problem inside the high-voltage battery that can cause a fire, even while parked with the ignition off." This recall was part of a wider global recall concerning the Electrical Defect.
30. The 2023 Recall was attributed to the Electrical Defect. The Defendant acknowledged in a simultaneous notification of safety recall sent to the U.S. National Highway Traffic Safety Administration ("**NHTSA**") that the Subject Vehicles contain a "high voltage ('HV') battery which may fail internally" and could "lead to a vehicle fire with the ignition on or off."
31. The 2023 Recall directed owners and lessees to refrain from charging their vehicles or parking their vehicles indoors or near other vehicles or structures until recall repairs were completed. The Defendants began recall repairs pursuant to the 2023 Recall several months later.
32. On September 27, 2024, Transport Canada issued Recall #2024-566 for the Subject Vehicles, corresponding with manufacturer's recall 95B ("**2024 Recall**"). The 2024 Recall replaced the 2023 Recall, and was once again attributed to the Electrical Defect. It noted that the recall repairs completed pursuant to the 2023 Recall may not be effective and a second repair would be required. This recall was part of a wider global recall concerning the Electrical Defect.
33. The 2024 Recall once again directed owners and lessees to refrain from charging their vehicles or parking their vehicles indoors or near other vehicles or structures until recall repairs were completed. The recall repairs offered pursuant to the 2024 Recall have not been completed, but will not and do not resolve the Electrical Defect.

34. The Defendants did not have a repair procedure put in place when each of the Recalls were announced. As a result, for both Recalls, the Plaintiff and Class Members have had to wait several months to even begin the ineffective recall servicing.

Defendants' Knowledge of the Electrical Defect

35. At all material times, the Defendants knew or ought to have known of the Electrical Defect and the real and substantial dangers it posed. Despite being repeatedly met with evidence concerning the Electrical Defect, the Defendants intentionally or recklessly concealed the Defect from consumers and regulators.
36. Safety concerns related to fires connected with lithium-ion batteries, like those used in the Subject Vehicles, were known to the Defendants at the time it designed, developed and manufactured the Subject Vehicles. Lithium-ion batteries, and particularly those with nickel-manganese-cobalt compositions, carry well-documented risks of combustion if they are improperly used by manufacturers. In 2017, NHTSA released a report on lithium-ion battery safety issues, which documented the vast body of evidence on the battery fire risks.
37. The high-voltage lithium-ion battery packs in the Subject Vehicles were made by Samsung SDI America Inc. ("**Samsung**"). Samsung has a history of issues with its high-voltage electric vehicle batteries, of which FCA has had notice of since at least 2020. Since 2020, a number of automakers have recalled PHEVs equipped with batteries manufactured by Samsung due to similar vehicle fire issues.
38. The Defendants were also on notice of the Electrical Defect because they accumulated knowledge of a similar defect in another PHEV model they designed and manufactured: the 2017-2020 Chrysler Pacifica plug-in hybrid minivans. Before launching the Subject Vehicles, the Defendant began receiving reports of vehicle fires related to the high-voltage battery system in Chrysler Pacifica PHEVs as early as 2019.

39. Additionally, the Defendants had or ought to have had notice and knowledge of the Electrical Defect through, *inter alia*, the following: (i) monitoring of consumer complaints and field data; (ii) information received from dealers, including dealership repair records; (iii) NHSTA complaints and records; (iv) warranty claims; and (v) their own internal records, including pre-sale testing.
40. To the extent that the Defendants did not “know” any of the Electrical Defect, it was solely due to their own willful ignorance and negligence. As the developers and manufacturers of the Subject Vehicles, the Defendants were uniquely positioned to study the Electrical Defect. The Defendants had the means and wherewithal to conduct tests to investigate the Electrical Defect before the Subject Vehicles were put into the stream of commerce in Canada, including in British Columbia. By failing to adequately research, design, develop, manufacture, test and conduct surveillance of the Subject Vehicles, the Defendants showed a flagrant indifference to the safety of the Plaintiff and Class Members.

