

AMENDED THIS **MAR 15 2016** PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À

☐ RÈGLE/LA RÈGLE 26.02 ()

☒ THE ORDER OF Justice Belhababa
L'ORDONNANCE DE

DATED / FAIT LE Dec 9, 2015

Court File No.: CV-14-506683-00CP

REGISTRAR
SUPERIOR COURT OF JUSTICE

GREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

**SHERIDAN CHEVROLET CADILLAC LTD.,
THE PICKERING AUTO MALL LTD., and FADY SAMAHA**

Plaintiffs

- and -

**HITACHI, LTD., HITACHI AUTOMOTIVE SYSTEMS, LTD., HITACHI
AUTOMOTIVE SYSTEMS AMERICAS, INC., DENSO CORPORATION, DENSO
INTERNATIONAL AMERICA INC., DENSO MANUFACTURING CANADA, INC.,
DENSO SALES CANADA, INC., , DENSO INTERNATIONAL KOREA
CORPORATION, DENSO KOREA AUTOMOTIVE CORPORATION, MITSUBISHI
ELECTRIC CORPORATION, MITSUBISHI ELECTRIC AUTOMOTIVE AMERICA,
INC., MITSUBISHI ELECTRIC SALES CANADA INC., MITSUBISHI ELECTRIC US
HOLDINGS, INC., AISAN INDUSTRY CO. LTD, FRANKLIN PRECISION INDUSTRY,
INC., AISAN CORPORATION OF AMERICA, HYUNDAM INDUSTRIAL CO., LTD.,
KEIHIN CORPORATION, KEIHIN NORTH AMERICA, INC., MARUYASU
INDUSTRIES CO., LTD., MIKUNI CORPORATION, MIKUNI AMERICAN
CORPORATION, ROBERT BOSCH GMBH, ROBERT BOSCH LLC, ROBERT BOSCH
INC., RBKB BOSCH ELECTRICAL DRIVES CO., LTD. MITSUBA CORPORATION
and AMERICAN MITSUBA CORPORATION**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**CONSOLIDATED THIRD FRESH AS AMENDED STATEMENT OF CLAIM
(Fuel Injection Systems)**

TO THE DEFENDANTS:

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' lawyers or, where the plaintiffs do 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: June 18, 2014
~~December 18, 2015~~
Issued by: "M. Bauman" Y. Grant
Local Registrar

Address of Court Office:
Superior Court of Justice
393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO: **HITACHI, LTD.**
6-6, Marunouchi 1-chome
Chiyoda-ku, Tokyo 100-8280, Japan

AND TO: **HITACHI AUTOMOTIVE SYSTEMS, LTD.**
2-1, Otemachi 2-chom
Chiyoda-ku, Tokyo 100-0004, Japan

AND TO: **HITACHI AUTOMOTIVE SYSTEMS AMERICAS, INC.**
955 Warwick Rd.
Harrodsburg, Kentucky 40330, USA

- AND TO: **DENSO CORPORATION**
1-1, Showacho
Kariya, Aichi, 448-0029, Japan
- AND TO: **DENSO INTERNATIONAL AMERICA, INC.**
24777 Denso Dr.
Southfield, Michigan 48033, USA
- AND TO: **DENSO MANUFACTURING CANADA, INC.**
900 Southgate Drive
Guelph, Ontario N1L 1K1, Canada
- AND TO: **DENSO SALES CANADA, INC.**
195 Brunel Road
Mississauga, Ontario L4Z 1X3, Canada
- AND TO: **DENSO INTERNATIONAL KOREA CORPORATION**
131 Seonggogae-ro, Uiwang-si,
Gyeonggi-do, Korea
- AND TO: **DENSO KOREA AUTOMOTIVE CORPORATION**
47, Sungsan-dong, Sungsan-gu,
Changwon-city Kyungnam,
Kyeongnam, South Korea
- AND TO: **MITSUBISHI ELECTRIC CORPORATION**
Tokyo Building 2-7-3, Marunouchi
Chiyoda-ku, Tokyo 100-8310, Japan
- AND TO: **MITSUBISHI ELECTRIC AUTOMOTIVE AMERICA, INC.**
4773 Bethany Road
Mason, Ohio 45040, USA
- AND TO: **MITSUBISHI ELECTRIC SALES CANADA INC.**
4299 14th Avenue
Markham, Ontario L3R 0J2, Canada
- AND TO: **MITSUBISHI ELECTRIC US HOLDINGS INC.**
5900-A Katella Ave.
Cypress, CA 90630
- AND TO: **AISAN INDUSTRY CO. LTD**
1-1-1 Kyowa-cho,
Obu, Aichi 474-8588 Japan

