

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**DEVIN FORBES AND STEVE LAGACÉ**

Plaintiffs

- and -

**TOYOTA CANADA INC.**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

**TO THE DEFENDANT**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiffs. The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs does not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED** if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: November 21, 2016

Issued by

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**Local Registrar**

Address of  
court office:

161 Elgin Street  
2<sup>nd</sup> Floor  
Ottawa, ON K2P 2K1

**TO: TOYOTA CANADA INC.**

1 Toyota Place  
Scarborough, Ontario  
M1H 1H9

Tel: 1 (888) 869-6828

Fax: (416) 438-6136

## DEFINED TERMS

1. In this Amended Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Frame(s)**” and/or “**Vehicle Frame(s)**” means the main supporting structure of the **Toyota Vehicle** to which all other components are attached;
- (b) “**Vehicles**” and/or “**Toyota Vehicles**” means model years 2005 through 2010 Toyota Tacoma, model years 2007 through 2008 Toyota Tundra, and/or model years 2005 through 2008 Toyota Sequoia – which were designed, manufactured, imported, distributed, supplied, inspected, marketed, promoted, advertised, maintained, leased and/or sold and warranted by the **Defendant**;
- (c) “**Design Defect**” means the serious and pervasive design and manufacturing defect that causes the **Vehicles** to be prone to excessive, premature rust corrosion, which places vehicle occupants at risk of serious injury and/or death;
- (d) “**Class**” or “**Class Members**” means all persons, entities or organizations resident in Canada who purchased and/or leased the **Vehicles**;
- (e) “*Class Proceedings Act*” means the *Class Proceedings Act*, SA 2003 c C-16.5, as amended;
- (f) “*Sale of Goods Act*” means the *Sale of Goods Act*, RSA 2000, c. S-2, as amended, including ss. 16;

(g) “**Consumer Protection Act**” means the *Consumer Protection Act, 2002*, SO 2002, c. 30, Sched. A, as amended, including ss. 8, 11, 14 & 15;

(h) “**Consumer Protection Legislation**” means:

(i) *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 4, 5 & 8-10;

(ii) *The Business Practices Act*, CCSM, c. B120, as amended, including ss. 2 & 23;

(iii) *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, as amended, including ss. 7, 8, 9 & 10, and *Trade Practices Act*, RSNL 1990, c. T-7, as amended, including ss. 5, 6 & 14;

(iv) *Fair Trading Act*, RSA 2000, c. F-2, as amended, including ss. 6, 7 & 13;

(v) *Consumer Protection Act*, RSQ c. P-40.1, as amended, including ss. 219 & 272;

(vi) *Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1, including ss. 4, 10, 12, 15-18, 23 & 27;

(vii) *Consumer Protection Act*, RSNS 1989, c. 92, including ss. 26 & 28A;

(viii) *Business Practices Act*, RSPEI 1988, c. B-7, as amended, including ss. 2-4; and

(ix) *The Consumer Protection Act*, SS 1996, c. C-30.1, as amended, including ss. 5-8, 14, 16, 48 & 65;

(i) “**Competition Act**” means the *Competition Act*, RSC 1985, c. C-34, as amended, including ss. 36 & 52;

(j) “**Motor Vehicle Safety Act**” means the *Motor Vehicle Safety Act*, SC 1993, c 16, as amended, including ss. 10 & 17;

(k) “**Defendant**” or “**Toyota**” means Toyota Canada Inc.;

(l) “**Plaintiffs**” means Devin Forbes and Steve Lagacé; and

(m) “**Representation(s)**” means the **Defendant’s** false, misleading or deceptive representations that its **Vehicles** (a) have approval, performance characteristics, uses, ingredients, benefits and/or qualities which they do not have, (b) are of a particular standard, quality or grade which they are not; (c) have been supplied in accordance with a previous representation, when they had not and (d) its use of exaggeration, innuendo and ambiguity in failing to disclose a material fact, that the **Vehicles** are plagued by a serious, pervasive, and dangerous **Design Defect**, despite longstanding knowledge.

### THE CLAIM

2. The proposed Representative Plaintiffs, Devin Forbes and Steve Lagacé, claims on ~~his~~ their own behalf and on behalf of the members of the Class as defined in paragraph 5 below (the “Class”) as against Toyota Canada Inc. (the “Defendant”):

(a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiffs as Representative Plaintiffs for the Class Members;

(b) A declaration that the Defendant breached its express contractual warranty to properly repair Class Members’ Vehicles within the warranty period;

- (c) A declaration that the Defendant breached its implied warranty of fitness for a particular purpose;
- (d) A declaration that the Defendant breached its implied warranty of merchantability;
- (e) A declaration that the Defendant breached its duty to warn the Plaintiffs and Class Members of the dangerous and defective nature of the Vehicles;
- (f) A declaration that the Defendant was negligent in the design, manufacture, import, distribution, supply, inspection, marketing, maintenance, lease and/or sale and warranty of the Vehicles;
- (g) A declaration that the Defendant made representations that were false, misleading, deceptive, and unconscionable, amounting to unfair practices in violation of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation as well as the *Competition Act*;
- (h) A declaration that the present Statement of Claim is considered as notice given by the Plaintiffs on ~~his~~ their own behalf and on behalf of “persons similarly situated” and is sufficient to give notice to the Defendant on behalf of all Class Members;
- (i) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;

- (j) A declaration that the Defendant violated the *Motor Vehicle Safety Act* in failing to cause notice of the Design Defect to be disseminated;
- (k) General damages in an amount to be determined in the aggregate for the Class Members for, *inter alia*, stress, trouble and inconvenience;
- (l) Special damages in an amount that this Honourable Court deems appropriate to compensate Class Members for, *inter alia*, the overpayment for the purchase price and/or lease payments of the Vehicles, the out-of-pocket expenses for repairs and replacements, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered, the fair replacement value of the of the defective parts and/or the costs of rectifying the defect, the costs associated with diagnosing the problem, out-of-pocket costs associated with towing, including future costs of towing, loss of use of the Vehicles and expenditures for rental vehicles, and the diminished value of the Vehicles;
- (m) Punitive, aggravated, and exemplary damages in the aggregate in an amount to be determined as this Honourable Court deems appropriate;
- (n) An order that Class Members are entitled to a refund of the purchase price of their Vehicles, including, but not limited to sales taxes, license and registration fees based *inter alia* on revocation of acceptance and rescission or, in the alternative, the diminished value of the Vehicles;

- (o) In the alternative, an order for an accounting of revenues received by the Defendant resulting from the sale of the Vehicles;
- (p) A declaration that any funds received by the Defendant through the sale of the Vehicles are held in trust for the benefit of the Plaintiffs and Class Members;
- (q) Restitution and/or a refund of all monies paid to or received by the Defendant from the sale of their Vehicles to members of the Class on the basis of unjust enrichment;
- (r) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendant from the sale of ~~their~~ its Vehicles to members of the Class on the basis of *quantum meruit*;
- (s) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (t) An interim interlocutory and permanent order restraining the Defendant from continuing any tortious actions in law, as well as those taken in contravention of the *Consumer Protection Act*, the Consumer Protection Legislation, the *Sale of Goods Act*, the *Competition Act*, and the *Motor Vehicle Safety Act*;
- (u) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;



- (v) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 26 (9) of the *Class Proceedings Act*;
- (w) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon; and
- (x) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

## **THE PARTIES**

### **The Representative Plaintiffs**

3. ~~The~~ Plaintiff Devin Forbes is an individual residing in the city of Courtenay, in the province of British Columbia.

4. In or about November 2014, ~~the~~ Plaintiff Forbes purchased a 2006 Toyota Tacoma 4x4 Double Cab V6 6M (VIN 5TELU42N56Z247119) from a Toyota-certified dealership for approximately \$13,500.00.

4.1 Plaintiff Steve Lagacé is an individual residing in the city of Sudbury in the province of Ontario.

4.2 In 2008, Plaintiff Lagacé purchased a 2005 Toyota Tacoma Double Cab V6 4.0L from a Toyota-certified dealership for approximately \$26,000.00.

**The Class**

5. The Plaintiffs seeks to represent the following class of which they are ~~he is a~~ members (the “Proposed Class”):

All persons, entities or organizations resident in Canada who purchased and/or leased a Toyota Tacoma (model years 2005-2010), a Toyota Tundra (model years 2007-2008), and/or Toyota Sequoia (model years 2005-2008) [collectively the “Vehicles”].

**The Defendant**

6. The Defendant, Toyota Canada Inc. (hereinafter “Toyota”), is a Canadian corporation with its head office in Scarborough, Ontario.

7. The Defendant is responsible for any number of the following functions: design, manufacture, importation, distribution, supply, inspection, marketing, promotion, advertisements, maintenance, lease and/or sale and warranting the Vehicles throughout Canada.

8. From its Scarborough, Ontario head office, Toyota makes all decisions related to marketing the Vehicles in Canada and implementing its Safety Recall Campaigns (SRC), Limited Service Campaigns (LSC) and Warranty Enhancement Programs (WEP).

9. The maintenance services that Toyota provides are through its nationwide network of authorized dealers and service providers.

## THE NATURE OF THE CLAIM

10. These class proceedings concern the quality, design, manufacturing, and reliability defect with the Vehicles' Frames which are prone to excessive, premature rust corrosion, thereby rendering them unmerchantable, unsuitable, and unsafe for use.

11. The Vehicle Frames were not properly prepared and treated against rust corrosion when they were manufactured. Excessively corroded frames pose a serious safety hazard to a vehicle's occupants because a vehicle's frame forms the basis of a vehicle's crashworthiness, including its ability to withstand or minimize damage to the occupant compartment in the event of an accident.