Defendants’ Conduct in Addressing the Electrical Defect

41. The Defendants adopted an unreasonable, careless and defective product design for the Subject Vehicles that resulted in a defect that poses a substantial and imminent risk of vehicle fires. During the period of time that the Defendants’ Subject Vehicles have been marketed and sold in Canada, there have existed safer and economically feasible alternative design options.
42. Despite being an experienced manufacturer, the Defendant failed to adequately conduct testing on the Subject Vehicles and their components to verify that they were free from defects.
43. At all material times, despite their actual and/or constructive knowledge of the Electrical Defect, the Defendants:
 - (a) fail to disclose the Electrical Defect to consumers before and after their purchases or leases of the Subject Vehicles;

- (b) misrepresented the performance, capability, reliability and safety of the Subject Vehicles;
 - (c) continued to market the Subject Vehicles as safe and reliable;
 - (d) continued to market the PHEV Benefits of the Subject Vehicles; and
 - (e) failed to issue timely and adequate recalls to address the Electrical Defect.
44. It was reasonably foreseeable that Canadian consumers would receive the Defendants' promotional messages and would act in reliance upon them in purchasing or leasing the Subject Vehicles.
45. To date, the remedies offered by the Defendants have been ineffective at addressing the Electrical Defect and the risks that it poses.

Losses Sustained by the Plaintiff and Class

46. The Class Members, including the Plaintiff, have sustained losses as a result of the Defendants' negligent and wrongful conduct, including but not limited to: personal injury, property damage, the cost of remedying the Electrical Defect and mitigating the danger it poses, increased fuel costs arising from inability to use the Subject Vehicles in all-electric mode or hybrid mode with the assistance of electric charging, loss of use of the vehicles while awaiting remedies to be put in place by the Defendants or while the Subject Vehicles were under repair, and overpayment of the Subject Vehicles. Such losses were reasonably foreseeable by the Defendants.
47. The Electrical Defect renders the Subject Vehicles inherently dangerous in ordinary use. The Defendants have failed to provide an inclusive and adequate repair for the Electrical Defect or any related compensation. Class Members, including the Plaintiff, have been left with no choice but to mitigate against the imminent and material danger it poses at their own expense.

48. The Plaintiff and Class Members paid a premium for PHEV benefits they did not receive. The Plaintiff and Class Members would not have purchased the Subject Vehicles or would have paid much less for the Subject Vehicles had they been aware of the Electrical Defect.
49. The Electrical Defect materially reduces the value of the Subject Vehicles. A vehicle purchased or leased under the reasonable assumption that it is safe and reliable is worth more than a vehicle of questionable safety and reliability due to the manufacturer's failure to remedy a dangerous defect in a timely manner. The Plaintiff and Class Members paid more for the Subject Vehicles than they would have paid had the Defendants disclosed the Electrical Defect to them at the time they were buying or leasing the vehicles. The Defendants had a duty to disclose the Electrical Defect promptly upon becoming aware of it, or at the time they ought to have become aware of it. The value of the Subject Vehicles was diminished as a result of the Defendant's failures to detect and remedy the Electrical Defect in a timely manner.

PART 2: RELIEF SOUGHT

50. The Plaintiff claims on his own behalf and on behalf of the Class Members:
 - (a) an order certifying this action as a class proceeding and appointing Jason Hydamacka as the representative plaintiff under the *Class Proceedings Act*, R.S.B.C. 1996 c. 50 ("**CPA**");
 - (b) a declaration that the Defendants were negligent in the development, design, testing, manufacturing, marketing, distribution and sale of the Subject Vehicles;
 - (c) a declaration that the Subject Vehicles contain defective parts and not safe for their intended or reasonably foreseeable use;

