



**Further amended pursuant to the Order of Justice Matthews made on August 19, 2022**  
**Further amended pursuant to SCCR 6-1(1)(a) on November 1, 2021**  
**Amended pursuant to a Consent Order made on October 7, 2021**  
**Original Filed May 21, 2021**

No. VLC-S-S-215148

Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between

G.W. Kent Scarborough

Plaintiff

And

General Motors LLC

General Motors of Canada Company

LG Corp.

LG Chem, Ltd.

LG Energy Solution, Ltd.

LG Electronics Inc.

Defendants

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

**SECOND FURTHER AMENDED 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

- (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,

- (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**

### **Part 1: STATEMENT OF FACTS**

#### ***Overview***

1. This proposed class proceeding arises out of the defendants' design, engineering, testing, manufacturing, marketing, distributing, and sale of the 2017 through 2022 model year Chevrolet Bolt EVs and 2022 model year Chevrolet Bolt EUVs (hereafter "Chevrolet Bolt" or "Class Vehicle"). The Class Vehicles suffer from a serious defect that results in a risk of fire. Specifically, when the high voltage batteries are charged to full, or very close to full, they pose a risk of fire (the "Battery Defect"). To allegedly reduce this risk, the battery capacity of the high voltage batteries in the Chevrolet Bolt has been downgraded and owners have been instructed to not allow the battery to be discharged lower than 30%, reducing the battery mileage of the vehicle and the value of the vehicle.

2. As described in more detail below, the Plaintiff seeks for himself and for a class, damages because the defendants have breached the terms of the warranty for the Class Vehicles, were negligent in their design, engineering, testing, developing, manufacturing, and sale of the Class Vehicles and deceptively marketed them to consumers. The Battery Defect creates a significant safety risk to class members and has caused damage to the class.

### ***The Parties***

3. The Plaintiff is a resident of North Vancouver, British Columbia, Canada. He owns a 2017 Chevrolet Bolt and a 2018 Chevrolet Bolt and brings this claim on behalf of himself and on behalf of a class of persons who purchased or leased a Class Vehicle in Canada (the “Class Members”).

4. The defendant, General Motors LLC (“GM”), is a limited liability company organized under Delaware law. GM designs, engineers, tests, manufactures, markets, distributes, and sells various vehicles under several prominent brand names, including but not limited to Chevrolet, Buick, GMC, and Cadillac, including the Class Vehicles.

5. The defendant, General Motors of Canada Company (“GM Canada”) is a company incorporated pursuant to the laws of the province of Nova Scotia and registered as an extra-provincial company in each Canadian province and territory. GM Canada is, directly or indirectly, a wholly owned subsidiary of GM and markets, distributes, warrants, and sells GM’s vehicles in Canada through a network of automobile dealers.

5A. The defendants, LG Corp. (“LG Corp”), LG Chem, Ltd. (“LG Chem”), LG Energy Solution, Ltd. (“LG Energy”), and LG Electronics Inc. (“LG Electronics”) (collectively, the LG Defendants) are corporations incorporated pursuant to the laws of South Korea with a head office address at 128 and 108 Yeoui-Daero Yeongdeungpo-Gu, Seoul, 07336 South Korea. LG Energy is a wholly-owned subsidiary of LG Chem. LG Chem and LG Electronics are subsidiaries of LG Corp.

5B. LG Corp is a multinational conglomerate corporation that, through its many subsidiaries including LG Chem, LG Energy, and LG Electronics, produces electronic, chemical, and telecommunication products including components for electric vehicles such as the batteries used

in the Class Vehicles. Each of the LG Defendants acted in concert with the other and each is liable for the actions of the others as they were part of a common enterprise acting together for a common goal.

***GM, and ~~GM Canada~~, the LG Defendants Design and Manufacture and Sell the Chevrolet Bolt***

6. In or about 2012, GM began designing, engineering, testing, and developing a prototype for its first all-electric vehicle. In or about January 2016, GM unveiled the production version of the Chevrolet Bolt at the Consumer Electronics Show in Las Vegas.