12. The Defendant has represented that the Vehicles are crashworthy throughout the expected life of the Vehicles and its customers expect the Vehicles to remain crashworthy throughout the Vehicle's life. Contrary to this promise and expectation, the frames of the Toyota Vehicles were designed, manufactured, and sold with inadequate rust corrosion protection. As a result, the frames on every Toyota Vehicle are prone to excessive rust corrosion, which render the Vehicles unstable and unsafe.

13. This condition is unrelated to and separate from normal surface rust, which is commonly found on metallic surfaces after some years of usage and environmental exposure. A vehicle with a sufficiently corroded frame is practically worthless unless the corroded frame is replaced.

14. The Defendant failed to disclose and/or actively concealed, despite longstanding knowledge, of the existence of the Design Defect and of the fact that its existence would diminish both the intrinsic and resale value of the Vehicles. As a result, the high cost of repairs (upwards

of \$15,000 to replace the Frame) was transferred to Class Members, who were left completely unaware of the Design Defect until their Vehicle's Frames would inevitably rust and corrode, oftentimes outside the warranty period.

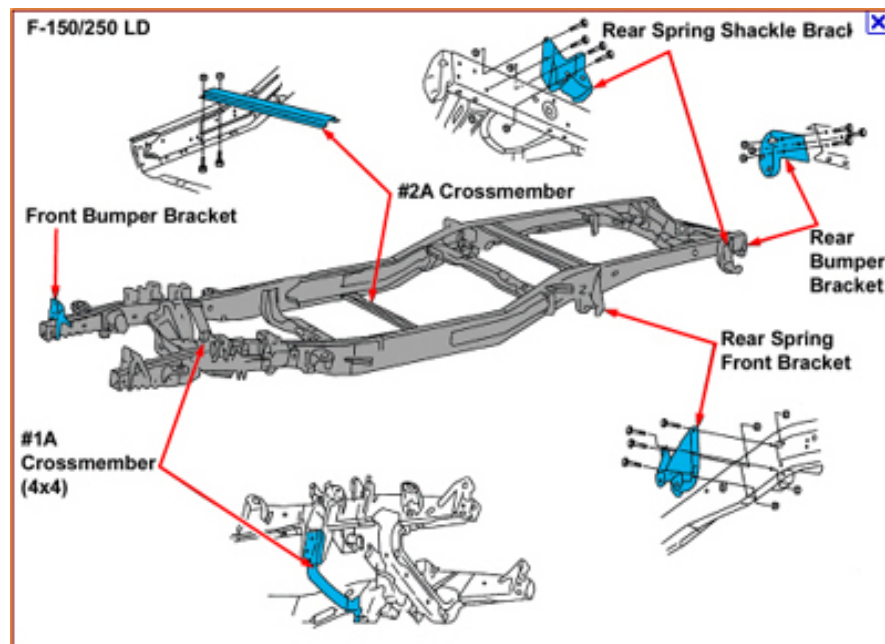
15. Toyota has long known that the Frames on the Toyota Vehicles are defective because they lack adequate rust corrosion protection. Despite this knowledge, Toyota failed to disclose the existence of this defect to the Plaintiff, Class Members, and the public. It has equally neglected to ~~Not has it~~ issued a recall to inspect and repair the Vehicles, or to ~~offered~~ to reimburse the Vehicle owners for costs incurred to identify and repair this defect.

16. Instead Toyota initiated, at best, marginally-publicized Limited Service Campaigns that provided inadequate relief for only some of the affected models and only in limited geographic areas. Even in the unlikely event that an intrepid Class Member actually discovered the existence of these Limited Service Campaigns on their own, it could only have served to mislead them because those Vehicle owners not covered by the campaigns were made to believe that their Vehicles were not affected by the Design Defect, when, in reality, they were.

17. The Plaintiffs, on behalf of the Class Members, seeks an award of damages against Toyota for its intentional, willful, and/or negligent failure to disclose and/or active concealment of the inherently defective and dangerous condition posed by the Vehicles' Frames and its failure to honour its warranty obligation to repair the Design Defect.

## I. Excessive Rust Corrosion and Perforation Renders the Toyota Vehicles Unsafe

18. As described above, a vehicle frame is the main supporting structure of a motor vehicle to which all other components are attached, depicted below is a schematic and a photo of a vehicle frame.



19. The main function of vehicle frames includes supporting the vehicle's mechanical components and body and the handling of static and dynamic loads with unintended deflection and distortion, including, but not limited to the weight of the body, passengers, and cargo loads, vertical and torsional twisting transmitted by going over uneven surfaces, transverse lateral forces caused by road conditions, side wind, and steering the vehicle, torque from the engine and transmission, longitudinal tensile forces from starting and acceleration, as well as compression from braking, and sudden impact from collisions. In other words, a vehicle's frame is intended to preventing undesirable forces and twisting from driving over uneven surfaces, engine torque, vehicle handling and accelerating and decelerating. In short, Frames also are the primary component that guard against sudden impacts and collisions.

20. The Vehicles were manufactured with frames lacking adequate rust corrosion protection<sup>1</sup>. As a result, the Vehicles' Frames are prone to severe and premature rust corrosion, which affects the structural integrity of the Vehicles, rendering them unsafe to drive and a hazard on the roadways.

20.1 When a vehicle's frame is being manufactured in the factory, it is ordinarily protected from rust and corrosion with special chemical formulations, typically phosphate conversion coatings. This is to protect the vehicle from the local climate and the use of ice-melting chemicals (salt) upon the roadways, atmospheric pollution such as acid rain or salt spray, and exposure to salt water. In addition, there are various other factors that impact the rate of corrosion including, but not limited to: (i) quality, thickness, and composition of metal used, often an alloy of mild

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<sup>1</sup> Vehicle rustproofing is intended to prevent and protect against the rusting and corrosion of iron and steel (typically carbon steel). Typically, the protection is achieved by a process of surface finishing or treatment.

steel, (ii) improper use of some dissimilar metals, which can accelerate the rusting of steel bodywork through electrolytic corrosion, (iii) design of rust traps (nooks and crannies that collect road dirt and water), (iv) particular process of rustproofing used, and (v) plastic/under-seal protection on the vehicle's underside.

21. Rust corrosion has a significant deleterious effect on metal items. It makes them weaker by replacing the strong iron or steel with flaky powder, ultimately leading to perforations. Rust corrosion is a progressive process. Once corrosion begins, it will not stop until adequately repaired.

22. Pictured below are some examples of corroded frames:









23. The Frames on the Vehicles are materially the same for purposes of this class proceeding and suffer from the same Design Defect. All of the Frames were manufactured and supplied by the same corporation (namely, Dana Holding Corporation) pursuant to the same defective manufacturing and design process. Further, the Toyota Sequoia is based on the Toyota Tundra, sharing an identical frame and frame assembly.

24. Because the damage is typically on the undercarriage of the Vehicles, it typically goes undetected unless purposefully inspected, for example, through a mandatory provincial safety inspection or otherwise.

25. The corrosion of the Vehicles is unrelated to and separate from normal surface rust experienced after years of usage and/or exposure to environmental conditions.

26. The excessive rust corrosion on the Vehicles compromises the vehicles' safety, stability, and crash-worthiness because important suspension components, engine mounts, transmission mounts, and body mounts anchor to the Vehicles' Frames.

27. According to Popular Mechanics, "A rusted-through frame means the structural and crash integrity of the car is questionable, and it should be inspected and repaired by a qualified repair facility."

28. As described on AutoGuide.com, "excessive rust often signals the impending death of a vehicle. Its useful life [is] essentially over." Further:

Frame rust is a big concern, as it affects the integrity of the car. Bad enough frame rust can cause parts to snap off or crack, which will really compromise the safety of you, your passengers and other motorists. It may also significantly diminish the car's ability to protect you in a crash.

29. Excessive rust corrosion and perforation on the Toyota Vehicles also causes the Vehicles to fail provincial safety inspections. Once a vehicle fails a provincial safety inspection, consumers cannot use their vehicle(s) unless and until they spend more time and money to remediate the rust and perforation problems.

## **II. Toyota Knew of the Design Defect and Failed to Protect Consumers**

30. Toyota represented and promised that it used the "most advanced technology available" to ensure that the Toyota Vehicles were, at minimum, equipped with reasonably corrosion-resistant parts. For example, Toyota made the following representation in the owner's manuals for the Toyota Vehicles:

Toyota, through its diligent research, design and use of the most advanced technology available, helps prevent corrosion and provides you with the finest quality vehicle construction.

31. Toyota has long been aware that the Frames on the Vehicles were exhibiting excessive rust corrosion due to incorrect and substandard manufacturing and design processes. Similar frames on other Toyota vehicles exhibited the same excessive rust corrosion and perforation. Further, Limited Service Campaigns initiated by Toyota (in both the United States and Canada) to ostensibly address this known defect were inadequate and failed to properly warn consumers about the extent and gravity of the hazard.

32. In or around March 2008, after receiving numerous reports that frames on approximately 813,000 model year 1995 through 2000 Tacoma vehicles had exhibited excessive rust corrosion, Toyota Motor Sales, U.S.A. (“Toyota USA”) initiated a Customer Support Program in the U.S. that extended the vehicles’ warranty coverage for frame perforation caused by rust corrosion. Under the program, Toyota USA, at its option, was to repair or repurchase any vehicle exhibiting perforation of the frame due to rust corrosion.

33. At the time, Toyota USA conceded that it had investigated reports of 1995 to 2000 model year Tacoma vehicles exhibiting excessive rust corrosion to the frame causing perforation of the metal and had determined that the vehicle frames in some vehicles may not have adequate corrosion-resistant protection. In a memorandum sent to dealers, distributors, and certain owners, Toyota USA emphasized that “[t]his [rust corrosion] is unrelated to and separate from normal surface rust which is commonly found on metallic surfaces after some years of usage”.