- (d) a declaration that the Defendants breached their duty to warn the Plaintiff and Class Members of the defective Subject Vehicles and their component parts;
- (e) a declaration that the Defendants engaged in conduct contrary to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the “**BPCPA**”) and comparable legislation in the other provinces and territories (collectively, the “**Consumer Protection Legislation**”), including:
- *Consumer Protection Act*, 2002, SO 2002, c. 30 (“**ON CPA**”);
 - *Consumer Protection Act*, RSA 2000, c. C-26.3 (“**AB CPA**”)
 - *Consumer Protection and Business Practices Act*; SS 2014, c. C-30.2 (“**SK CPBPA**”);
 - *Business Practices Act*, CCSM, c.B120 (“**MB BPA**”);
 - *Consumer Protection Act*, CQLR c. P-40.1, (“**QC CPA**”);
 - *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1 (“**NB CPWLA**”);
 - *Business Practices Act*, RSPEI 1988, c. B-7 (“**PEI BPA**”);
 - *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1 (“**NL CPA**”),
- (f) a declaration that the Defendants breached section 52 of the *Competition Act*, RSC 1985, c C-34 (“**Competition Act**”);
- (g) a declaration that the Defendants are vicariously liable for the acts and omissions of their officers, directors, agents, employees, and representatives;

- (h) a declaration that any applicable statute of limitation has been tolled by the Defendants' knowledge, concealment, and denial of the facts alleged herein, which prevented the Plaintiff from discovering their cause of action until the issuance of the Recalls;
- (i) general and special damages;
- (j) aggregate damages pursuant to section 29 of the *CPA* and equivalent legislation in other provinces;
- (k) relief pursuant to the *BPCPA* and Consumer Protection Legislation where applicable;
- (l) damages and costs of the investigation and prosecution of these proceedings pursuant to section 36(1) of the *Competition Act*;
- (m) punitive, aggravated, and exemplary damages in an amount to be determined at trial;
- (n) costs;
- (o) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (p) Such further and other relief this Honourable Court may deem just.

PART 3: LEGAL BASIS

- 51. The Plaintiff realleges and reaffirms herein all factual pleadings set forth in paragraphs **Error! Reference source not found.** to 50.
- 52. The Plaintiff pleads and relies on the *CPA*, the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 (the "**CJPTA**"), the *Court Order Interest Act*, RSBC 1996, c 79; the Consumer Protection Legislation, the *Competition Act*, the *Negligence Act*, RSBC 1996, c 333 (the "**Negligence Act**"), the *Limitation Act*, SBC 2012, c 13, the *Limitation Act*, RSBC 1996, c 266, the *Supreme Court Civil Rules*, BC Reg 168/2009, as amended and any regulations thereunder, any

equivalent provincial and territorial legislation as may be enacted, and such further and other statutes as counsel may advise.

Causes of Action

Negligence

53. The Plaintiff pleads and relies upon the provisions of the *Negligence Act*.
54. At all material times, the Defendants owed a duty of care to the Plaintiff and Class Members to provide a product that was free from defects.
55. As the designers, developers, manufacturers, marketers, distributors, warrantors, servicers and sellers of the Subject Vehicles intended for use by ordinary consumers, the Defendants owed a duty of care to the Plaintiff and the Class to ensure that the Subject Vehicles were reasonably safe for use.
56. At all material times, the Defendants, or any of them, owed a duty of care to the Plaintiff and the Class to:
 - (a) exercise reasonable care in the design, research, development, testing, manufacturing, marketing, advertisement, promotion, distribution, leasing, sale, warranting, servicing, and repair of the Subject Vehicles;
 - (b) ensure that the Subject Vehicles were fit for their intended or reasonably foreseeable use;
 - (c) conduct appropriate testing to determine that the Subject Vehicles were fit for their intended or reasonably foreseeable use;
 - (d) take all reasonable steps necessary to design, manufacture, promote, distribute or sell a product that was not unreasonably dangerous to those who use it;
 - (e) properly, adequately, and fairly warn of the magnitude and scope of the defects, including the Electrical Defect;