AND TO: **FRANKLIN PRECISION INDUSTRY, INC.**
3220 Bowling Green Road
Franklin, Kentucky 42134, USA

AND TO: **AISAN CORPORATION OF AMERICA**
810 Crescent Centre Drive, Suite 170
Franklin, Tennessee 37067, USA

AND TO: **HYUNDAM INDUSTRIAL CO., LTD.**
343-21 Yeok-ri
Yeongin-myeon
Asan-si, 336-820
South Korea

AND TO: **KEIHIN CORPORATION**
Higashi Kanagawa 1-1,
Kanagawa-ku, Yokohama,
Kanagawa Prefecture 221-0044
Japan

AND TO: **KEIHIN NORTH AMERICA, INC.**
2701 Enterprise Drive,
Anderson, IN 46013

AND TO: **MARUYASU INDUSTRIES CO. LTD.**
2-7-11, Shirakane,
Showa-ku, Nagoya-shi,
Aichi Prefecture 466-0058, Japan

AND TO: **MIKUNI CORPORATION**
Mikuni Bldg., 6-13-11, Soto-Kanda
Chiyoda-Ku, Tky 101-0021
Japan

AND TO: **MIKUNI AMERICAN CORPORATION**
8910 Mikuni Avenue
Northridge, CA 91324-3496

AND TO: **ROBERT BOSCH GMBH**
Postfach 10 60 50
Stuttgart, 70049, Germany

AND TO: **ROBERT BOSCH LLC**
38000 Hills Tech Drive
Farmington, Michigan, 48331, USA

AND TO: **ROBERT BOSCH INC.**
6955 Creditview Road
Mississauga, ON L5N 1R1

AND TO: **RBKB BOSCH ELECTRICAL DRIVES CO., LTD.**
115, Geumhosunmal-gil,
Bugang-myeon, Sejong Self-governing City, 339-942, South Korea

AND TO: **MITSUBA CORPORATION**
1-2681 Hirosawa-cho,
Kiryu-shi, Gunma 376-8555, Japan

AND TO: **AMERICAN MITSUBA CORPORATION**
2945 Three Leaves Drive,
Mt. Pleasant, Michigan 48858, USA

CLAIM

1. The plaintiffs claim on their own behalf and on behalf of other members of the Proposed Class (as defined in paragraph 7 below):

- (a) A declaration that the defendants conspired and agreed with each other and other unknown co-conspirators to rig bids and fix, raise, maintain, or stabilize the price of Fuel Injection Systems (as defined in paragraph 2 below) sold in North America and elsewhere during the Class Period (as defined in paragraph 7 below);
- (b) A declaration that the defendants and their unknown co-conspirators did, by agreement, threat, promise or like means, influence or attempt to influence upwards, or discourage or attempt to discourage the reduction of the price at which Fuel Injection Systems were sold in North America and elsewhere during the Class Period;
- (c) Damages or compensation in an amount not exceeding \$100,000,000:
 - (i) for loss and damage suffered as a result of conduct contrary to Part VI of the *Competition Act*, RSC 1985, c C-34 (“***Competition Act***”);
 - (ii) for civil conspiracy;
 - (iii) for unjust enrichment; and
 - (iv) for waiver of tort;
- (d) Punitive, exemplary and aggravated damages in the amount of \$10,000,000;

- (e) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, RSO 1990, c C.43 ("***Courts of Justice Act***"), as amended;
- (f) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*;
- (g) Investigative costs and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act*; and
- (h) Such further and other relief as this Honourable Court deems just.

Summary of Claim

2. This action arises from a conspiracy to fix, raise, maintain or stabilize prices, rig bids and allocate the market and customers in North America and elsewhere for fuel injection systems used in automobiles and other light-duty vehicles ("**Fuel Injection Systems**"). Fuel injection systems admit fuel or a fuel/air mixture into engine cylinders. Fuel Injection Systems include, without limitation, the following components: injectors, high pressure pumps, rail assemblies, feed lines, and other components sold as a unitary system. The unlawful conduct occurred from at least as early as January 1, 2000 and continued until at least March 1, 2010, and impacted prices for several years thereafter. The unlawful conduct was targeted at the automotive industry, raising prices to all members of the Proposed Class.

3. As a direct result of the unlawful conduct alleged herein, the plaintiffs and other members of the Proposed Class paid artificially inflated prices for Fuel Injection Systems and/or new vehicles containing Fuel Injection Systems manufactured, marketed, sold, and/or distributed during the Class Period and have thereby suffered losses and damages.