34. Another Toyota “Warranty Policy Bulletin,” distributed in the U.S. on March 7, 2008, instructed service managers and warranty administrators that “[v]ehicle inspections should only be performed if the customer has noticed excessive rust.” Toyota USA sought to limit the costs of this campaign by offering inspections only when a customer requested one. This business decision was made in full knowledge that the majority of owners would not notice excessive rust corrosion in the undercarriage of the vehicle and by so doing, it disregarded its responsibility to correct latent defects in its products and to reduce the unreasonable risk that its customers and others would be injured by the undiscovered, hidden defect.

35. Toyota USA subsequently modified and expanded this U.S. Customer Support Program to include 2001-2004 Tacoma models.

36. On November 17, 2009, Toyota recalled approximately 9,722 Tundra vehicles in Canada under Transport Canada Recall # 2009329. The recall details stated:

On certain vehicles operated in areas of heavy road salt usage, excessive corrosion of the rear cross member may cause separation of the spare tire stowed under the truck bed. Corrosion of the rear cross member may also affect the functionality of the rear brake line at the proportioning valve. A spare tire that separates during vehicle usage could impact nearby persons or objects resulting in personal injury and/or vehicle and property damage.

36.1 On January 12, 2011, Dana Holding Corporation (the company that manufactured and supplied the Toyota Vehicle Frames<sup>2</sup>) announced that it would pay Toyota Motor Corporation \$25

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<sup>2</sup> In 2010, Dana Holding Corporation sold the plants responsible for the faulty Toyota Frames to Mexican conglomerate Grupo Porza’s Metalsa subsidiary, but as part of the settlement it will pay out the amount as the plants were in their ownership when the problematic parts were manufactured.

million to settle warranty claims on corroded frames that it manufactured for the Toyota Tacoma pickup truck.

37. In November 2012, Toyota USA recalled approximately 150,000 Tacoma vehicles in the U.S. to inspect and replace the spare-tire carrier on vehicles sold in twenty so-called cold climate states<sup>3</sup>. The recall was issued to address the problem of spare-tire carriers rusting through and causing the spare tire to drop to the ground.

38. On November 21, 2012, Toyota recalled approximately 9,000 Tacoma vehicles in Canada under Transport Canada Recall # 2012390. The recall details stated:

On certain vehicles, excessive corrosion of the spare tire carrier lift plate may cause the separation of the spare tire stowed under the vehicle. The spare tire falling on the road surface creates a safety hazard that may result in a crash causing personal injury and/or property damage.

### ***Toyota Tacoma Limited Service Campaigns***

39. Although Toyota has known that the Toyota Vehicles suffer from excessive premature rust corrosion and that this is a serious safety-related defect, Toyota continues to mislead consumers and fails to adequately remedy the problem.

40. Through the issuance of two separate Limited Service Campaigns in 2014 and 2015, Toyota USA admits that the Tacoma Vehicles suffer from inadequate rust protection leading to excessive premature rust corrosion. However, Toyota USA has failed to adequately inform

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<sup>3</sup> These cold-climate states included: Connecticut, Delaware, Illinois, Indiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, Wisconsin, and West Virginia.

consumers of the true nature of the defect, the number of vehicles and models actually affected by it, and continues to offer inadequate remedies.

41. In 2014, Toyota USA issued the first Limited Service Campaign (the “2014 Campaign”) in the U.S., which applied only to certain 2005-2008 Tacoma Vehicles registered in certain cold-weather states. In notifying dealerships of the 2014 Campaign, Toyota USA expressly admitted as follows:

- Toyota has received reports that certain 2005 through 2008 model year Tacoma vehicles operated in specific cold climate areas (Cold Climate States) with high road salt usage may exhibit more-than-normal corrosion to the vehicle’s frame.
- Toyota investigated these reports and determined that the frames in some vehicles may not have corrosion-resistant protection sufficient for use in these areas.
- This combined with prolonged exposure to road salts and other environmental factors, may contribute to the development of more-than-normal rust in the frame of some vehicles.
- This condition is unrelated to and separate from normal surface rust which is commonly found on metallic surfaces after some years of usage and/or exposure to the environment.

42. The 2014 Campaign was not a formal recall and was not widely publicized. Rather, Toyota USA’s efforts to notify affected individuals of the 2014 Campaign consisted solely of sending letters to certain owners of affected Tacoma Vehicles registered in above-mentioned cold-weather states based on address information obtained from a third party and of instructing dealerships to

forward notice of the 2014 Campaign to non-original purchasers of Tacoma vehicles whom they were aware of. Accordingly, by design, the 2014 Campaign did not reach numerous affected consumers.

43. Additionally, the relief provided under the 2014 Campaign was inadequate and unnecessarily limited. Under the Campaign, owners of Tacoma Vehicles registered in certain cold-weather states could bring their vehicles to a participating Toyota dealership for inspection to determine whether rust perforation of 10 mm or larger was identifiable on certain designated areas of the vehicle's frame. Compliance with the program and its requirements was highly inconsistent.

44. In 2014, Toyota instituted a similar Campaign in Canada as the 2014 Campaign in the U.S. Letters were sent out to some Tacoma vehicle owners which stated:

Certain 2005 through 2008 Tacoma Vehicles Corrosion-Resistant Compound (CRC)  
Application Customer Satisfaction Campaign Notice

Dear Toyota Owner:

Thank you for driving a Toyota. At Toyota, we are dedicated to providing vehicles of outstanding quality and value. As part of our continual efforts to meet our customer's satisfaction and confidence in their vehicles, Toyota is announcing a Customer Satisfaction Campaign that includes your Toyota vehicle (VIN indicated below on the Owner Information Change Certificate). This campaign concerns certain 2005 through 2008 Model Year Tacoma vehicles.

What is the condition?

Toyota has received reports that, on certain 2005 through 2008 Model Year Tacoma vehicles operated in cold climate areas with high road salt usage, excessive corrosion may be exhibited on the vehicle's frame. Toyota investigated these reports and determined that the frames on some vehicles may not have adequate corrosion-resistant protection. This combined with the prolonged exposure to road salts and other environmental factors may contribute to the development of excessive corrosion on the frame of some vehicles. This

condition is unrelated to and separate from normal surface rust which is commonly found on metallic surfaces, after some years of usage and/or exposure to the environment.

There are approximately 32,000 Tacoma (2005 - 2008 model year) vehicles involved in Canada.

In the near future, Toyota will notify affected owners to request that they bring their vehicles to any Toyota dealership to have the frame on their vehicle inspected. Depending on the results of the inspection, one of the following will occur:

- i) If excessive corrosion is not found, the dealer will apply a corrosion-resistant compound (CRC) to the frame at no charge to the customer. The treatment will be applied to both external and internal surfaces of the frame to enhance the corrosion protection of the Tacoma's frame.
- ii) If the inspection of the vehicles confirms excessive corrosion to the frame, Toyota will, as necessary, provide an appropriate remedy at no charge to owners.

Owners who have questions about this campaign or immediate concerns about their vehicle should contact their local Toyota dealer for any assistance.

45. If a dealership's inspection revealed a hole 10 mm or larger on a designated portion of a Tacoma vehicle's frame, a new frame was to be installed. However, Toyota USA failed to mandate that a replacement frame be installed within a defined time period, forcing owners to unwittingly drive unsafe vehicles even after their vehicle had been determined to be eligible under the Campaign.

46. Additionally, the 2014 Campaign limited relief to only those vehicles that were brought in for inspection prior to March 31, 2016, a seemingly arbitrary deadline. Thus, Tacoma vehicles that suffered from excessive rust corrosion after March 31, 2016, were ineligible for any repair from Toyota USA.

47. In April 2015, Toyota USA issued a second Limited Service Campaign (the "2015 Campaign") in the U.S. for certain model year 2005-2008 Tacoma vehicles in the 30 states which



had not been previously covered by the 2014 Campaign described above. Through the 2015 Campaign, Toyota USA conceded that Toyota vehicles in warm weather states also suffer from excessive rust corrosion and perforation.

48. Like the 2014 Campaign, the 2015 Campaign was again not widely publicized. Rather, Toyota USA's efforts to notify affected individuals of the 2015 Campaign consisted solely of sending letters to certain owners of affected Tacoma vehicles registered in above-mentioned cold-weather states based on address information obtained from a third party and of instructing dealerships to forward notice of the 2015 Campaign to non-original purchasers of Tacoma vehicles whom they were aware of.

49. The letters Toyota USA sent to owners of certain Toyota vehicles registered in the 30 states covered by the 2015 Campaign were misleading on the cause of the rust corrosion attributing it solely to cold climate areas with "high" road salt use. Each such letter stated:

What is the condition?

Toyota has received reports that certain 2005 through 2008 model year Tacoma Vehicles operated in specific cold climate areas with high road salt use may exhibit more-than-normal corrosion to the vehicle's frame. This condition is unrelated to and separate from normal surface rust which is commonly found on metallic surfaces after some years of usage and/or exposure to the environment.

50. The 2015 Campaign letters left decisions to the vehicle owner, rather than directing all vehicles to be inspected:

What is included in this Limited Service Campaign?

If you believe your vehicle has been operated in cold climate regions of the United States where high road salt is frequently used, any authorized Toyota Dealer will inspect your vehicle's frame for excessive rust corrosion.

51. It is clear that a reasonable person would interpret such language to mean that the 2015 Campaign only applied to vehicles that had been operated in certain areas of cold climate regions of the United States where "high" road salt was used. However, the excessive rust corrosion and perforation exhibited by Tacoma vehicles has little or nothing to do with road salt.