6A. From the beginning of the process, GM and the LG Defendants worked in collaboration through joint planning and research to design, engineer, test, develop, and manufacture the Chevrolet Bolt including the battery components. Specifically, GM and the LG Defendants worked to design, engineer, test, and develop the Chevrolet Bolt. LG Chem worked together with its wholly-owned subsidiary LG Energy and GM to design, produce, and manufacture the batteries in the Class Vehicles. LG Electronics manufactured and supplied core parts of the batteries in the Class Vehicles.

**GM and GM Canada Sell the Chevrolet Bolt**

7. By late 2016, GM and GM Canada began marketing, distributing, and selling 2017 Chevrolet Bolts through a network of authorized automobile dealers throughout Canada.

8. GM and ~~GM Canada~~ the LG Defendants continued to design, engineer, test, develop and manufacture and GM and GM Canada continued to market, distribute, and sell the Chevrolet Bolt throughout Canada, including the 2018 through 2022 models of the Chevrolet Bolt EV and the 2022 model of the Chevrolet Bolt EUV.

9. GM and GM Canada have sold over 16,000 Class Vehicles in Canada to date.

***The Chevrolet Bolt has a Battery Defect that Leads to Fire Risk***

10. The Chevrolet Bolt is designed with a nickel-lithium-ion high-voltage battery pack which serves as the sole power and propulsion source for the vehicles. The battery capacity determines the overall range of the vehicle.

11. For each Class Vehicle sold, GM and GM Canada provided a warranty for the high-voltage battery for 8 years or 160,000 kilometers, whichever came first, from the original in-service date of the vehicle (the “Warranty”). The Warranty “covers repairs to correct any vehicle defect,” including repairs or replacement of the battery. If the battery is not repaired, GM and GM Canada warrant to replace the battery with a new or factory refurbished battery “with an energy capacity (kWh storage) level at or within approximately 10% of that of the original battery”. The Warranty states that the batteries may degrade during the length of the Warranty. The Warranty makes no references to a purposeful curtailment of the battery capacity.

11A. The Battery Defect is multi-faceted. The batteries in the Class Vehicles require active cooling to prevent a risk of fire. When the Class Vehicles are in operation, they engage an active thermal management system to keep the battery at a safe temperature. When the Class Vehicles are parked or charging, the active thermal management system is not engaged, which creates a risk of spontaneous fire. Additionally, there are defects in the batteries, which increase the risk of fire. The Defendants have identified two of these defects as a torn anode tab and a folded separator.

12. Unbeknownst to the Plaintiff and Class Members, the Class Vehicles suffer from the Battery Defect. The Battery Defect renders the battery susceptible to catching fire at full or near-full charge. However, the risk of fire is allegedly reduced when the Class Vehicle settings are modified to deplete the battery capacity by 10% and when the battery is not allowed to discharge below 30% of its full capacity.

13. The modified vehicle settings are significant as they prevent the battery from reaching full capacity – it is limited to 90% capacity. Even when the battery degrades over time, the battery can still only reach 90% of its degraded capacity. In other words, the battery is curtailed to only charge up to 90% of what it can store, at any point during the battery life.

14. This reduction reduces the range of the Class Vehicles, a factor that GM and GM Canada marketed as one of the Class Vehicles main features. The effective range is further curtailed by the requirement that the batteries not be discharged lower than 30%. This leaves the Class Vehicles with only 60% of their promised range.

15. ~~GM and GM Canada~~ The Defendants have been aware of issues affecting the batteries in the Class Vehicles since at least 2018. Nonetheless, GM and GM Canada have marketed and sold Chevrolet Bolts with the knowledge that they contain defective and potentially dangerous batteries without warning customers or authorized dealerships of the issue.

16. At all material times, GM and GM Canada marketed the Class Vehicles as being free from defect, as having a promised range that the vehicles could travel on a full battery charge, and as safe and reliable and the Plaintiff and Class Members relied on these representations in their purchase of the Class Vehicles.

***GM and GM Canada Issue an Insufficient Recall***

17. Despite their knowledge, GM and GM Canada failed to notify the Plaintiff and Class Members or the authorized dealerships of these problems and associated hazards at the time of purchasing their Class Vehicles. Instead, GM and GM Canada did not perform a recall until several fires occurred in the Class Vehicles. They delayed the recall to avoid the financial ramifications of having to acknowledge that its Class Vehicles and car batteries were inherently defective by design and incapable of safely providing customers with the advertised driving range.