The Plaintiffs

4. The plaintiff, Sheridan Chevrolet Cadillac Ltd. ("**Sheridan**"), was an automotive dealer in Pickering, Ontario pursuant to a Dealer Sales and Service Agreement with General Motors of Canada Limited ("**GMCL**") from 1977 to 2009.

5. The plaintiff, The Pickering Auto Mall Ltd. ("**Pickering**"), was an automotive dealer in Pickering, Ontario pursuant to a Dealer Sales and Service Agreement with GMCL from 1989 to 2009.

6. The plaintiff, Fady Samaha, a resident of Newmarket, Ontario, purchased a new Honda Civic in 2009.

7. The plaintiffs seek to represent the following class (the "**Proposed Class**");

All Persons in Canada who purchased a Fuel Injection System;^{1,2} or who purchased and/or leased a new Automotive Vehicle³ containing a Fuel Injection System during the Class Period.⁴ Excluded from the class are the defendants, their parent companies, subsidiaries and affiliates.

¹ Fuel Injection Systems means systems that admit fuel or a fuel/air mixture into engine cylinders, including, without limitation, the following components: injectors, high pressure pumps, rail assemblies, feed lines, and other components sold as a unitary system.

² Fuel Injection Systems purchased for repair or replacement in an Automotive Vehicle are excluded from the Class.

³ Automotive Vehicle means passenger cars, SUVs, vans, and light trucks (up to 10,000 lbs).

⁴ Class Period means between January 1, 2000 and March 1, 2010 and/or during the subsequent period during which prices were affected by the alleged conspiracy.

The Defendants

Hitachi Defendants

8. The defendant, Hitachi, Ltd., is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Hitachi Ltd. manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendants Hitachi Automotive Systems, Ltd. (“**Hitachi Automotive**”), Hitachi Automotive Systems Americas, Inc. (“**Hitachi US**”), as well as the former Hitachi Unisia Automotive, Ltd. and the former Tokico, Ltd. In March 2004, Hitachi, Ltd. announced a merger of Hitachi, Ltd., Hitachi Unisia Automotive, Ltd. and Tokico, Ltd. As part of the merger, Hitachi, Ltd. absorbed Hitachi Unisia Automotive, Ltd. and Tokico, Ltd., and Hitachi Unisia Automotive, Ltd. and Tokico, Ltd. were dissolved thereafter. The merger became effective in October 2004. Prior to the merger, Hitachi, Ltd. held a 23.9% equity interest in Tokico, Ltd. (42.1% including indirect holdings through subsidiaries) and wholly owned Hitachi Unisia Automotive, Ltd.

9. Hitachi Automotive is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Hitachi Automotive manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Hitachi Automotive is owned and controlled by Hitachi Ltd.

10. Hitachi US is an American corporation with its principal place of business in Harrodsburg, Kentucky. During the Class Period, Hitachi US manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers through Canada, either

directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Hitachi US is owned and controlled by Hitachi Ltd.

11. The business of each of Hitachi Ltd., Hitachi Automotive, and Hitachi US is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Fuel Injection Systems in Canada and for the purposes of the conspiracy described hereinafter. Hitachi Ltd., Hitachi Automotive and Hitachi US are collectively referred to herein as “**Hitachi**.”

Denso Defendants

12. The defendant, Denso Corporation, is a Japanese corporation with its principal place of business in Aichi, Japan. During the Class Period, Denso Corporation manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries, including the defendants Denso International America Inc. (“**Denso US**”), Denso Manufacturing Canada, Inc. (“**Denso Manufacturing Canada**”), Denso Sales Canada, Inc. (“**Denso Sales Canada**”), Denso International Korea Corporation (“**Denso Korea**”) and Denso Korea Automotive Corporation (“**Denso Korea Automotive**”).

13. Denso US is an American corporation with its principal place of business in Southfield, Michigan. During the Class Period, Denso US manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Denso US is owned and controlled by Denso Corporation.

14. Denso Manufacturing Canada is a Canadian corporation with its principal place of business in Guelph, Ontario. During the Class Period, Denso Manufacturing Canada manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Denso Manufacturing Canada is owned and controlled by Denso Corporation.

15. Denso Sales Canada is a Canadian corporation with its principal place of business in Mississauga, Ontario. During the Class Period, Denso Sales Canada manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Denso Sales Canada is owned and controlled by Denso Corporation.

16. Denso Korea is a Korean corporation with its principal place of business in Uiwang-si, South Korea. During the Class Period, Denso Korea manufactured, marketed, sold and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Denso Korea is owned and controlled by Denso Corporation.

17. Denso Korea Automotive is a Korean corporation with its principal place of business in Changwon, South Korea. During the Class Period, Denso Korea Automotive manufactured, marketed, sold and/or distributed Fuel Injection Systems to customers either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Denso Korea Automotive is owned and controlled by Denso Corporation.