52. The 2015 Campaign was even more restrictive than the 2014 Campaign, only providing remedies, if any, for vehicles already exhibiting excessive rust corrosion to certain portions of the vehicle's frame. In addition, the 2015 Campaign did not allow for application of rust protection on the majority of vehicles affected. Indeed, the instruction to the Toyota dealer was that if the vehicle's frame passes inspection, no further action would be required.

53. Like the 2014 Campaign, the 2015 Campaign limited all relief to vehicles that were inspected prior to the arbitrary deadline of March 31, 2016. Accordingly, Tacoma vehicles that suffered from excessive rust corrosion after March 31, 2016, were not to receive any repair.

54. Replacing the rusted-through frames on Tacoma vehicles pursuant to the 2014 and 2015 Campaigns is a lengthy and highly complex process. Reportedly, the Technical Instructions that Toyota sent to dealerships relating to replacing the frames under the 2015 Campaign are 73-pages long and contained matters unrelated to frame corrosion.

### *Toyota Tundra Limited Service Campaigns*

55. Toyota USA was also forced to acknowledge excessive frame corrosion on early model year Toyota Tundra vehicles. In November 2009, Toyota USA was forced to issue a limited safety recall for 110,000 first generation Tundra vehicles sold or registered in twenty cold-weather states and the District of Columbia (“Safety Recall 90M”). At the same time, Toyota Canada issued the same recall for 10,000 vehicles in Canada. This recall followed a United States National Highway Traffic Safety Administration (NHTSA) investigation, which found that Tundra spare tires (mounted to the rear cross-member) were falling off due to frame rust. The Tundra safety recall required dealers to inspect the rear cross-member and rear brake line mounts on certain model year 2000-2003 Tundra vehicles for significant rust. If dealers found significant rust, the corroded parts (but not the entire frame) were to be replaced. According to Toyota USA, the excessive corrosion could cause the spare tire stowed under the truck bed to become separated from the rear cross-member or could lead to the loss of the rear brake circuits which will increase vehicle stopping distances and the risk of a crash.

56. The Tundra safety recall did not cover many of the components on the frame of first generation Tundra vehicles that were exhibiting excessive rust. Accordingly, in May 2010, Toyota USA announced a Limited Service Campaign for all 2000-2003 Tundra vehicles (regardless of geographic location) in the U.S. for excessive frame rust (“LSC A0F”). However, Toyota USA instructed dealers that direct marketing of warranty or this LSC was strictly prohibited and emphasized that exposure to cold climate and high road salt usage conditions are primary contributors to the abnormal rust. Under LSC A0F, Toyota USA provided a limited time offer to replace the vehicle frame if specific areas of the frame had perforation of 10 mm or larger.

57. Toyota USA also issued a Corrosion Resistant Compound (“CRC”) Campaign B0D “as the extension to Safety Recall 90M – CRC application to the rear portion of the frame” for 2000-2003 model year Tundra vehicles registered in cold weather states (“Tundra B0D”) in the U.S. Tundra B0D is a combination of Safety Recall 90M that offered to apply a CRC to the rear portion of the vehicle frame, and a limited time offer for a CRC to the front portion of the frame. Toyota USA issued Tundra B0D as an additional measure of confidence to owners.

58. In December 2011, for the same excessive spare tire rust defects relating to Safety Recall 90M, Toyota USA issued a Limited Service Campaign for approximately 316,000 model year 2000-2003 Tundra Vehicles sold or registered in the remaining 30 states (“LSC 9SM”) in the U.S. Again, Toyota USA instructed dealers to not solicit opportunities to perform the campaign and told owners that it was unlikely that these vehicles would experience prolonged exposure to high concentrations of road salts and other environmental factors that contribute to excessive corrosion. Owners who brought in eligible vehicles by December 2012, could have had the rear cross-member, fuel tank mounting system, brake tubes and valves, and spare tire carrier inspected. Again, only, if significant corrosion was found could the impacted parts be replaced.

59. In 2012, Toyota ~~Canada~~ issued a Limited Service Campaign in Canada by sending letters to certain Tundra vehicle owners, which stated:

Toyota has received reports that, on certain 2007 through 2008 model year Tundra vehicles operated in cold climate areas with high road salt usage, excessive corrosion may be exhibited on the vehicle's frame. Toyota investigated these reports and determined that the frames on some vehicles may not have adequate corrosion resistant protection. This combined with prolonged exposure to other environmental factors may contribute to the development of excessive corrosion on the frame of some vehicles....

What is Toyota going to do for you?

Any Toyota dealer will inspect the condition of the frame on your vehicle for excessive corrosion. Depending on the results of the inspection, one of the following will occur:

- i) If excessive corrosion is not found, the dealer will apply a corrosion-resistant compound (CRC) to the frame at no charge to you. The CRC will be applied to both external and internal surfaces of the frame to enhance corrosion protection of the Tundra's frame.
- ii) If the inspection of the vehicle confirms excessive corrosion to the frame, Toyota will, as necessary provide an appropriate remedy at no charge to you.

In addition, as the application of the CRC or any frame repair may take one or two days, your Toyota dealership will arrange alternative transportation as required at no charge to you.

60. In August 2013, Toyota USA began another Limited Service Campaign for approximately 78,000 model year 2004-2006 Tundra vehicles (“LSC D0D”) in the U.S. LSC D0D applied to 2004-2006 Tundra vehicles only then currently registered in certain limited cold climate states and the District of Columbia. According to Toyota USA, it investigated reports that these vehicles may “exhibit more-than-normal corrosion to the vehicle’s frame” and “determined that the frames in some vehicles may not have corrosion-resistant protection sufficient for use in these areas.” Toyota stated “[t]his condition is unrelated to and separate from normal surface rust which is commonly found on metallic surfaces after some years of usage and/or exposure to the environment.”

61. LSC D0D did not apply to 2004 to 2006 Tundra vehicles registered outside the 20 cold climate states or in the District of Columbia. LSC D0D did not provide a full “remedy” for eligible vehicles either. Pursuant to LSC D0D, owners only had until March 31, 2015 to have their vehicle inspected at an authorized Toyota dealer.

*Toyota Sequoia Limited Service Campaign*

62. In late 2012 through early 2013, Toyota USA issued a Limited Service Campaign for certain 2001 through 2004 model year Toyota Sequoia vehicles (“LSC C0D”) in the U.S. LSC C0D was limited to vehicles then currently registered in what Toyota USA described as the “Cold Climate States” or the District of Columbia: CT, IN, KY, MA, MD, ME, MI, MN, NH, NJ, NY, OH, PA, RI, VA, VT, WI & WV. Pursuant to LSC C0D, vehicles brought to an authorized Toyota dealer in those “Cold Climate States” would be inspected for “more than normal corrosion to the vehicle’s frame” because Toyota had determined the vehicles lacked “corrosion-resistant protection sufficient for use in [Cold Climate States].”

63. Pursuant to LSC C0D, eligible Sequoia vehicles would be inspected and provided one of two so-called remedies at Toyota USA’s sole discretion, but only until July 31, 2014.

64. In its letter to owners announcing LSC C0D, Toyota USA added an untrue and vague condition on LSC C0D, representing that only vehicles that operated in specific cold climate areas with high road salt usage were at risk of above average rust problems. This was false, deceptive and designed to dissuade customers from bringing in their vehicles for inspection and/or provided them with a false sense of security in believing that their vehicle would not subject to excessive corrosion if it was not driven in these so-called cold climate areas with high road salt usage. In fact, the defect was and is present on all Toyota Vehicles.

65. In addition, under Toyota USA’s definition, “Cold Climate States” excluded such northern and cold states such as North Dakota, Montana, Idaho, Washington and Alaska.

66. In a tacit admission that LSC C0D was inadequate (from both geographic and remedial standpoints), in or about September 2013, Toyota USA issued a Limited Service Campaign (“LSC CSD”) for certain 2001 through 2004 model year Toyota Sequoia vehicles. LSC CSD applied to approximately 200,000 Sequoia vehicles in all states other than the so-called “Cold Climate States.”

67. In its notice letter accompanying LSC CSD, Toyota USA downplayed the scope of the defect by stating “If you believe your vehicle has been operated in cold climate regions of the United States where high road salt is frequently used,” then you could ask for an inspection. Even then, eligible owners had less than one year, until July 31, 2014, to complete vehicle inspection under LSC CSD.

68. Toyota USA’s letter Q&A accompanying the LSD CSD stated:

What is the condition?

Toyota has received reports that certain 2001 through 2004 model year Sequoia vehicles operated in specific cold climate areas with high road salt usage may exhibit more-than-normal corrosion to the vehicle’s frame. Toyota investigated these reports and determined that the frames in some vehicles may not have adequate corrosion-resistant protection. This combined with prolonged exposure to road salts and other environmental factors may contribute to the development of more than normal rust in the frame of some vehicles. This condition is unrelated to and separate from normal surface rust which is commonly found on metallic surfaces after some years of usage and/or exposure to the environment.

69. Like the others, this letter to owners was false, deceptive and designed to dissuade customers from bringing in their vehicles for inspection and/or provided them with a false sense of security by thinking their vehicle was not subject to excessive corrosion if it was not driven in

so-called cold climate areas with high road salt usage. The defect was and is present on all Toyota Vehicles.

### **III. Danger/Safety Concerns**

70. In connection with its failure to disclose the Design Defect to consumers, Toyota also risks the safety of the occupants of the Vehicles as well as all persons on the road. When the Frames become excessively corroded, they can no longer perform the function for which they were intended – that of crashworthiness, including its ability to withstand or minimize damage in the event of an accident. The reasonable expectation that the Vehicles were safe was, and is, material to the Plaintiffs and to the members of the Class.