18. In or about November 2020, GM and GM Canada issued a recall of 2017, 2018, and 2019 Chevrolet Bolt EVs. They stated at the time that through their own investigation, they concluded that the battery pack posed a risk of fire when charged to full, or very close to full, capacity.

19. Rather than issue a complete recall of the Class Vehicles to replace the dangerous batteries or compensate the Plaintiff and Class Members for their loss in accordance with the Warranty, GM and GM Canada proposed to install an interim software fix to reprogram the hybrid propulsion system control module to reduce the battery's charge capacity by 10%. GM and GM Canada subsequently instructed owners to not discharge the battery below approximately 113km of the remaining range (which is approximately a 30% reduction in capacity).

20. Instead of offering owners a full recall to completely replace the defective battery, GM and GM Canada instituted a software update to provide a less than suitable remedy for a

significant and potentially dangerous defect. GM and GM Canada concealed their knowledge of the issues and failed to develop a permanent solution. Meanwhile, GM and GM Canada continued to market and sell the Class Vehicles in Canada.

20A. In or about April 2021, GM initiated buy-back programs in several states in the US under which GM purchased vehicles back from customers. No such programs were implemented in Canada.

20B. In or about August 2021, GM and GM Canada issued a further recall, expanding it to 2020, 2021, and 2022 Chevrolet Bolt EVs and 2022 Chevrolet Bolt EUVs.

20C. After each recall and on many occasions since, GM and GM Canada have issued warnings to owners about best practices to limit damages from potential fires from the Class Vehicles, including parking their vehicles outdoors after charging and refraining from leaving their vehicles charging overnight unattended.

20D. In or about September 2021, GM and GM Canada issued a further warning instructing owners to park on the top level of parking decks, to park 50 feet away from other vehicles, and to avoid frequent charging sessions (in addition to the restrictions to limit charging their vehicles to under 90% capacity and to avoid depleting their battery below 113km of range).

### ***Harm to the Plaintiff and Class Members***

21. On or about April 2, 2016, the Plaintiff purchased a 2017 Chevrolet Bolt, from Carter Chevrolet Cadillac Buick GMC Northshore Ltd., a car dealership in North Vancouver, for approximately \$42,463. On or about October 14, 2017 the Plaintiff purchased a second vehicle, a 2018 Chevrolet Bolt, from the same dealer for approximately \$47,096.

22. The Plaintiff and the Class Members purchased their vehicles for primarily personal, family, and household use.

23. In or about November 2020, the Plaintiff received two recall notices from GM Canada, informing him that his vehicles “may contain a defect that could affect the safety of a person” and that “GM has developed software that will limit vehicle charging to 90% of full capacity to mitigate this risk”.

24. The Plaintiff is dissatisfied with the quality of his Chevrolet Bolts given that one of his primary reasons for purchasing two of the Class Vehicles was the representation that his vehicle's battery could charge to full capacity. The Plaintiff is also concerned about the safety and reliability of his vehicles and the Class Vehicles of Class Members.

25. The Battery Defect creates a substantial likelihood of harm to the Plaintiff and Class Members given that several fires did occur as a result of the Battery Defect. There were safer and economically feasible batteries that could have been used in the design and manufacturing of the Class Vehicles, but the defendants elected to use defective batteries.

26. As a result of the Battery Defect and the marketing and sale practices of GM and GM Canada, the Plaintiff and the Class Members have suffered loss and damages.

27. The Plaintiff and Class Members paid for a vehicle free from defects. The economic value of electric vehicles is directly related to their range and safety. By marketing and selling the Class Vehicles that contained the Battery Defect, GM and GM Canada sold the Class Vehicles at an inflated price. The Plaintiff and Class Members overpaid for their vehicles and their resale value is now reduced.

28. The Plaintiff and Class Members have also suffered loss due to the inconvenience and costs associated with having their vehicles allegedly repaired and associated with having to be without their vehicles during the repairs.

29. The Plaintiff and Class Members have suffered stress and anxiety as a result of GM and GM Canada deceptively marketing the Class Vehicles and selling the Class Vehicles with the Battery Defect and as a result of the time they have had to spend investigating the matter, communicating with GM and GM Canada about the issues, worrying about potential fires, and attending to have the problem diagnosed and addressed.