- (f) ensure that consumers, the public and regulators were kept fully and completely informed of all defects associated with the Subject Vehicle in a timely manner;
 - (g) not withhold from consumers and the public material facts concerning the performance, capability, reliability and safety of the Subject Vehicles;
 - (h) monitor, investigate, evaluate and follow-up on reports of defects in the Subject Vehicles;
 - (i) warn the Plaintiff and the Class Members of the risks associated with the Subject Vehicles; and
 - (j) provide a timely and effective remedy to the Electrical Defect.
57. Once aware of the Electrical Defect, the Defendants had a duty to warn the Plaintiff and the Class Members of the risks associated with the Subject Vehicles.
58. The Defendants, being in the business of placing the Subject Vehicles into the Canadian stream of commerce, are and were in a relationship of proximity to the Plaintiff and the Class Members. It was reasonably foreseeable that Class Members would be harmed as a result of the Defendants' failure to design and manufacture the Subject Vehicles free from safety defects and thereafter monitor and take adequate corrective measures when required.
59. At all material times, it was reasonably foreseeable that if the Subject Vehicles contained the Electrical Defect, harm to the Plaintiff and the Class would result.
60. The reasonable standard of care expected in the circumstances required the Defendants to act fairly, honestly, candidly and with due care in the course of designing, developing, testing and manufacturing the Subject Vehicles and having them certified, imported, marketed and distributed.

61. The Defendants, through their employees, officers, directors and agents, failed to meet the standard of care required in all the circumstances. The Defendants, or any of them, were negligent in that, *inter alia*, they:
- (a) knew, or ought to have known, that the Subject Vehicles contained an Electrical Defect could cause vehicle fires and therefore create a dangerous an unreasonable risk of injury and damage to property;
 - (b) failed to adequately design, research, develop, test and/or manufacture the Subject Vehicles to ensure they were safe and free from the Electrical Defect prior to marketing, distributing or selling them;
 - (c) failed to adequately investigate and act upon reports of vehicle fires in the Subject Vehicles caused by the Electrical Defect;
 - (d) failed to adequately test the Subject Vehicles and their battery systems in a manner that would fully disclose the magnitude and scope of the defects associated with the Subject Vehicles;
 - (e) continued to sell the Subject Vehicles, notwithstanding reports of vehicle fires connected with the vehicles' electrical systems;
 - (f) failed to provide the Plaintiff and Class Members with proper, adequate and timely warning that the Subject Vehicles and their component parts were defective;
 - (g) failed to issue a proper, adequate and timely recall for the Electrical Defect;
 - (h) failed to design and establish an effective and timely procedure for repair of the Electrical Defect; and
 - (i) failed to compensate consumers for the full costs incurred in remedying the Electrical Defect.

62. The Plaintiff and Class Members did not know of the existence of the Electrical Defect, nor the nature and extent of the risks it poses and the damage that could result from their foreseeable use of the Subject Vehicles. As a result, they were unable to purchase, lease and/or operate alternative, safer options.
63. The Plaintiff's and Class Members' damages were caused by the negligence of the Defendants. As a result of the Defendants' acts and omissions described above, the Plaintiff and the Class Members suffered, and will continue to suffer, the injuries and losses as set out below.

Negligent Misrepresentation

64. The Defendants were in a proximate and special relationship with the Plaintiff and Class Members by virtue of, among other things:
 - (a) the Defendants' skill, expertise and experience in the research, design, development, testing and manufacture of the Subject Vehicles;
 - (b) the Defendants' control of the promotion and marketing of the Subject Vehicles;
 - (c) the Defendants' responsibility to clearly, fully and accurately disclose information relating to the safety risks and defects arising from the intended use of the Subject Vehicles;
 - (d) the fact that the Class Members had no choice but to rely on the representations of the Defendants in respect of the Subject Vehicles, and their design, attributes and safety (including the absence of information regarding the Electrical Defect).
65. The Defendants were negligent in representing that the Subject Vehicles were safe and reliable for their intended or foreseeable use and that the Subject Vehicles possessed PHEV Benefits. Their representations were made either explicitly, or implicitly by failing to inform the Plaintiff and the Class of the Electrical Defect.