### **IV. The Warranty**

71. The Vehicles are covered by a standard thirty-six (36) or 60,000-kilometre warranty, whichever occurs first, during which time Toyota represented it would cover the cost of any repair or replacement necessary due to a defect in materials or workmanship relating to the Toyota Vehicles.

72. With regard to the Frame, this warranty means naught as the Defendant actively concealed the Design Defect from the public and from Class Members, which negated their ~~utility~~ ability to correct the problem before their expiry. Toyota failed to repair the inadequately coated frames on the Toyota Vehicles to ensure such vehicles did not exhibit severe rust corrosion and perforation.

73. Further, Toyota has refused to take adequate action to correct this concealed Design Defect when it occurs in Vehicles outside of the applicable warranty period. Since the first signs of the



Design Defect typically surfaces within the warranty period for the Vehicles, but are hidden and out of the view of Class Members, which continues unabated after the expiration of the warranty, and given the Defendant's knowledge of this concealed Design Defect – any attempt by Toyota to limit its warranty with respect to the Design Defect is unconscionable.

**V. Summative Remarks**

74. The Plaintiffs and the Class Members that ~~he~~ they seeks to represent suffered economic damages by purchasing and/or leasing the Defendant's products; they did not receive the benefit of the bargain, suffered out-of-pocket loss and are, therefore, entitled to damages.

75. The Plaintiffs and members of the Class (as defined in paragraph 5 above) would not have purchased and/or leased the Vehicles had they known that the Vehicles' Frames were prone to unavoidable, dangerous, and premature failure due to excessive, premature rust corrosion. When the Plaintiffs and members of the Class purchased and/or leased the Vehicles, they relied on their reasonable expectation that they did not pose an unavoidable safety risk. Furthermore, had Toyota timely disclosed to consumers the material fact that Vehicles suffered from the Design Defect, Class Members would have required Toyota to replace their Frames before the expiration of the warranty period. Toyota neither disclosed material facts to consumers at the time of purchase, nor anytime thereafter.

76. The Defendant placed ~~their~~ its Vehicles into the stream of commerce in Canada with the intention and expectation that customers, such as the Plaintiffs and Class Members, would purchase and/or lease the Vehicles based on their Representations.

77. The Defendant knew or ought to have known that purchasers and/or lessees of Vehicles would not be reasonably able to protect their interests and that customers would be relying on the Defendant's Representations to their detriment.

### **THE REPRESENTATIVE PLAINTIFFS**

#### **A. Plaintiff Forbes**

78. In or about November 2014, ~~the~~ Plaintiff Forbes purchased a 2006 Toyota Tacoma 4x4 DoubleCab V6 6M (VIN 5TELU42N56Z247119) from Rice Toyota, a Toyota-Certified dealership in Courtenay, B.C. for approximately \$13,500.00.

79. ~~The~~ Plaintiff Forbes had been exposed to Toyota's extensive promotional and advertising campaigns, which influenced his purchasing decision.

80. On or about October 2, 2016, ~~the~~ Plaintiff Forbes was driving home when he started to hear a grinding sound, causing him to pull over to the side of the road.

81. A passerby offered his assistance and told him that the fan was rubbing on the plastic coating. In fact, this was true, but its cause was that the frame had rusted through and collapsed and the engine had sunk down approximately 1/2 an inch and was no longer aligned.



82. ~~The~~ Plaintiff Forbes took his vehicle to the Toyota dealership that he bought it from, but he was told that it was no longer covered by warranty. He was informed that he could contact Toyota Canada Inc. if he wanted to file a complaint.

83. Thereafter, ~~the~~ Plaintiff Forbes took his vehicle to Courtenay Spring and Welding and received an estimate of \$3,000.00 to fix the area where the frame had collapsed – but he decided that it was too expensive. On October 21, 2016, ~~the~~ Plaintiff Forbes had the frame welded and repaired by DN Auto Corp. for a price of \$259.42.

84. ~~The~~ Plaintiff Forbes spoke to a representative at Toyota Canada Inc. and was told to return to the dealership to make a “special warranty request”. He has called the dealership at least six (6) times without success; he has been told that someone will get back to him.

85. ~~The~~ Plaintiff Forbes has never received any correspondence whatsoever from the Defendant relating to the frame of his Vehicle; this includes a Safety Recall Campaign, Limited Service Campaign and Warranty Enhancement Campaign.

86. ~~The~~ Plaintiff Forbes has become aware, through internet research, of a U.S. class action lawsuit and settlement relating to the premature and excessive rust and wear of certain Toyota vehicles' frames (including ~~the~~ Plaintiff Forbes's year and model).

87. ~~The~~ Plaintiff Forbes's Vehicle's Frame shows other signs of rust and wear and he is quite aware, that he only performed a temporary fix by welding only the exact spot of the frame that collapsed.

#### B. Plaintiff Lagacé

87.1 In 2008, Plaintiff Lagacé purchased a 2005 Toyota Tacoma Double Cab V6 4.0L from a Toyota-certified dealership for approximately \$26,000.00.

87.2 Plaintiff Lagacé was alerted about the existence of the Design Defect that was plaguing his Vehicle in early 2017 when he happened upon the informative website of Consumer Law Group P.C., and the present proposed class action.

87.3 Based on the information that he obtained online, Plaintiff Lagacé became concerned about rust issues with the Frame and he calling Laking Toyota, in Sudbury, Ontario to inquire about the Design Defect and what his options were. Laking Toyota informed him that there had been a recall due to the Design Defect, but that it had ended on December 31, 2016. Therefore,

he was informed that he could bring his Vehicle in for an inspection of the Frame, but that if any issues were found, it would not be repaired free of charge as he was too late.

87.4 On February 6, 2017, Plaintiff Lagacé brought his Vehicle for a diagnostic into Laking Toyota in Sudbury, Ontario in order to test his Vehicle Frame. The results were the following:

“Cause: Found perforation in left front frame rail area inner side by cross member

Correction: Frame Failed”

87.5 Plaintiff Lagacé telephoned Toyota after learning about the Design Defect and of the fact this his Vehicle’s Frame had failed and he was informed that due to the fact that the “recall” had ended on December 31, 2016, they would not repair or replace the Frame free of charge.

87.6 Plaintiff Lagacé never received any notification from Toyota of the Design Defect or of the fact that he should take his Vehicle into a certified-Toyota dealership for testing and/or repair/replacement of the Frame.

88. At the time of sale, the Plaintiffs ~~was~~ were under the impression that ~~he~~ they were ~~was~~ purchasing a Vehicles that ~~was~~ were free of any design defects; unbeknownst to them ~~him~~, they overpaid for the purchase price as the Vehicles were ~~was~~ in fact suffering from the Design Defect which also affects the ~~his~~ Vehicles’ resale value.

89. The Plaintiffs were ~~was~~ further deceived by the Defendant’s misrepresentations; the Plaintiffs did not receive the benefit of the bargain and/or suffered loss as a result of the Defendant’s unfair practices and misrepresentations and were ~~was~~ damaged.

90. The Plaintiffs were ~~was~~ unaware of the existence of the Design Defect until its manifestation and/or until discovering the existence of the present proposed class action.

91. The Plaintiffs now have ~~has~~ every reason to believe that the Vehicles are plagued by a serious and pervasive Design Defect and that the Defendant has been engaging in widespread misrepresentations with regard thereto.

92. The Plaintiffs have ~~has~~ suffered damages as a result of purchasing ~~this~~ these Vehicles including, the repairs that Plaintiff Forbes has ~~he~~ already expended in fixing the Vehicle's frame (\$259.42) and both Plaintiffs' ~~the~~ future repair expenses (upwards of \$15,000.00) when they will be required to replace the entire frame. In addition to the damages as outlined above, they continues to drive a Vehicle that is not adequately safe and secure in the case of a crash.

## CAUSES OF ACTION

### A. Strict Liability

93. The Defendant is strictly liable to Class Members for the reasons that follow:

- (a) The Defendant designed, manufactured, imported, distributed, supplied, inspected, marketed, promoted, advertised, maintained, leased and/or sold and warranted the Vehicles;
- (b) The Vehicles suffer from serious manufacturing and design defects, are unsafe and unfit for their intended use;

- (c) The Vehicles could have been made without the Design Defect but-for the Defendant's business decisions;
- (d) Class Members were entitled to expect that the Vehicles were not plagued by serious, dangerous and pervasive manufacturing and design defects;
- (e) Class Members had no opportunity or expertise to inspect their Vehicles;
- (f) The defects inherent in the design of the Frame outweigh any possible benefits of its design and such defect was a material contributing cause of the injuries and losses of Class Members; and
- (g) At the time of the injury and loss to Class Members, the Vehicles were being used for the purpose and manner for which they were intended and Class Members were not aware of the Design Defect and could not, through the exercise of reasonable care and diligence, have discovered such defect.

## **B. Breach of Express Contractual Warranty**

94. According to the terms of its warranty, Toyota expressly warranted that it provided 36 months or 60,000-kilometres of comprehensive coverage, whichever occurred first, during which time Toyota represented it would cover the cost of any repair or replacement necessary due to a defect in materials or workmanship relating to the Toyota Vehicles.

95. The Defendant also represented and affirmed, contrary to facts, that it used the most advanced technology to help prevent corrosion on the Toyota Vehicles. In actuality, the Defendant

failed to use adequate rust prevention techniques or materials in constructing the Toyota Vehicles. It has been admitted that the frames on the Toyota Vehicles experience an unnatural and excessive degree of rust corrosion. The rust corrosion is a result of a defect in the manufacture or design of the Toyota Vehicles.