30. Had the Plaintiff and the Class Members known of the Battery Defect, they would not have purchased the vehicles.

31. GM and GM Canada were enriched by the inflated prices of the Class Vehicle and the delayed recall which resulted in increased revenues for GM and GM Canada.



## **Part 2: RELIEF SOUGHT**

32. The Plaintiff claims, on his own behalf, and on the behalf of the Class Members, as follows:

- a. an order certifying this action as a class proceeding and appointing the Plaintiff as representative plaintiff under the *Class Proceeding Act*;
- b. general damages;
- c. special damages;
- d. punitive damages;
- e. an accounting and disgorgement;
- f. relief pursuant the *Competition Act*, R.S.C. 1985, c. C-34;
- g. relief pursuant to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.2 and comparable legislation in other Canadian provinces;
- h. costs;
- i. interest pursuant to the *Court Order Interest Act*, RS.B.C. 1996, c.79; and
- j. such further and other relief this Honourable Court may deem just.

## **Part 3: LEGAL BASIS**

33. The Plaintiff pleads and relies on the *Class Proceedings Act*, RSBC 1996, c 50, the *Competition Act*, RSC 1985, c C-34, the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (and comparable legislation in other Canadian provinces), the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, the *Limitation Act*, SBC 2012, c 13, and the common law generally, including, negligence and unjust enrichment.

### ***Breach of Express and Implied Warranty***

34. At all material times, the Class Vehicles were covered by the Warranty and by failing to adequately remedy the Battery Defect by repairing or replacing the batteries, GM and GM Canada have breached the terms of the Warranty.

35. Based on the wording of the Warranty, there is an implied warranty that the battery will be able to charge to 100% of its capacity, throughout the Warranty period. There was also an implied warranty, upon purchasing or leasing the Class Vehicle, that the battery could charge to 100% of its capacity.

36. Further, by marketing, advertising, distributing and selling the Class Vehicles containing the Battery Defect while misrepresenting or failing to report information concerning the Battery Defect and the dangers of the Class Vehicles to the public, GM and GM Canada created and breached implied warranties that the vehicles were safe and free of defects.

37. GM and GM Canada breached these warranties and as a result, the Plaintiff and the Class Members have suffered damages.

### ***Negligence***

#### ***Duty of Care***

38. As the designers, testers, manufacturers, marketers, distributors, importers, and sellers of the Chevrolet Bolts, ~~GM and GM Canada~~ the Defendants were in such a close and proximate relationship to the Plaintiff, and Class Members, as to owe them a duty of care. ~~GM and GM Canada~~ The Defendants owed a duty to the Plaintiff and Class Members to exercise reasonable care when designing, testing, manufacturing, marketing, distributing, importing, and selling the Class Vehicles.

#### ***Negligent Development, Design, and Testing***

39. GM and the LG Defendants breached its their duty of care to the Plaintiff and Class Members by negligently developing, designing, and testing the Class Vehicles, including (without limitation), by:

- a. failing to properly design, develop, and test the batteries and the Class Vehicles to ensure that they were safe from defects;
- b. failing to discover, through reasonably expected adequate testing, that the Class Vehicles had the Battery Defect that made them prone to catch on fire; ~~and~~,
- c. failing to employ safer and economically feasible batteries in the Class Vehicles; and
- d. failing to have adequate systems in place to monitor the performance of the batteries and Class Vehicles to ensure they were free from defect.

#### *Negligent Manufacturing*

40. GM and the LG Defendants breached ~~its~~ their duty of care to the Plaintiff and Class Members by negligently manufacturing the Class Vehicles, including (without limitation), by failing to properly manufacture the Class Vehicles to ensure that they were reasonably safe and free from defects.

#### *Negligent Distribution, Marketing, and Sale*

41. GM and GM Canada breached their duty of care to the Plaintiff and Class Members by negligently distributing, marketing, and selling the Class Vehicles, including (without limitation), by:

- a. failing to adequately monitor the safety and performance of the Class Vehicles;
- b. failing to warn of the dangers of the defects in the Class Vehicles;
- c. failing to properly and adequately warn of the dangers attendant with the use of the Class Vehicles, specifically including, but not limited to, the risk to the driver and occupants of a sudden fire;
- d. continuing to manufacture, market, and sell the Class Vehicles when they knew there were defects; and,

- e. failing to promptly recall the Class Vehicles from the Canadian market upon discovery of issues concerning the Battery Defect and when issuing a recall, failing to provide a permanent solution that does not decrease the value of the vehicles.