18. The business of each of Denso Corporation, Denso US, Denso Manufacturing Canada, Denso Sales Canada, Denso Korea and Denso Korea Automotive is inextricably

interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Fuel Injection Systems in Canada and for the purposes of the conspiracy described hereinafter. Denso Corporation, Denso US, Denso Manufacturing Canada, Denso Sales Canada, Denso Korea and Denso Korea Automotive are collectively referred to herein as “**Denso.**”

Mitsubishi Electric Defendants

19. The defendant, Mitsubishi Electric Corporation, is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Mitsubishi Electric Corporation manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries, including the defendants Mitsubishi Electric Automotive America, Inc. (“**Mitsubishi Automotive**”), Mitsubishi Electric Sales Canada, Inc. (“**Mitsubishi Canada**”) and Mitsubishi Electric Corporation US Holdings Inc. (“**MEC US**”) .

20. Mitsubishi Automotive is an American corporation with its principal place of business in Mason, Ohio. During the Class Period, Mitsubishi Automotive manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Mitsubishi Automotive is owned and controlled by Mitsubishi Electric Corporation.

21. Mitsubishi Canada is a Canadian corporation with its principal place of business in Markham, Ontario. During the Class Period, Mitsubishi Canada manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either

directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Mitsubishi Canada is owned and controlled by Mitsubishi Electric Corporation.

22. MEC US is a Delaware corporation with its principal place of business in Cypress, California. During the Class Period, MEC US manufactured, marketed, sold and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through its predecessors, affiliates and/or subsidiaries. MEC US is owned and controlled by Mitsubishi Electric Corporation.

23. The business of each of Mitsubishi Electric Corporation, Mitsubishi Automotive, Mitsubishi Canada and MEC US is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Fuel Injection Systems in Canada and for the purposes of the conspiracy described hereinafter. Mitsubishi Electric Corporation, Mitsubishi Automotive, Mitsubishi Canada and MEC US are collectively referred to herein as “**Mitsubishi**.”

Aisan Defendants

24. The defendant, Aisan Industry Co. Ltd. (“**Aisan Industry**”), is a Japanese corporation with its principal place of business in Obu, Japan. During the Class Period, Aisan Industry manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries, including the defendants Franklin Precision Industry, Inc. (“**Franklin Precision**”), Aisan Corporation of America (“**Aisan America**”) and Hyundam Industrial Co., Ltd. (“**Hyundam**”).

25. Franklin Precision is an American corporation with its principal place of business in Franklin, Kentucky. During the Class Period, Franklin Precision manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Franklin Precision is owned and controlled by Aisan Industry.

26. Aisan America is an American corporation with its principal place of business in Franklin, Tennessee. During the Class Period, Aisan America manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Aisan America is owned and controlled by Aisan Industry.

27. Hyundam is a Korean corporation with its principal place of business in Asan-si, South Korea. During the Class Period, Hyundam manufactured, marketed, sold and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Hyundam is owned and controlled by Aisan Industry.

28. The business of each of Aisan Industry, Franklin Precision, Aisan America and Hyundam is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacturing, marketing, sale, and/or distribution of Fuel Injection Systems in Canada and for the purposes of the conspiracy described hereinafter. Aisan Industry, Franklin Precision, Aisan America and Hyundam are collectively referred to herein as “**Aisan.**”

Keihin Defendants

29. The defendant, Keihin Corporation (“**Keihin**”), is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Keihin manufactured, marketed, sold and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries including the defendant, Keihin North America, Inc. (“**Keihin NA**”).

30. Keihin NA is an Indiana corporation with its principal place of business in Anderson, Indiana. During the Class Period, Keihin NA manufactured, marketed, sold and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Keihin NA is owned and controlled by Keihin.

31. The business of each of Keihin and Keihin NA is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacturing, marketing, sale, and/or distribution of Fuel Injection Systems in Canada and for the purposes of the conspiracy described hereinafter. Keihin and Keihin NA are collectively referred to herein as “**Keihin.**”

Maruyasu Defendant

32. The defendant, Maruyasu Industries Co., Ltd. (“**Maruyasu**”), is a Japanese corporation with its principal place of business in Nagoya-shi, Japan. During the Class Period, Maruyasu manufactured, marketed, sold and/or distributed Fuel Injection Systems

to customers throughout Canada, either directly or indirectly through its predecessors, affiliates and/or subsidiaries.

Mikuni Defendants

33. The defendant, Mikuni Corporation, is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Mikuni Corporation manufactured marketed, sold and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries including the defendant, Mikuni American Corporation (“**Mikuni US**”).