66. The Defendants' representations were untrue, inaccurate, and/or misleading and was made negligently.
67. The Defendants marketed the safety, reliability, and PHEV Benefits of the Subject Vehicles knowing that these attributes were material to consumers. It was intended by the Defendants, and reasonably foreseeable, that the Plaintiff and Class Members would rely on the Defendants' representations in purchasing or leasing the Subject Vehicles. The failure to disclose the Electrical Defect is material to each Class Members' purchase or lease decision, because it is inextricably linked to the Defendants' true intentions in promoting the safety, reliability and PHEV Benefits of the Subject Vehicles.
68. The Plaintiff and Class Members reasonably relied on the Defendants' representations in making decisions about purchasing or leasing the Subject Vehicles. If the representations had not been made, explicitly or implicitly, the Plaintiff and the Class would not have purchased or leased the Subject Vehicles given that there are safer gas-powered alternatives that are not affected by the Electrical Defect.
69. The Defendants' misrepresentations enabled it to inflate the price it charged for the Subject Vehicles, which included safety, reliability and the PHEV Benefits as an integral component.
70. The Plaintiff and Class Members suffered damages as a result of relying on the Defendants' representations.

Breaches of Consumer Protection Legislation

71. The Plaintiff pleads and relies on the Consumer Protection Legislation.
72. The Defendants' conduct particularized herein constituted unfair, unconscionable and/or otherwise prohibited practices under the Consumer Protection Legislation, given that, among other things:

- the Plaintiff and Class Members purchased or leased the Subject Vehicles for purposes that were for personal use. As such, they obtained the Subject Vehicles in the context of “consumer transactions” and contracts within the meaning of the Consumer Protection Legislation;
- the Defendants’ engaged in deceptive, unconscionable and/or unfair acts and practices, including in their failure to properly or adequately disclose all material facts regarding the performance, capability, safety and reliability of the Subject Vehicles;
- the Defendants’ conduct in their promotion, marketing, advertising, solicitations, offers, distribution and sales of the Subject Vehicles had the capability, tendency or capacity of deceiving or misleading consumers, such as the Plaintiff and Class Members, regarding the performance, capability, safety and reliability of the Subject Vehicles;
- the Plaintiff and Class Members were not reasonably able to protect their interests because of the inherent informational asymmetry between the Defendants and the public;
- each consumer transaction whereby the Plaintiff and Class Members obtained the Subject Vehicles was excessively one-sided in favour of the Defendants; and
- the terms of the consumer transactions were uniformly inequitable and adverse to the Plaintiff and Class Members.

73. In the circumstances of this case, the Court should dispense with any notice requirements under any of the Consumer Protection Legislation, where required, in the interest of justice.

i. British Columbia

74. The Defendants’ solicitations, offers, advertisements, promotions, sales and supply of the Subject Vehicles for personal use by the Plaintiff and by Class Members were “consumer transactions” within the meaning of s. 2 of the *BPCPA*. With respect to those transactions, the Plaintiff and Class Members who purchased or leased the Subject Vehicles are “consumers” and the Defendants were “suppliers” within the meaning of the *BPCPA*.

75. The Defendants' conduct in their solicitations, offers, advertisements, promotions, sales and distribution of the Subject Vehicles had the capability, tendency or effect of deceiving or misleading consumers regarding the performance, capability, safety and reliability of the Subject Vehicles.
76. The Defendants' conduct in its solicitations, offers, advertisements, promotions, sales and distribution of the Subject Vehicles, as particularized herein, was deceptive or unconscionable acts and practices contrary to ss. 4 and/or 8 of the *BPCPA*. The Defendants' deceptive acts and practices included the failure to properly disclose all material facts regarding the performance, capability, safety and reliability of the Subject Vehicles, including the Electrical Defect.
77. As a result of the Defendants' deceptive or unconscionable acts and practices, the Plaintiff and Class Members have suffered losses and damages. The Plaintiff seeks injunctive and declaratory relief, damages and statutory compensation pursuant to ss. 171 and 172 of the *BPCPA* on her own behalf and on behalf of Class Members. Such relief includes the restoration of the profits or revenues received by the Defendants from the distribution and/or sale of the Subject Vehicles in Canada.
78. Class Members in British Columbia are entitled, to the extent necessary and pursuant to section 173(3) of the BC *BPCPA*, to a waiver of any notice requirements under the BC *BPCPA*, or alternatively, that the within action should proceed irrespective of any notice being served pursuant to the BC *BPCPA*.