### *Negligent Misrepresentation*

42. As detailed above, GM and GM Canada made representations, knowingly, recklessly, and negligently that the Class Vehicles were free from defects and safe and reliable and that the batteries could be fully charged (subject to natural degradation). These statements are false, and the Plaintiff and Class Members relied on them.

43. The Plaintiff and Class Members reasonably expected that the Class Vehicles would not pose a safety risk. The Plaintiff and Class Members reasonably expected that the batteries in the Class Vehicles could be fully charged. The Plaintiff and the Class Members relied on these representations to their detriment, resulting in damages. In the alternative, reliance can be inferred in these circumstances.

### *Damages*

44. As a result of GM and ~~GM Canada's~~ the LG Defendants' negligence and GM and GM Canada's negligent misrepresentations as detailed above, the Plaintiff and Class Members have suffered and will continue to suffer loss and damage including, but not limited to:

- a. economic loss;
- b. the inconvenience and costs associated with having to take time to have their vehicles allegedly repaired and be without their vehicles;
- c. out of pocket expenses incurred for, among other things, alternative transportation and prior repairs to the Class Vehicles; and
- d. stress and anxiety.

## ***Breach of Consumer Protection Legislation***

### **British Columbia**

45. The conduct of GM and GM Canada was in breach of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the “BC BPCPA”).

46. GM and GM Canada’s solicitations, offers, advertisements, promotions, sales and supply of the Class Vehicles – ultimately for personal, family, or household use by the Plaintiff and by British Columbia Class Members – were “consumer transactions” within the meaning of the BC BPCPA.

47. With respect to these consumer transactions, the Plaintiff and the British Columbia Class Members were “consumers” within the meaning of the BC BPCPA, GM and GM Canada were each “suppliers” within the meaning of the BC BPCPA, and the Class Vehicles were each “goods” within the meaning of the BC BPCPA.

48. GM and GM Canada’s conduct with regards to the marketing and sale of the Class Vehicles, as particularized above, had the capability, tendency or effect of deceiving or misleading the Plaintiff and British Columbia Class Members with respect to the fair market price and safety of the Class Vehicles. GM and GM Canada’s conduct constituted deceptive acts and practices within the meaning of s.4 of the BC BPCPA and contrary to s. 5 of the BC BPCPA.

49. As a result of GM and GM Canada’s deceptive acts and practices, the Plaintiff and British Columbia Class Members have suffered losses and damages. The Plaintiff seeks remedies pursuant to ss. 171 and 172 of the BC BPCPA on their own behalf and on behalf of British Columbia Class Members.

50. It is not necessary for the Plaintiff and British Columbia Class Members to establish reliance on GM and GM Canada’s deceptive acts or practices in order to establish a breach of the BC BPCPA and a remedy for that breach. In the alternative, if reliance is required to establish a statutory breach and/or remedy, such reliance may be assumed or inferred on the facts of this case. In the further alternative, there was actual reliance by the Plaintiff and British Columbia Class Members.

### Alberta

51. The conduct of GM and GM Canada was in breach of the *Consumer Protection Act*, RSA 2000, c C-26.3 (the “AB CPA”).

52. GM and GM Canada’s supply of the Class Vehicles – ultimately for personal, family, or household use by Alberta Class Members – were “consumer transactions” within the meaning of the AB CPA.

53. With respect to these consumer transactions, the Alberta Class Members were “consumers” within the meaning of the AB CPA, GM and GM Canada were each “suppliers” within the meaning of the AB CPA, and the Class Vehicles were “goods” within the meaning of the AB CPA.

54. GM and GM Canada’s conduct with regards to the marketing and sale of the Class Vehicles, as particularized above, had the capability, tendency or effect of deceiving or misleading the Alberta Class Members with respect to the fair market price and safety of the Class Vehicles. GM and GM Canada’s conduct constituted an unfair practice within the meaning of, and contrary to, s. 6 of the AB CPA.

55. As a result of GM and GM Canada’s unfair practices, the Alberta Class Members have suffered losses and damages. The Plaintiff seeks remedies for the Alberta Class Members pursuant to s.13 of the AB CPA.