34. Mikuni US is a California corporation with its principal place of business in Northridge, California. During the Class Period, Mikuni US manufactured marketed, sold and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Mikuni US is owned and controlled by Mikuni Corporation.

35. The business of each of Mikuni Corporation and Mikuni US is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacturing, marketing, sale, and/or distribution of Fuel Injection Systems in Canada and for the purposes of the conspiracy described hereinafter. Mikuni Corporation and Mikuni US are collectively referred to herein as “**Mikuni**”.

Bosch Defendants

36. The defendant, Robert Bosch GmbH (“**Bosch GmbH**”), is a German corporation with its principal place of business in Stuttgart, Germany. During the Class Period, Bosch

GmbH manufactured, marketed, sold and/or distributed Fuel Injection Systems to customers either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendants, RBKB Bosch Electrical Drives Co., Ltd. (“**Bosch Korea**”), Robert Bosch LLC (“**Bosch LLC**”), and Robert Bosch Inc. (“**Bosch Inc.**”).

37. Bosch Korea is a Korean corporation with its principal place of business in Sejong, South Korea. During the Class Period, Bosch Korea manufactured, marketed, sold and/or distributed Fuel Injection Systems to customers either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Bosch Korea is owned and controlled by Bosch GmbH.

38. Bosch LLC is an American corporation with its principal place of business in Farmington, Michigan. During the Class Period, Bosch LLC manufactured, marketed, sold and/or distributed Fuel Injection Systems to customers either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Bosch LLC is owned and controlled by Bosch GmbH.

39. Bosch Inc. is a Canadian corporation with its principal place of business in Mississauga, Ontario. During the Class Period, Bosch Inc. manufactured, marketed, sold and/or distributed Fuel Injection Systems to customers either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Bosch Inc. is owned and controlled by Bosch GmbH.

40. The business of each of Bosch GmbH, Bosch Korea, Bosch LLC, and Bosch Inc. is inextricably interwoven with that of the other and each is the agent of the other for the

purposes of the manufacture, market, sale and/or distribution of Fuel Injection Systems and for the purposes of the conspiracy described herein. Bosch GmbH, Bosch Korea, Bosch LLC, and Bosch Inc. are hereinafter referred to as “**Bosch.**”

Mitsuba Defendants

41. The defendant, Mitsuba Corporation, is a Japanese corporation with its principal place of business in Kiryu-shi, Japan. During the Class Period, Mitsuba Corporation manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendant, American Mitsuba Corporation (“**American Mitsuba**”).

42. American Mitsuba is an American corporation with its principal place of business in Mt. Pleasant, Michigan, USA. During the Class Period, American Mitsuba manufactured, marketed, sold, and/or distributed Fuel Injection Systems to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. American Mitsuba is owned and controlled by Mitsuba Corporation.

43. The business of each of Mitsuba Corporation and American Mitsuba is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, market, sale, and/or distribution of Fuel Injection Systems and for the purposes of the conspiracy described herein. Mitsuba Corporation and American Mitsuba are hereinafter referred to as “**Mitsuba.**”

Unnamed Co-Conspirators

44. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, the identities of which are not presently known, may have participated as co-conspirators with the defendants in the unlawful conspiracy alleged in this statement of claim, and have performed acts and made statements in furtherance of the unlawful conduct.

Joint and Several Liability

45. The defendants are jointly and severally liable for the actions of and damages allocable to all co-conspirators.

46. Whenever reference is made herein to any act, deed or transaction of any corporation, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's business or affairs.

The Fuel Injection Systems Industry

47. Fuel Injection Systems admit fuel or a fuel/air mixture into engine cylinders, and may include injectors, high pressure pumps, rail assemblies, feed lines and other components sold as a unitary system. Fuel Injection Systems can also be sold as part of a broader system, such as an engine management system, or as separate components, such as the injectors, feed lines, high pressure pumps, and/or rail assemblies.

48. Fuel Injection Systems are responsible for injection timing, atomization, and injection quality of the fuel supplied to the engine.

49. Fuel Injection Systems are installed by automobile original equipment manufacturers (“**OEMs**”) in new vehicles as part of the automotive manufacturing process.

50. For new vehicles, the OEMs – mostly large automotive manufacturers such as General Motors, Chrysler, Toyota, and others – purchase Fuel Injection Systems directly from the defendants and its co-conspirators. Fuel Injection Systems may also be purchased by component manufacturers who then supply such systems to OEMs. These component manufacturers are also called “**Tier I Manufacturers**” in the industry. A Tier I Manufacturer supplies Fuel Injection Systems directly to an OEM.