96. Toyota knew that the frames on the Toyota Vehicles were defective at the time of sale. Indeed, Toyota was well aware of the frame rust corrosion problems on the Toyota Vehicles. The Defendant breached express warranties when it delivered the Toyota Vehicles that did not conform to its affirmations of fact and industry standards for truck frames.

97. Toyota breached the express warranty to repair the defects in the Toyota Vehicles, because it failed to repair the inadequately coated frames on the Toyota Vehicles to ensure such Vehicles did not exhibit severe rust corrosion and perforation.

98. Despite Toyota's knowledge of the problem and opportunity to cure, Toyota failed to notify the Plaintiffs and the other members of the Class of the defect and to repair or replace, at no charge to the Class, the defective frames within the warranty period.

99. The Defendant knew when it first made these warranties and their limitations that the defect existed and that the warranties would expire before a reasonable consumer would notice or observe the defect. Defendant also failed to take necessary actions to adequately disclose or cure the defect after the existence of the defect came to the public's attention and sat on its reasonable opportunity to cure or remedy the defect, its breaches of warranty, and consumers' losses.

100. The Class Members did rely on the express warranties of the Defendant herein.



101. The Defendant knew or should have known that, in fact, said representations and warranties were false, misleading and untrue.

102. Defendant breached ~~their~~ its express warranties (and continue to breach these express warranties) because ~~they~~ it did not (and does not) cover the expenses associated with the rust corrosion on the Class Members' Vehicles.

103. Contrary to this warranty representation, the Frames were defective in that they became plagued with rust corrosion and perforations, which rendered the Vehicles dangerous to operate and which required repairs costing thousands of dollars. Due to the nature of the defect, Class Members frequently have experienced, and will continue to experience, unexpected and premature failure. This has resulted in damages, including diminished value of the Vehicles, and the various out-of-pocket expenses.

104. By failing to provide Vehicles that could function properly and on a reliable basis, the Defendant's behaviour has caused a failure of the essential purpose of the warranty to provide a Vehicle capable of functioning as required under all operating conditions for a reasonably expected life.

105. As a direct and proximate result of the foregoing acts and/or omissions, the Class Members have suffered damages entitling them to compensatory damages, punitive damages and/or, in the alternative, equitable and declaratory relief as elaborated further below.

### **C. Breach of Implied Warranty of Fitness for a Particular Purpose**

106. The members of the Class relied on the Defendant's representations which induced the Plaintiffs and Class Members to purchase and/or lease the Vehicles.

107. When purchasing and/or leasing their Vehicles, the Class Members, either expressly made it known or it was impliedly obvious from the character of the Vehicles, the particular purpose for which they required the Vehicles, namely for safe on-road transportation.

108. There are express or implied conditions that the Vehicles would be safe and durable for a reasonable period of time having regard to the uses to which the Vehicles would be put, uses that were clearly known to Toyota.

109. As a direct and proximate result of Defendant's breach of the implied warranty of fitness for particular purpose, the Class Members have suffered financial loss and other damages.

### **D. Breach of Implied Warranty of Merchantability**

110. At all times relevant hereto, applicable law imposed a duty that requires that the Vehicles be in merchantable condition and fit for the ordinary purposes for which they are used.

111. The Vehicles when sold and at all times thereafter, were not in merchantable condition and were not fit for the ordinary purpose for which vehicles are used (safe travel). The Toyota Vehicles left the Defendant's possession and control equipped with defective Frames that rendered them at all times thereafter unmerchantable, unfit for ordinary use, unsafe, and a threat to public safety.

112. Toyota had actual knowledge of, and received timely notice regarding the Design Defect at issue in this Statement of Claim and, notwithstanding such notice, failed and refused to offer an effective remedy (let alone a proactive solution).

113. Despite the Plaintiff's and the other Class Members' normal and ordinary use, maintenance, and upkeep, the frames of the Toyota Vehicles experienced an unusually rapid rate of rust corrosion, rust perforation, and structural degradation as a result of a manufacturing or design defect that existed at the time that the Defendant transferred the Toyota Vehicles from its possession or control. The defect rendered the Toyota Vehicles unfit for their ordinary use and incapable of performing the tasks they were designed, advertised, and sold to perform.

114. As a result, the Toyota Vehicles' frames are not of fair average quality. Nor would they pass without objection in the automotive industry. Excessive rust corrosion to a vehicle frame affects the stability of a vehicle, rendering the vehicle unsafe to drive and requiring substantial repairs or even replacement of the Vehicle's entire frame before safe, ordinary use can resume.

115. The Vehicles were unfit and inherently unsound for use, and the Defendant knew that they would not pass without objection in the trade; that they were not fit for the ordinary purpose for which they were used, that they would not operate on a reliable basis for the reasonable life of the Vehicles and were unmerchantable.

116. Consequently, the Defendant breached the implied warranty of merchantability, to wit: they failed to use safe and reliable Vehicles that would operate for its anticipated life (and the reasonable expectations).

117. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability, the Class Members have suffered financial loss and other damages.

#### **E. Tort of Fraud by Concealment**

118. The Defendant made material omissions as well as affirmative misrepresentations regarding the Frames and the Vehicles.

119. The Defendant sold Toyota Vehicles that it knew did not have adequate rust corrosion protection, possessed uniform defects that caused the Toyota Vehicles' frames to rust excessively and perforate, and exposed the public to an unreasonable safety risk. The Defendant omitted from the Plaintiffs and the other Class Members the material fact that the Toyota Vehicles were sold with defective frames that caused excessive rust corrosion and perforation to who it had a duty to disclose. This is a fact that a reasonable consumer would consider important in selecting a vehicle to purchase and/or lease.

120. The Defendant concealed and/or suppressed material facts concerning the Frames and the Vehicles.

121. The Vehicles that were purchased and/or leased by Class Members were, in fact, defective and unreliable as they were suffering from the Design Defect described hereinabove.

122. The Defendant had a duty to disclose that the Vehicles were defective and unreliable particularly so due to their marketing campaign in representing and it used state-of-the art methods and materials to prevent rust corrosion on the Toyota Vehicles. The Defendant knew that these

representations were false at the time that they were made. Instead, the Defendant omitted the fact that it failed to use adequate and reasonable rust preventative measures, and manufactured the Toyota Vehicles with a uniform defect that caused excessive and significant rust corrosion and perforation to the frames of the Vehicles.

123. The Defendant had a duty to disclose these omitted material facts because they were known and/or accessible only to the Defendant who has superior knowledge and access to the facts and the Defendant knew they were not known to or reasonably discoverable by the Class Members. These omitted facts were material because they directly impact the value of the Vehicles. The Defendant possessed exclusive knowledge of the defects rendering the Vehicles unreliable, non-durable and rendering the operating costs higher than similar vehicles.

124. The Defendant actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce the Class Members to purchase and/or lease the Vehicles and the Frames at a higher price, which did not match the Vehicles' true value.

125. The Class Members were unaware of these omitted material facts and would not have acted as they did if they had known of the concealed and/or suppressed facts. The Class Members' actions were reasonable and justified. The Defendant was in exclusive control of the material facts concerning the Frame defects and such facts were not known to the public or to the Class Members.

126. In addition, Class Members relied on the Defendant's Representation in relation to the Vehicles that they were purchasing and/or leasing and they purchased and/or leased such Vehicles.

Said reliance was reasonable. The Class Members were without the ability to determine the truth on their own and could only rely on the Defendant's statements and representations.

127. As a result of the concealment and/or suppression of facts, the Class Members have sustained and will continue to sustain damages as described herein.

128. As a result of their reliance, the Class Members have been injured in an amount to be proven at trial.

#### **F. Tort of Civil Negligence**

129. The Defendant had a positive legal duty to use reasonable care to perform their legal obligations to the Class Members, including, but not limited to designing, manufacturing, importing, distributing, supplying, inspecting, marketing, promoting, advertising, maintaining, leasing and/or selling and warranting safe and durable Vehicles, free from the Design Defect.

130. The Defendant breached ~~their~~ its duty of care to the Class Members by negligently designing, manufacturing, importing, distributing, supplying, inspecting, marketing, promoting, advertising, maintaining, leasing and/or selling and warranting the Vehicles and by failing to ensure that they were of merchantable quality and fit for their intended purpose, free from the Design Defect. The aforesaid loss suffered by the Class Members was caused by this negligence, particulars of which include, but are not limited to the following:

- a) The Defendant failed to properly design the Vehicles such that, under normal conditions, Class Members experienced serious and dangerous problems, including excessive and significant rust corrosion and perforation to the Frames of the Vehicles;
- b) The Defendant failed to properly market the Vehicles when it failed to reveal the deficiencies with the Frames and the associated serious consequences;
- c) The Defendant failed to adequately test the Frames to ensure a proper design and to ensure proper and timely modifications to the Frames to eliminate the foreseeable risks;
- d) The Defendant failed to accurately, candidly, promptly and truthfully disclose the defective nature of the Frames;
- e) The Defendant failed to conform with good manufacturing and distribution practices;
- f) The Defendant failed to disclose to and/or to warn Class Members that the Vehicles were defective when knowledge of the defects became known to them;
- g) The Defendant failed to recall and to carry out the proper repairs or to replace said defective Frames;
- h) The Defendant continued to sell the Vehicles when they knew or ought to have known of the defective nature and other associated problems with said Frames;
- i) The Defendant consciously accepted the risk of the Design Defect;

- j) The Defendant failed to establish any adequate procedures to educate their distributors, dealerships or the ultimate users;
- k) The Defendant failed to identify, implement and verify that procedures were in place to address the defects;
- l) The Defendant failed to change their design, manufacturing, inspection, marketing, maintenance, and testing process with respect to the Frames in a reasonable and timely manner;
- m) The Defendant failed to engage in adequate pre-market and production testing of the Vehicles; and
- n) The Defendant continue to fail to fulfill their ongoing obligations.