56. It is not necessary for the Alberta Class Members to establish reliance on GM and GM Canada’s unfair practices in order to establish a breach of the AB CPA and a remedy for that breach. In the alternative, if reliance is required to establish a statutory breach and/or remedy, such reliance may be assumed or inferred on the facts of this case. In the further alternative, there was actual reliance by the Alberta Class Members.

### Saskatchewan

57. The conduct of GM and GM Canada was in breach of *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 (the “SK CPA”).

58. With respect to GM and GM Canada's supply of the Class Vehicles, the Saskatchewan Class Members were "consumers" within the meaning of the SK CPA, GM and GM Canada were each "suppliers" within the meaning of the SK CPA, and the Class Vehicles were "goods" within the meaning of the SK CPA.

59. GM and GM Canada's conduct with regards to the marketing and sale of the Class Vehicles, as particularized above, had the capability, tendency or effect of deceiving or misleading the Saskatchewan Class Members with respect to the fair market price and safety of the Class Vehicles. GM and GM Canada's conduct constituted an unfair practice within the meaning of ss. 4 and 6 of the SK CPA and contrary to s. 8 of the SK CPA.

60. As a result of GM and GM Canada's unfair practices, the Saskatchewan Class Members have suffered losses and damages. The Plaintiff seeks remedies for the Saskatchewan Class Members pursuant to s. 93 of the SK CPA.

61. It is not necessary for the Saskatchewan Class Members to establish reliance on GM and GM Canada's unfair practices in order to establish a breach of the SK CPA and a remedy for that breach. In the alternative, if reliance is required to establish a statutory breach and/or remedy, such reliance may be assumed or inferred on the facts of this case. In the further alternative, there was actual reliance by the Saskatchewan Class Members.

### Manitoba

62. The conduct of GM and GM Canada was in breach of *The Business Practices Act*, C.C.S.M., c B-120 ("MB BPA").

63. GM and GM Canada's solicitations, offers, advertisements, promotions, sales and supply of the Class Vehicles – ultimately for personal, family, or household use by the Manitoba Class Members – were "consumer transactions" within the meaning of the MB BPA.

64. With respect to these consumer transactions, the Manitoba Class Members were "consumers" within the meaning of the MB BPA, GM and GM Canada were each "suppliers" within the meaning of the MB BPA, and the Class Vehicles were "goods" within the meaning of the MB BPA.

65. GM and GM Canada's conduct with regards to the marketing and sale of the Class Vehicles, as particularized above, had the capability, tendency or effect of deceiving or misleading the Manitoba Class Members with respect to the fair market price and safety of the Class Vehicles. GM and GM Canada's conduct constituted an unfair business practice within the meaning of ss. 1 and 2 of the MB BPA and contrary to s. 5 of the MB BPA.

66. As a result of GM and GM Canada's unfair business practices, the Manitoba Class Members have suffered losses and damages. The Plaintiff seeks remedies for the Manitoba Class Members pursuant to s. 23 of the MB BPA.

67. It is not necessary for the Manitoba Class Members to establish reliance on GM and GM Canada's unfair business practices in order to establish a breach of the MB BPA and a remedy for that breach. In the alternative, if reliance is required to establish a statutory breach and/or remedy, such reliance may be assumed or inferred on the facts of this case. In the further alternative, there was actual reliance by the Manitoba Class Members.

#### Quebec

68. The conduct of GM and GM Canada was in breach of the *Consumer Protection Act*, C.Q.L.R. c. P-40.1 (the "QC CPA").

69. GM and GM Canada, in the course of marketing and advertising of the Class Vehicles as particularized above, made false or misleading representations to Quebec Class Members with respect to the fair market price and safety of the Class Vehicles, contrary to s. 219 of the QC CPA.

70. As a result, the Quebec Class Members have suffered losses and damages. The Plaintiff seeks remedies for the Quebec Class Members pursuant to s. 272 of the QC CPA.

71. It is not necessary for the Quebec Class Members to establish reliance on GM and GM Canada's false or misleading representations to establish a breach of the QC CPA and a remedy for that breach. In the alternative, if reliance is required to establish a statutory breach and/or remedy, such reliance may be assumed or inferred on the facts of this case. In the further alternative, there was actual reliance by the Quebec Class Members.