51. When purchasing Fuel Injection Systems, OEMs issue Requests for Quotation (“**RFQs**”) to automotive parts suppliers on a model-by-model basis for model-specific parts. In at least some circumstances, the RFQ is sought from pre-qualified suppliers of the product. Typically, the RFQ would be made when there has been a major design change on a model-by-model basis. Automotive parts suppliers submit quotations, or bids, to OEMs in response to RFQs. The OEMs usually award the business to the selected automotive parts supplier for a fixed number of years consistent with the estimated production life of the parts program. Typically, the production life of the parts program is between two and five years. Typically, the bidding process begins approximately three years before the start of production of a new model. Once production has begun, OEMs issue annual price reduction requests (“**APRs**”) to automotive parts suppliers to account for efficiencies gained in the production process. OEMs procure parts for North American manufactured vehicles in Japan, the United States, Canada and elsewhere.

52. During the Class Period, the defendants and their unnamed co-conspirators supplied Fuel Injection Systems to OEMs for installation in vehicles manufactured and

sold in North America and elsewhere. The defendants and their unnamed co-conspirators manufactured Fuel Injection Systems: (a) in North America for installation in vehicles manufactured in North America and sold in Canada, (b) outside North America for export to North America and installation in vehicles manufactured in North America and sold in Canada, and (c) outside North America for installation in vehicles manufactured outside North America for export to and sale in Canada.

53. The defendants and their unnamed co-conspirators intended, as a result of their unlawful conspiracy, to inflate the prices for Fuel Injection Systems and new vehicles containing Fuel Injection Systems sold in North America and elsewhere.

54. The defendants and their unnamed co-conspirators unlawfully conspired to agree and manipulate prices for Fuel Injection Systems and conceal their anti-competitive behaviour from OEMs and other industry participants. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Fuel Injection Systems would be sold from the price that would otherwise be charged on a competitive basis. The defendants and their unnamed co-conspirators were aware that, by unlawfully increasing the prices of Fuel Injection Systems, the prices of new vehicles containing Fuel Injection Systems would also be artificially inflated. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Fuel Injection Systems and purchasers and lessees of new vehicles containing Fuel Injection Systems. The defendants' conduct impacted not only multiple bids submitted to OEMs, but also the price paid by all other purchasers of Fuel Injection Systems.

55. The global Fuel Injection Systems market was valued at US \$47 billion in 2012.

56. The defendant's customers include Ford, GM, Honda, Nissan, Toyota, Chrysler, and Subaru.

57. The automotive industry in Canada and the United States is an integrated industry. Automobiles manufactured on both sides of the border are sold in Canada. The unlawful conspiracy affected prices of Fuel Injection Systems in the United States and Canada, including Ontario.

Investigations into International Cartel and Resulting Fines

United States

58. Mitsuba Corporation agreed to plead guilty and pay a fine of US \$135 million in respect of its role in various conspiracies to fix the prices of automotive parts sold to automobile manufacturers in the United States and elsewhere from at least as early as January 2000 and continuing until at least March 1, 2010.

59. Hitachi Automotive Systems, Ltd. agreed to plead guilty and pay a fine of US \$195 million in respect of its role in the alleged conspiracy to fix prices of Fuel Injection Systems and other automotive parts sold to Nissan, Honda, GM, Ford, Toyota, Chrysler Group LLC, and Fuji Heavy Industries Ltd., from as early as January 1, 2000 and continuing until at least March 1, 2010.

Plaintiffs Purchased New Vehicles Containing Fuel Injection Systems

60. During the Class Period, Sheridan purchased for resale the following brands of vehicles manufactured by GMCL or its affiliates: Chevrolet, Oldsmobile, and Cadillac.

61. During the Class Period, Sheridan also purchased for resale vehicles manufactured by the following other automotive manufacturers: Suzuki Canada Inc., CAMI Automotive Inc., GM Daewoo Auto & Technology Company, and Daewoo Motor Co.

62. During the Class Period, Pickering purchased for resale the following brands of vehicles manufactured by GMCL or its affiliates: Isuzu, Saab, and Saturn.

63. During the Class Period, Pickering also purchased for resale vehicles manufactured by the following other automotive manufacturers: Isuzu Motors Ltd., Adam Opel AG, and Subaru Canada Inc.

64. The vehicles purchased by Sheridan and Pickering were manufactured in whole or in part at various times in Ontario or other parts of Canada, the United States, Japan, and other parts of the world.