131. By virtue of the acts and omissions described above, the Defendant was negligent and caused damage and posed a real and substantial risk to the safety of the Class Members.

132. The loss, damages and injuries were foreseeable.

133. The Defendant's negligence proximately caused the loss, damage, injury and damages to the Class Members.

134. By reason of the foregoing, the Class Members are entitled to recover damages and other relief from Defendant.



### **G. Tort of Negligent Misrepresentation**

135. The Defendant designed, manufactured, imported, distributed, supplied, inspected, marketed, promoted, advertised, maintained, leased and/or sold and warranted Toyota Vehicles with defective frames, whilst misrepresenting the quality, reliability, and safety of Toyota Vehicles, and omitting material facts concerning the defective frames and inadequate rustproofing with the intent that the Plaintiffs and other Class Members rely on the omissions and purchase and/or lease the Vehicles.

136. The tort of negligent misrepresentation can be made out as:

- (a) There was a relationship of proximity in which failure to take reasonable care would foreseeably cause loss or harm to the Class;
- (b) The Defendant made a Representation that was untrue, inaccurate and/or misleading;
- (c) The Defendant acted negligently in making the Representation;
- (d) The Representation were relied upon by the Class reasonably; and
- (e) The Class has sustained damages as a result of their reliance.

137. At the time that the Defendant made the misrepresentations herein alleged, they had no reasonable grounds for believing the Representation to be true, as there was ample evidence to the contrary set forth in detail above.

138. The Defendant made the Representation herein alleged with the intention of inducing the Class Members to purchase and/or lease their Vehicles.

139. The Class Members relied upon the Representation and, in reliance upon it, purchased and/or leased the Vehicles. Said reliance was reasonable.

140. The Class Members were without the ability to determine the truth of these statements on their own and could only rely on the Defendant.

141. Had the Class Members known the true facts, they would either not have purchased or leased the Vehicles. No reasonable consumer would have purchased a Toyota Vehicle knowing that its Frame did not possess adequate rust corrosion protection, that this defect would greatly diminish the useful life of the Vehicle and that they would be exposed (and expose others) to an unreasonable risk of personal injury.

142. By reason of the foregoing, the Class Members are entitled to recover damages and other relief from Defendant.

#### **H. Breach of Implied Covenant of Good Faith and Fair Dealing**

143. It is a well-established tenet of contract law that there is an implied covenant of good faith and fair dealing in every contract.

144. The Class Members entered into agreements to purchase and/or to lease Vehicles, and/or were in contractual privity with Defendant as a result of the express warranties described herein.

145. In addition, in bringing their Vehicles to the Defendant's dealerships for diagnosis and/or repair, the implied covenant of good faith and fair dealing equally applies.

146. The contracts and warranties were subject to the implied covenant that the Defendant would conduct business with the Plaintiffs and the Class Members in good faith and would deal fairly with them.

147. The Defendant breached those implied covenants by selling and/or leasing to the Class Members Vehicles with the Design Defect, when they knew, or should have known, that the contracts and/or warranties were unconscionable and by abusing their discretion in the performance of the contract or by intentionally subjecting the Plaintiffs and the Class Members to a risk beyond that which they would have contemplated at the time of purchase and/or lease as well as failing to provide for proper parts and service of the Vehicles.

148. The Defendant also breached the implied covenants by not placing terms in the contracts and/or warranties that conspicuously disclosed to the Plaintiffs and the Class Members that the Frames were defective as described herein.

149. Lastly, the Defendant breached the implied covenants when they failed to disclose the Design Defect to Class Members when they brought their Vehicles in for repairs and/or diagnosis of the problem, particularly so when Class Members were charged for these as they are quite costly.

150. As a direct and proximate result of Defendant's breach of its implied covenants, the Plaintiffs and the Class Members have been damaged in an amount to be determined at trial.

## STATUTORY REMEDIES

151. The Defendant is in breach of the *Sale of Goods Act*, the *Consumer Protection Act*<sup>4</sup>, the *Competition Act*, the *Motor Vehicle Safety Act* and/or other similar/equivalent legislation.

152. The Plaintiffs pleads and relies upon trade legislation and common law, as it exists in this jurisdiction and upon consumer protection legislation and the equivalent/similar legislation and common law in the other Canadian provinces and territories. The Class Members have suffered injury, economic loss and damages caused by or materially-contributed to by the Defendant's inappropriate and unfair business practices, which includes the Defendant being in breach of applicable Consumer Protection laws.

### **A. Breach of the *Sale of Goods Act***

153. At all times relevant to this Claim, the Class Members were “buyer[s]” within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

154. At all times relevant to this action, the Defendant was “seller[s]” within the meaning of that term as defined in s.1 of the *Sale of Goods Act*.

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<sup>4</sup> While the *Consumer Protection Act* applies only in Ontario, other Canadian provinces have similar consumer protection legislation including, but not limited to: the *Consumer Protection Act*, CQLR c P-40.1 at ss. 41, 215, 216, 218, 219, 220(a), 221(g), 228, 239, 253, 270 & 272; the *Fair Trading Act*, RSA 2000, c F-2 at ss. 5-7, 7.2, 7.3, 9 & 13; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 at ss. 4-9, 171 & 172; *The Business Practices Act*, CCSM, c B120 at ss. 2-9 & 23; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 and the *Trade Practices Act*, RSNL 1990, c T-7 at ss. 5-7 & 14; the *Business Practices Act*, RSPEI 1988, c B-7 at ss. 2-4; the *Consumer Protection Act*, SS 1996, c C-30.1 at ss. 5-8, 14, 16 & 23-25; the *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1 at ss. 10-13, 15, 23 & 27; the *Consumer Protection Act*, RSNS 1989, c 92 at ss. 26-29.

155. There were implied conditions as to merchantable quality or fitness pursuant to s. 16 of the *Sale of Goods Act* as well as an implied condition as regards defects as the Design Defect could not have been revealed upon examination.

156. The Defendant was aware that the customers purchased and/or leased the Vehicles based on their representations and based on their marketing and advertising and there is therefore an implied warranty or condition that the goods will perform as presented.

157. The Defendant committed a fault or wrongful act by breaching the implied condition as to quality or fitness for a particular purpose. By placing into the stream of commerce a product that was unfit for the purpose for which it was marketed and/or advertised, as per s. 16 of the *Sale of Goods Act*, the Defendant is liable. The Class is entitled to maintain an action for breach of warranty under ss. 52 & 53 of the *Sale of Goods Act*.

#### **B. Breach of the *Consumer Protection Act***

158. The Defendant is resident in Ontario for the purpose of s. 2 of the *Consumer Protection Act*.

159. At all times relevant to this action, many of the Class Members were “consumer[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

160. At all times relevant to this action, the Defendant was “supplier[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

161. The transactions by which many of the Class Members purchased and/or leased the Vehicles were “consumer transaction[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

162. The Defendant has engaged in an unfair practice by making a Representation to Class Members which was and is “false, misleading or deceptive” and/or “unconscionable” within the meaning of ss. 14, 15 and 17 of the *Consumer Protection Act* as follows:

- (a) Representing that the Vehicles have approval, performance characteristics, uses, ingredients, benefits and/or qualities, which they do not have;
- (b) Representing that the Vehicles are of a particular standard, quality or grade which they are not;
- (c) Representing that the Vehicles have been supplied in accordance with a previous representation, when they had not; and
- (d) Using exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding the Design Defect as such use or failure deceives or tends to deceive.

163. The Representation was and is unconscionable because *inter alia* the Defendant know or ought to know that consumers are likely to rely, to their detriment, on Defendant’s misleading statements as to reliability and durability of the Vehicles.

164. The Representation was and is false, misleading, deceptive and/or unconscionable such that it constituted an unfair practice which induced the Class to purchase and/or lease the Vehicles as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

165. The Class Members relied on the Representation.

166. The reliance upon the Representation by the Class Members is established by his or her purchase and/or lease of the Vehicles. Had the Class Members known that the Representation was false and misleading they would either not have purchased and/or leased the Vehicles or would have paid less than what they did.

### **C. Breach of the *Competition Act***

167. At all times relevant to this action, the Defendant's design, manufacturing, importing, distribution, supply, inspecting, marketing, maintaining, leasing and/or selling and warranting business was a "business" and the Vehicles were "product(s)" within the meaning of that term as defined in s. 2 of the *Competition Act*.

168. The Defendant's acts are in breach of s. 52 of Part VI of the *Competition Act*, were and are unlawful and render the Defendant jointly and severally liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*.

169. The Defendant made the Representation to the public and in so doing breached s. 52 of the *Competition Act* because the Representation:

- (a) Was made for the purpose of promoting, directly or indirectly, the use of a product or for the purpose of promoting, directly or indirectly, the business interests of the Defendant;
  - (b) Was made knowingly or recklessly;
  - (c) Was made to the public;
  - (d) Was false and misleading in a material respect; and
  - (e) Stated a level of performance and quality that was false and not based on adequate and proper testing.
170. The Class Members relied upon the Representation by buying and/or leasing the Vehicles and suffered damages and loss.
171. Pursuant to s. 36 of the *Competition Act*, the Defendant is liable to pay the damages which resulted from the breach of s. 52.
172. Pursuant to s. 36 of the *Competition Act*, the Class Members are entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.
173. The Class Members are also entitled to recover as damages or costs, in accordance with the *Competition Act*, the costs of administering the plan to distribute the recovery in this action and the costs to determine the damages of each Class Member.



#### **D. Breach of the *Motor Vehicle Safety Act***

174. At all times relevant to this action, the Defendant was a “company” within the meaning of that term as defined in s. 2 of the *Motor Vehicle Safety Act*.