Newfoundland and Labrador

72. The conduct of GM and GM Canada was in breach of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 (the “NFLD CPBPA”).

73. GM and GM Canada’s solicitations, offers, advertisements, promotions, sales and supply of the Class Vehicles – ultimately for personal, family, or household use by the Newfoundland and Labrador Class Members – were “consumer transactions” within the meaning of the NFLD CPBPA.

74. With respect to these consumer transactions, the Newfoundland and Labrador Class Members were “consumers” within the meaning of the NFLD CPBPA, GM and GM Canada were each “suppliers” within the meaning of the NFLD CPBPA, and the Class Vehicles were “goods” within the meaning of the NFLD CPBPA.

75. GM and GM Canada’s conduct with regards to the marketing and sale of the Class Vehicles, as particularized above, had the capability, tendency or effect of deceiving or misleading the Newfoundland and Labrador Class Members with respect to the fair market price and safety of the Class Vehicles. GM and GM Canada’s conduct constituted an unfair business practice within the meaning of s. 7 of the NFLD CPBPA and contrary to s. 9 of the NFLD CPBPA.

76. As a result of GM and GM Canada’s unfair business practices, the Newfoundland and Labrador Class Members have suffered losses and damages. The Plaintiff seeks remedies for the Newfoundland and Labrador Class Members pursuant to s. 10 of the NFLD CPBPA.

77. It is not necessary for the Newfoundland and Labrador Class Members to establish reliance on GM and GM Canada’s unfair business practices in order to establish a breach of the NFLD CPBPA and a remedy for that breach. In the alternative, if reliance is required to establish a statutory breach and/or remedy, such reliance may be assumed or inferred on the facts of this case. In the further alternative, there was actual reliance by the Newfoundland and Labrador Class Members.

Prince Edward Island

78. The conduct of GM and GM Canada was in breach of the *Business Practices Act*, R.S.P.E.I. 1988, c. B-7 (“PEI BPA”).

79. With respect to GM and GM Canada’s supply of the Class Vehicles, the PEI Class Members were “consumers” within the meaning of the PEI BPA, and the Class Vehicles were “goods” within the meaning of the PEI BPA.

80. GM and GM Canada’s conduct with regards to the marketing and sale of the Class Vehicles, as particularized above, had the capability, tendency or effect of deceiving or misleading the PEI Class Members with respect to the fair market price and safety of the Class Vehicles. GM and GM Canada’s conduct constituted an unfair practice within the meaning of s. 2 of the PEI BPA and contrary to s. 3 of the PEI BPA.

81. As a result of GM and GM Canada’s unfair practices, the PEI Class Members have suffered losses and damages. The Plaintiff seeks remedies for the PEI Class Members pursuant to s. 4 of the PEI BPA.

82. It is not necessary for the PEI Class Members to establish reliance on GM and GM Canada’s unfair practices in order to establish a breach of the PEI BPA and a remedy for that breach. In the alternative, if reliance is required to establish a statutory breach and/or remedy, such reliance may be assumed or inferred on the facts of this case. In the further alternative, there was actual reliance by the PEI Class Members.

Ontario

82A. The conduct of GM and GM Canada was in breach of the *Consumer Protection Act*, 2002, SO 2002, c.30, Sch A (“Ontario CPA”).

82B. GM and GM Canada’s solicitations, offers, advertisements, promotions, sales and supply of the Class Vehicles – ultimately for personal, family, or household purposes by the Ontario Class Members – were “consumer transactions” within the meaning of the Ontario CPA.

82C. With respect to GM and GM Canada's supply of the Class Vehicles, the Ontario Class Members were "consumers" within the meaning of the Ontario CPA, and the Class Vehicles were "goods" within the meaning of the Ontario CPA.

82D. GM and GM Canada's conduct with regards to the marketing and sale of the Class Vehicles, as particularized above, had the capability, tendency or effect of deceiving or misleading the Ontario Class Members with respect to the fair market price and safety of the Class Vehicles. GM and GM Canada's conduct constituted an unfair practice within the meaning of s. 14 and 15 of the Ontario CPA and contrary to s. 17 of the Ontario CPA.

82E. As a result of GM and GM Canada's unfair practices, the Ontario Class Members have suffered losses and damages. The Plaintiff seeks remedies for the Ontario Class Members pursuant to s. 18 of the Ontario CPA.