65. Sheridan and Pickering purchased new vehicles containing Fuel Injection Systems.

66. Fady Samaha purchased a new Honda Civic in 2009, which contained a Fuel Injection System.

Breaches of Part VI of *Competition Act*

67. From at least as early as January 1, 2000 until at least March 1, 2010, the defendants and their unnamed co-conspirators engaged in a conspiracy to rig bids for and to fix, maintain, increase, or control the prices of Fuel Injection Systems sold to customers in North America and elsewhere. The defendants and their unnamed co-conspirators conspired to enhance unreasonably the prices of Fuel Injection Systems and/or to lessen unduly competition in the production, manufacture, sale, and/or distribution of Fuel Injection Systems in North America and elsewhere. The conspiracy was intended to, and

did, affect prices of Fuel Injection Systems and new vehicles containing Fuel Injection Systems.

68. The defendants and their unnamed co-conspirators carried out the conspiracy by:

- (a) participating in meetings, conversations, and communications in the United States, Japan, Europe, and elsewhere to discuss the bids (including RFQs) and price quotations to be submitted to OEMs selling automobiles in North America and elsewhere;
- (b) agreeing, during those meetings, conversations, and communications, on bids (including RFQs) and price quotations (including APRs) to be submitted to OEMs in North America and elsewhere (including agreeing that certain defendants or unnamed co-conspirators would win the RFQs for certain models);
- (c) agreeing on the prices to be charged and to control discounts (including APRs) for Fuel Injection Systems in North America and elsewhere and to otherwise fix, increase, maintain or stabilize those prices;
- (d) agreeing, during those meetings, conversations, and communications, to allocate the supply of Fuel Injection Systems sold to OEMs in North America and elsewhere on a model-by-model basis;
- (e) agreeing, during those meetings, conversations, and communications, to coordinate price adjustments in North America and elsewhere;
- (f) submitting bids (including RFQs), price quotations, and price adjustments (including APRs) to OEMs in North America and elsewhere in accordance with the agreements reached;

- (g) enhancing unreasonably the prices of Fuel Injection Systems sold in North America and elsewhere;
- (h) selling Fuel Injection Systems to OEMs in North America and elsewhere for the agreed-upon prices, controlling discounts and otherwise fixing, increasing, maintaining or stabilizing prices for Fuel Injection Systems in North America and elsewhere;
- (i) allocating the supply of Fuel Injection Systems sold to OEMs in North America and elsewhere on a model-by-model basis;
- (j) accepting payment for Fuel Injection Systems sold to OEMs in North America and elsewhere at collusive and supra-competitive prices;
- (k) engaging in meetings, conversations, and communications in the United States, Japan and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme;
- (l) actively and deliberately employing steps to keep their conduct secret and to conceal and hide facts, including but not limited to using code names, following security rules to prevent "paper trails," abusing confidences, communicating by telephone, and meeting in locations where they were unlikely to be discovered by other competitors and industry participants; and
- (m) preventing or lessening, unduly, competition in the market in North America and elsewhere for the production, manufacture, sale or distribution of Fuel Injection Systems.

69. As a result of the unlawful conduct alleged herein, the plaintiffs and other members of the Proposed Class paid unreasonably enhanced/supra-competitive prices for Fuel Injection Systems and/or new vehicles containing Fuel Injection Systems.

70. The conduct described above constitutes offences under Part VI of the *Competition Act*, in particular, sections 45(1), 46(1) and 47(1) of the *Competition Act*. The plaintiffs claim loss and damage under section 36(1) of the *Competition Act* in respect of such unlawful conduct.

Breach of Foreign Law

71. The defendants and their unnamed co-conspirators' conduct, particularized in this statement of claim, took place in, among other places, the United States, Japan, and Europe, where it was illegal and contrary to the competition laws of the United States, Japan, and Europe.

Civil Conspiracy

72. The defendants and their unnamed co-conspirators voluntarily entered into agreements with each other to use unlawful means which resulted in loss and damage, including special damages, to the plaintiffs and other members of the Proposed Class. The unlawful means include the following:

- (a) entering into agreements to rig bids and fix, maintain, increase, or control prices of Fuel Injection Systems sold to customers in North America and elsewhere in contravention of sections 45(1), 46(1), and 47(1) of the *Competition Act*; and
- (b) aiding, abetting and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code*, RSC 1985, c C-46.

73. In furtherance of the conspiracy, the defendants, their servants, agents and unnamed co-conspirators carried out the acts described in paragraph 68 above.

74. The defendants and their unnamed co-conspirators were motivated to conspire. Their predominant purposes and concerns were to harm the plaintiffs and other members of the Proposed Class by requiring them to pay artificially high prices for Fuel Injection Systems, and to illegally increase their profits on the sale of Fuel Injection Systems.