175. At all times relevant to this action the Vehicles were “vehicle[s]” within the meaning of that term as defined in s. 2 of the *Motor Vehicle Safety Act*.

176. In manufacturing, selling and/or importing the Vehicles, the Defendant breached the *Motor Vehicle Safety Act* as, although they were and are aware of the dangerous Design Defect, they continue to deny its existence and have not caused notice to be given to the Minister or to the Class Members.

177. Pursuant to s. 17 of the *Motor Vehicle Safety Act*, the Defendant is liable to pay damages as a result of ~~their~~ its contravention of s. 10.

#### **CAUSATION**

178. The acts, omissions, wrongdoings, and breaches of legal duties and obligations of the Defendant is the direct and proximate cause of the Plaintiff’s and Class Members’ injuries.

179. The Plaintiff~~s~~ pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendant, including damages, consequential damages, specific performance, rescission, attorneys’ fees, costs of suit and other relief as appropriate in the circumstances.

## DAMAGES

### A. Compensatory Damages (Economic Losses)

180. By reason of the acts, omissions and breaches of legal obligations of the Defendant, the Plaintiffs and Class Members have suffered injury, economic loss and damages, the particulars of which include:

- (a) Overpayment for the purchase price and/or lease payments of the Vehicles,
- (b) Out-of-pocket expenses for repairs and replacements, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered,
- (c) The fair replacement value of the of the defective parts and/or the costs of rectifying the defects;
- (d) The costs associated with diagnosing the problem;
- (e) Out-of-pocket costs associated with towing, including future costs of towing,
- (f) The loss of use of the Vehicles and expenditures for rental vehicles;
- (g) The diminished value of their Vehicles,
- (h) The cost of purchasing additional Vehicles and or/parts necessitated by the repeated problems with the Frames;

- (i) Pain and suffering, stress, trouble and inconvenience; and
- (j) Other damages as described herein.

### **B. Punitive, Exemplary and Aggravated Damages**

181. The Defendant has taken a cavalier and arbitrary attitude to its legal and moral duties to the Class Members.

182. In addition, it should be noted since the Defendant is part of a highly-revered, multi-billion-dollar corporation, it is imperative to avoid any perception of evading the law without impunity. Should the Defendant only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive, aggravated and exemplary damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations.

183. At all material times, the conduct of the Defendant as set forth was malicious, deliberate and oppressive towards their customers and the Defendant conducted itself ~~themselves~~ in a wilful, wanton and reckless manner.

### **WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST**

184. The Plaintiffs pleads and relies on the doctrine of waiver of tort and states that the Defendant's conduct, including the alleged breaches of law and of the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, or the *Motor Vehicle Safety Act* constitutes

wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

185. The Plaintiffs reserves the right to elect at the Trial of the Common Issues to waive the legal wrong and to have damages assessed in an amount equal to the gross revenues earned by the Defendant or the net income received by the Defendant or a percent of the sale of the Vehicles as a result of the Defendant's unfair practices and false representations which resulted in revenues and profit for the Defendant.

186. Further, the Defendant has been unjustly enriched as a result of the revenues generated from the sale of the Vehicles and as such, *inter alia*, that:

(a) The Defendant has obtained an enrichment through:

- i. Revenues and profits from the sale of the Vehicles;
- ii. The saving of costs of recalling the Vehicles;
- iii. The saving of costs of replacing the Frame with a properly designed and manufactured Frame; and
- iv. The saving of costs of repair.

(b) The Plaintiffs and other Class Members have suffered a corresponding deprivation;  
and

(c) The benefit obtained by the Defendant and the corresponding detriment experienced by the Plaintiffs and Class Members has occurred without juristic reason. Since the monies that were received by the Defendant resulted from the

Defendant's wrongful acts, there is and can be no juridical reason justifying the Defendant's retaining any portion of such money paid.

187. Further, or in the alternative, the Defendant is constituted as constructive trustees in favour of the Class Members for all of the monies received because, among other reasons:

- (a) The Defendant was unjustly enriched by receipt of the monies paid for the Vehicles;
- (b) The Class Members suffered a corresponding deprivation by purchasing and/or leasing the Vehicles;
- (c) The monies were acquired in such circumstances that the Defendant may not in good conscience retain them;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;
- (e) The integrity of the market would be undermined if the court did not impose a constructive trust; and
- (f) There are no factors that would render the imposition of a constructive trust unjust.

188. Further, or in the alternative, the Plaintiffs claim an accounting and disgorgement of the benefits which accrued to the Defendant.

## COMMON ISSUES

189. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

- (a) Are the Vehicles defective?
- (b) Are the Vehicles, non-merchantable, and/or subject to excessive, premature rust corrosion in the course of their normal use?
- (c) Did the Defendant negligently perform its duties to properly design, manufacture, import, distribute, supply, inspect, market, maintain, lease and/or sell and warrant the Vehicles?
- (d) Is the Defendant strictly liable for the damages suffered by Class Members?
- (e) Did the Defendant breach its express and/or implied warranty by not providing proper repairs and/or replacement of the Frame during the warranty period?
- (f) Did the Defendant impliedly warrant the Vehicles for fitness for a particular purpose?
- (g) Did the Defendant impliedly warrant the Vehicles for merchantability?

- (h) Did the Defendant commit the tort of fraud by concealment when they concealed and/or suppressed material facts concerning the reliability, durability, total ownership costs and dealer support of the Vehicles?
- (i) Did the Defendant misrepresent the standard, quality, and characteristics of the Vehicles?
- (j) Did the Defendant misrepresent or fail to adequately disclose to customers the true defective nature of the Vehicles?
- (k) Does the Defendant owe the Class members a duty to use reasonable care?
- (l) Did the Defendant act negligently in failing to use reasonable care to perform its legal obligations?
- (m) Did the Defendant intend or foresee that the Plaintiffs or other Class Members would purchase the Vehicles based on their representations?
- (n) Did the Defendant's negligence proximately cause loss or injury and damages?
- (o) Did the Defendant breach its implied covenant of good faith and fair dealing?
- (p) Did the Defendant engage in unfair, false, misleading, and/or deceptive acts or practices in their design, manufacture, import, distribute, supply, inspect, market, maintain, lease and/or sale and warranty of the Vehicles?

- (q) Are the Defendant responsible for all related costs (including, but not limited to, diminished value of the Vehicles in terms of an overpayment for the purchase price and/or lease payments, the out-of-pocket expenses for repairs and replacements for the Vehicles, including future costs of repair and including deductibles paid when repairs were covered by warranty, and the full cost of repair when they were not covered, the fair replacement value of the of the defective parts and/or the costs of rectifying the defects the costs associated with diagnosing the problem, towing costs for the Vehicles, including the cost of future towing, the loss of use of the Vehicles and expenditures for rental vehicles, the diminished value of the Vehicles, stress, trouble and inconvenience) to Class Members as a result of the problems associated with the Vehicles?
- (r) Did the Defendant's acts or practices breach the *Sale of Goods Act*, the *Consumer Protection Act*, *Competition Act*, the *Motor Vehicle Safety Act* and/or other similar/equivalent legislation?
- (s) Was the Defendant unjustly enriched?
- (t) Have Class Members been damaged by the Defendant's conduct and, if so, what is the proper measure of such damages?
- (u) Should an injunctive remedy be ordered to prohibit the Defendant from continuing to perpetrate their unfair practices?



- (v) Is the Defendant responsible to pay punitive, aggravated, and/or exemplary damages to Class Members and in what amount?

### **EFFICACY OF CLASS PROCEEDINGS**

190. The members of the proposed Class potentially number in the thousands. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable.

191. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendant. Even if the Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendant would increase delay and expense to all parties and to the court system.

192. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgments on questions of fact and law that are similar or related to all members of the Class.

193. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice.

194. The Plaintiffs ~~has~~ have the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and ~~has~~ have given the mandate to ~~his~~ their counsel to obtain

all relevant information with respect to the present action and intends to keep informed of all developments. In addition, Class Counsel is qualified to prosecute complex class actions.

## LEGISLATION

195. The Plaintiffs pleads and relies on the *Class Proceedings Act*, the *Sale of Goods Act*, the *Consumer Protection Act*, the *Competition Act*, the *Motor Vehicle Safety Act*, and other Consumer Protection Legislation.

## JURISDICTION AND FORUM

### Real and Substantial Connection with Ontario

196. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) Defendant Toyota Canada Inc. has its head office in Ontario;
- (b) The Defendant engages in business with residents of Ontario;
- (c) The Defendant derives substantial revenue from carrying on business in Ontario;
- and
- (d) The damages of Class Members were sustained in Ontario.

197. The Plaintiffs proposes that this action be tried in the city of Ottawa, in the province of Ontario as a proceeding under the *Class Proceedings Act*.

## SERVICE OUTSIDE ONTARIO

198. The originating process herein may be served outside Ontario, without court order, pursuant to subparagraphs (a), (c), (g), (h) and (p) of Rule 17.02 of the *Rules of Civil Procedure*. Specifically, the originating process herein may be served without court order outside Ontario, in that the claim is:

- (a) In respect of personal property situated in Ontario (rule 17.02(a));
- (b) For the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02 (c));
- (c) In respect of a tort committed in Ontario (rule 17.02(g));
- (d) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
- (e) The claim is authorized by statute, the *Sale of Goods Act*, the *Competition Act* and the *Consumer Protection Act* (rule 17.02(n)); and
- (f) Against a person carrying on business in Ontario (rule 17. 02(p)).

Date: November 21, 2016

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Defendant

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED IN OTTAWA**  
Proceeding under the *Class Proceedings Act, 1992*

**AMENDED STATEMENT OF CLAIM**

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