ii. Ontario

79. The supply of the Subject Vehicles to the Class, whether by the Defendants or their agents as described herein, were consumer transactions within the meaning of s. 1 of the *ON CPA*.
80. The Defendants' conduct, as particularized herein, constituted unfair practices contrary to ss. 14, 15 and/or 17 of the *ON CPA*.

81. As a result of the Defendants' unfair practices, the Plaintiff and Class Members suffered losses and are entitled to relief and/or damages pursuant to s. 18 of the *ON CPA*.
82. Further, pursuant to s 18(12) of the *ON CPA*, each of the Defendants are jointly and severally liable to the Class Members together with any of their agents who directly entered into the consumer transactions for the supply of the Subject Vehicles to the Class.
83. Class Members in Ontario are entitled, to the extent necessary and pursuant to section 18(15) of the *ON CPA*, to a waiver of any notice requirements under the *ON CPA*, particularly as the Defendants have concealed the actual state of affairs from Class Members.

iii. Alberta

84. The Defendants' supply of the Subject Vehicles to the Class were consumer transactions within the meaning of s. 1(1) of the *AB CPA*.
85. The Defendants' conduct, as particularized herein, constituted unfair practices contrary to ss. 6 and/or 7.3 of the *AB CPA*. The representations made by the Defendants constituted "material facts" that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.
86. As a result of the Defendants' unfair practices, the Plaintiff and Class Members suffered losses and are entitled to relief and/or damages pursuant to ss. 13 or 142.1 of the *AB CPA*.
87. Class Members in Alberta are entitled, to the extent necessary and pursuant to section 7.2(3) of the *AB CPA*, to a waiver of any notice requirements under the *AB CPA*.

iv. Saskatchewan

- 88. The Defendants' supply of the Subject Vehicles to the Class were consumer transactions within the meaning of ss. 2 and 5 of the *SK CPBPA*.
- 89. The Defendants' conduct, as particularized herein, constituted unfair practices contrary to ss. 6, 7, 8 and/or 19(d)-I of the *SK CPBPA*.
- 90. As a result of the Defendants' unfair practices, the Plaintiff and Class Members suffered losses and are entitled to damages pursuant to s. 93(1) of the *SK CPBPA*.

v. Manitoba

- 91. The Defendants' supply of the Subject Vehicles to the Class were consumer transactions within the meaning of s. 1 of the *MB BPA*.
- 92. The Defendants' conduct, as particularized herein, constituted unfair business practices contrary to s. 2, 3 and/or 5 of the *MB BPA*.
- 93. As a result of the Defendants' unfair business practices, the Plaintiff and Class Members suffered losses and are entitled to relief and/or damages pursuant to s. 23 of the *MB BPA*.

vi. Québec

- 94. The Class Members in Québec were "consumers", the Defendants were "manufacturers", and the Subject Vehicles were "goods" within the meaning of s. 1 of the *QC CPA*.
- 95. The Defendants' conduct, as particularized herein, constituted prohibited practices contrary to ss. 37, 40, 41, 53, 215-221 and/or 228 of the *QC CPA*.
- 96. As a result of the Defendants' prohibited practices, the Plaintiff and Class Members suffered losses and are entitled to relief and/or damages pursuant to s. 272 of the *QC CPA*.