82F. It is not necessary for the Ontario Class Members to establish reliance on GM and GM Canada's unfair practices in order to establish a breach of the Ontario CPA and a remedy for that breach. In the alternative, if reliance is required to establish a statutory breach and/or remedy, such reliance may be assumed or inferred on the facts of this case. In the further alternative, there was actual reliance by the Ontario Class Members.

### ***Breach of the Competition Act***

83. The conduct of GM and GM Canada was contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 (the "Competition Act").

84. GM and GM Canada's conduct with regards to their marketing and sale of the Class Vehicles, as particularized above, violated s. 52 of the *Competition Act*, by using false and misleading representations or omissions of material fact in connection with the marketing, promotion, and sale of Class Vehicles equipped with the Battery Defect.

85. Although section 52 of the *Competition Act* does not require that the Plaintiff and Class Members be deceived or misled, they were - in fact - deceived or misled by GM and GM Canada's representations.

86. Pursuant to section 36 of the *Competition Act*, RSC 1985, c C-34, the Plaintiff and Class Members are entitled to recover from GM and GM Canada an amount equal to the loss or damage suffered by them, together with any additional amount that the Court may allow.

### ***Unjust Enrichment***

87. In this case, GM and GM Canada were enriched by the inflated prices of the Class Vehicle caused by the Battery Defect and the delayed recall. These resulted in increased revenues for GM and GM Canada.

88. The Plaintiff and Class Members suffered a corresponding deprivation as a consequence, namely: paying more for the Class Vehicles than they would have in the absence of the deceptive marketing and Battery Defect.

89. There was no juristic reason or justification for the enrichment of GM and GM Canada and restitution should be paid to the Plaintiff and Class Members.

### ***Punitive Damages***

90. The defendants' misconduct in deceptively marketing the Class Vehicles to consumers, delaying the recall, and failing to comply with the terms of the Warranty, was oppressive and high-handed, and departed to a marked degree from ordinary standards of decent behaviour.

91. The defendants' actions are part of a pattern of willful disregard for the Plaintiff and Class Members' rights. The defendants' actions offend the moral standards of the community and warrant the condemnation of the Court such that an award of punitive damages should be made against them.

### ***Limitation Period***

92. The Plaintiff pleads on its behalf and the behalf of Class Members that limitation periods have been temporarily suspended in the province due to COVID-19 pursuant to Order of the Minister of Public Safety and the Solicitor General, Ministerial Order, dated March 26, 2020, made under the *Emergency Program Act*, R.S.B.C., c.111, s. 10.

***Jurisdiction***

93. The Plaintiff relies on ss. 13, 7 and 10 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 subject matter of this action and the Province of British Columbia for the following reasons: GM and GM Canada marketed and sold the Class Vehicles in British Columbia; the Plaintiff resides in British Columbia; and the Plaintiff's damages were sustained in British Columbia.

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

The Plaintiff claims the right to serve this pleading on the defendants outside British Columbia on the grounds that: this action concerns a tort committed in British Columbia and a business carried on in British Columbia pursuant to section 10(g) and (h) of the *Court Jurisdiction and Proceeding Transfer Act*, S.B.C. 2003, c.28.

Plaintiff's address for service:

**Klein Lawyers LLP**  
1385 W 8th Ave #400  
Vancouver, BC V6H 3V9

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC  
V6Z 2E1

Date: August 24, 2022



Signature of lawyer for plaintiff  
David A. Klein

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

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

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

Defective Product and deceptive marketing claim.

### **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:**

*Business Practices and Consumer Protection Act*, SBC 2004, c 2.

*Business Practices Act*, R.S.P.E.I. 1988, c. B-7.

*Class Proceeding Act*, RSBC 1996, c 50.

*Competition Act*, RSC 1985, c C-34.

*Consumer Protection Act*, CQLR c P-40. 1.

*Consumer Protection Act*, RSA 2000, c C-26.3.

*Consumer Protection Act*, 2002, SO 2002, c.30, Sch A

*Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1.

*Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28.

*Court Order Interest Act*, RSBC 1996, c 79.

*Limitation Act*, SBC 2012, c 13.

*The Business Practices Act*, CCSM c B120.

*The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2.