vii. New Brunswick

97. The Subject Vehicles purchased or leased by Class Members in New Brunswick were “consumer products” and the Defendants were “distributors” and “suppliers” within the meaning of s. 1 of the *NB CPWLA*.
98. The Defendants were in breach of the express and implied warranties that they made to Class Members in New Brunswick, as set out in ss. 4, 10 and 11 of the *NB CPWLA*. The Defendants made express and implied warranties to Class Members in New Brunswick, by way of packaging and marketing materials, that represented the Subject Vehicles to be safe and reliable for their intended use. As particularized further herein, these warranties were false, deceptive or misleading.
99. Additionally, pursuant to s. 27 of the *NB CPWLA*, the Defendants are liable for the safety defect in the Subject Vehicles.
100. As a direct and proximate result of the Defendants’ warranties and/or the defects in Subject Vehicles, Class Members in New Brunswick suffered a “consumer loss” within the meaning of s. 1 of the *NB CPWLA* and are entitled to damages pursuant to s. 15 of the *NB CPWLA*.

viii. Newfoundland and Labrador

101. The Class Members in Newfoundland and Labrador were “consumers”, the Defendants were “suppliers”, and the supply of the Subject Vehicles to the Class were “consumer transactions” within the meaning of s. 2 of the *NL CPBPA*.
102. The Defendants’ conduct, as particularized herein, constituted unfair or unconscionable acts and practices contrary to ss. 7, 8 and/or 9 of the *NL CPBPA*.
103. As a result of the Defendants’ unfair or unconscionable acts and practices, the Plaintiff and Class Members suffered losses and are entitled to relief and/or damages and other remedies pursuant to the *NL CPBPA*.

ix. Prince Edward Island

104. The Defendants' supply of the Subject Vehicles to the Class were services within the meaning of s. 1 of the *PEI BPA*.
105. The Defendants made unconscionable consumer representations, as particularized herein, contrary to s. 2 of the *PEI BPA*. The Defendants' conduct, as particularized herein, constituted unfair practices contrary to ss. 2 and 3 of the *PEI BPA*.
106. As a result of the Defendants' unfair practices and unconscionable consumer representations, the Plaintiff and Class Members suffered losses and are entitled to relief and/or damages pursuant to s. 4 of the *PEI BPA*.

Breach of the Competition Act

107. The Plaintiff pleads and relies on the *Competition Act*.
108. Section 52 of the *Competition Act* prohibits knowingly or recklessly making misleading representations to promote a business interest.
109. The Subject Vehicles are "products" within the meaning of sections 2 and 52 of the *Competition Act*.
110. The Defendants knowingly or recklessly made representations to the Plaintiff and Class Members about the safety and reliability of the Subject Vehicles and their purported PHEV Benefits that were false or misleading. The Defendants made these representations for the purpose of promoting, directly or indirectly, their business interests and the purchase or lease of the Subject Vehicles.
111. These representations were false or misleading in a material respect, which the Defendants knew or ought to have known. As a result, the Defendants breached section 52 of the *Competition Act*.

112. The Plaintiff and the Class Members suffered damages as a result of the Defendants' breach of section 52 of the *Competition Act*. In addition to all other remedies at law, the Plaintiff is entitled to damages and costs of investigation and prosecution pursuant to section 36 of the *Competition Act*.

Remedies

Damages

113. The Plaintiff and the Class Members have suffered damages caused by the negligent and wrongful acts of the Defendants.
114. The Plaintiff and Class Members are entitled to claim for the following damages:
- (a) out-of-pocket expenses arising from the loss of use and enjoyment of the Subject Vehicles;
 - (b) costs incurred in attempts to identify and/or rectify the Electrical Defect;
 - (c) costs incurred in repairing the Electrical Defect and in complying with the Recalls, including loss of income, opportunity costs, increased fuel costs arising from inability to use the Subject Vehicles in all-electric mode or hybrid mode with the assistance of electric charging, costs of alternative transportation and inconvenience;
 - (d) costs incurred in repairing of any component parts damaged as a result of the Electrical Defect or as a result of compliance with the Recalls;
 - (e) overpayment for the Subject Vehicles;
 - (f) diminution in the value of the Subject Vehicles;
 - (g) increase in insurance premiums following damage to the Subject Vehicles caused by the Electrical Defect;

- (h) damages arising from physical, emotional and psychological injuries as a result of vehicle fires caused by the Electrical Defect, including loss of income and associated expenses related to medical care and other treatment;
- (i) damages arising from property damage as a result of vehicle fires caused by the Electrical Defect;
- (j) such further and other damages the particulars of which will be provided prior to trial.

Punitive Damages

- 115. The Defendants engaged in conduct that is appropriately characterized as a marked departure from ordinary standards of decent behaviour. The Defendants' conduct was intentional, deliberate, and shocks the conscience, warranting punitive and exemplary damages.
- 116. The Defendants exhibited an utter indifference to whether the Subject Vehicles may be equipped with a deadly defect. In particular, punitive damages are justified because the Defendants wilful blindness and deliberate disregard for indicators of the Electrical Defect before the Subject Vehicles were placed into the stream of commerce in Canada. The Defendants egregiously, deceitfully and/or recklessly overlooked and withheld information regarding the Electrical Defect in the Subject Vehicles.
- 117. An award of punitive damages would help deter the Defendants and others from similar conduct in the future, and to express society's condemnation of conduct such as the Defendants.

Joint and Several Liability

- 118. The Defendants are jointly and severally liable for the actions and damages attributable to any of them.

Discoverability

119. The Defendants concealed their unlawful conduct from the public, the Plaintiff and the Class. The Defendants carried out their acts and omissions in a manner that precluded detection by the Plaintiff and Class. The Plaintiff relies on the doctrines of postponement and discoverability to postpone running the limitation period.
120. The Plaintiff and Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by actions of inactions of the Defendants, or that a court proceeding would be the appropriate means to seek to remedy the injury until this action was commenced.
121. The Plaintiff pleads and relies on and the *Limitation Act*, SBC 2012, c 13, and in particular ss 8, 21(3), and the *Limitation Act*, RSBC 1996, c 266. Additionally, the Plaintiff relies on the doctrines of postponement and discoverability to postpone running the limitation period.

Jurisdiction

122. Without limiting the foregoing, the Plaintiff relies on ss. 7, 10 and 13 of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 and pleads that there is a real and substantial connection between the facts on which this proceeding is based and the Province of British Columbia because this proceeding concerns:
- (a) restitutionary obligations that, to a substantial extent, arose in British Columbia;
 - (b) a tort committed in British Columbia; and
 - (c) a business carried on in British Columbia.

Form 11 (Rule 4-5(2))

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

The Plaintiff claims the right to serve this pleading/petition on the Defendants outside British Columbia on the ground that:

The Plaintiff has at all material times been a resident of British Columbia and has suffered loss in British Columbia. The Supreme Court of British Columbia has jurisdiction with respect to this matter and the Plaintiff pleads the *Court Jurisdiction and Proceedings Transfer Act*, 2003, SBC Chapter 28 and amendments thereto.

Plaintiff's address for service:	RICE HARBUT ELLIOTT LLP 820 - 980 Howe Street Vancouver, BC V6Z 0C8 ROCHON GENOVA LLP 900 - 121 Richmond Street West Toronto, Ontario M5H 2K1
Fax number address for service (if any):	Nil
E-mail address for service (if any):	service@rhelaw.com
Place of trial:	Vancouver
The address of the registry is:	800 Smithe Street, Vancouver

Date: November 14, 2024



Signature of ☐ plaintiff ☒ lawyers for plaintiff
Anthony Leoni
Vincent Genova
Joel Rochon
Katherine Shapiro

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This proposed multi-jurisdictional class proceeding arises from the Defendants negligent and wrongful conduct in designing, manufacturing, marketing, distributing and selling the Subject Vehicles, which are affected by an Electrical Defect in their high-voltage hybrid battery system that can result in vehicle fires.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a 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. *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2
3. *Negligence Act*, RSBC 196 c 333
4. *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28
5. *Court Rules Act*, RSBC 1996, c 80
6. *Supreme Court Civil Rules*, BC Reg 168/2009
7. *Court Order Interest Act*, RSBC 1996, c 79
8. *Limitation Act*, SBC 2012, c 13
9. *Limitation Act*, SBC 2012, c 13, s 30
10. *Competition Act*, R.S.C., 1985, c. C-34