75. The defendants and their unnamed co-conspirators intended to cause economic loss to the plaintiffs and other members of the Proposed Class. In the alternative, the defendants and their unnamed co-conspirators knew, in the circumstances, that their unlawful acts would likely cause injury.

Discoverability

76. Fuel Injection Systems are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Fuel Injection Systems industry to be a competitive industry. A reasonable person under the circumstances would not have been alerted to investigate the legitimacy of the defendants' prices for Fuel Injection Systems.

77. Accordingly, the plaintiffs and other members of the Proposed Class did not discover, and could not discover through the exercise of reasonable diligence, the existence of the alleged conspiracy during the Class Period.

Fraudulent Concealment

78. The defendants and their unnamed co-conspirators actively, intentionally and fraudulently concealed the existence of the combination and conspiracy from the public,

including the plaintiffs and other members of the Proposed Class. The defendants and their unnamed co-conspirators represented to customers and others that their pricing and bidding activities were unilateral, thereby misleading the plaintiffs. The affirmative acts of the defendants alleged herein, including acts in furtherance of the conspiracy, were fraudulently concealed and carried out in a manner that precluded detection.

79. The defendants and their unnamed co-conspirators' anti-competitive conspiracy was self-concealing. As detailed in paragraph 68 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

80. Because the defendants' agreements, understandings and conspiracies were kept secret, plaintiffs and other members of the Proposed Class were unaware of the defendants' unlawful conduct during the Class Period, and they did not know, at the time, that they were paying supra-competitive prices for Fuel Injection Systems and/or new vehicles containing Fuel Injection Systems.

Unjust Enrichment

81. As a result of their conduct, the defendants benefited from a significant enhancement of their revenues on the sale of Fuel Injection Systems. All members of the Proposed Class have suffered a corresponding deprivation as a result of being forced to pay inflated prices for Fuel Injection Systems and/or new vehicles containing Fuel Injection Systems. There is no juristic reason or justification for the defendants' enrichment, as such conduct is tortious, unjustifiable and unlawful under the *Competition Act* and similar laws of other countries in which the unlawful acts took place.

82. It would be inequitable for the defendants to be permitted to retain any of the ill-gotten gains resulting from their unlawful conspiracy.

83. The plaintiffs and other members of the Proposed Class are entitled to the amount of the defendants' ill-gotten gains resulting from their unlawful and inequitable conduct.

Waiver of Tort

84. In the alternative to damages, in all of the circumstances, the plaintiffs plead an entitlement to "waive the tort" of civil conspiracy and claim an accounting or other such restitutionary remedy for disgorgement of the revenues generated by the defendants and their unnamed co-conspirators as a result of their unlawful conspiracy.

85. As a direct, proximate, and foreseeable result of the defendants' wrongful conduct, the plaintiffs and other members of the Proposed Class overpaid for Fuel Injection Systems. As a result of the unlawful conspiracy, the defendants profited from the sale of Fuel Injection Systems at artificially inflated prices and were accordingly unjustly enriched. The defendants accepted and retained the unlawful overcharge. It would be unconscionable for the defendants to retain the unlawful overcharge obtained as a result of the alleged conspiracy.

Damages

86. The conspiracy had the following effects, among others:

- (a) price competition has been restrained or eliminated with respect to Fuel Injection Systems sold directly or indirectly to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada;

- (b) the prices of Fuel Injection Systems sold directly or indirectly to the plaintiffs and other members of the Proposed Class in Ontario and the rest of Canada have been fixed, maintained, increased or controlled at artificially inflated levels; and
- (c) the plaintiffs and other members of the Proposed Class have been deprived of free and open competition for Fuel Injection Systems in Ontario and the rest of Canada.

87. Fuel Injection Systems are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Fuel Injection Systems follow a traceable chain of distribution from the defendants and their unnamed co-conspirators to the OEMs (or alternatively to the Tier I Manufacturers and then to OEMs) and from the OEMs to automotive dealers to consumers or other end-user purchasers. Costs attributable to Fuel Injection Systems can be traced through the distribution chain.

88. By reason of the wrongful conduct alleged herein, the plaintiffs and the members of the Proposed Class have sustained losses by virtue of having paid higher prices for Fuel Injection Systems and/or new vehicles containing Fuel Injection Systems than they would have paid in the absence of the illegal conduct of the defendants and their unnamed co-conspirators. As a result, the plaintiffs and other members of the Proposed Class have suffered loss and damage in an amount not yet known but to be determined. Full particulars of the loss and damage will be provided before trial.

Punitive, Aggravated and Exemplary Damages

89. The defendants and their unnamed co-conspirators used their market dominance, illegality and deception in furtherance of a conspiracy to illegally profit from the sale of Fuel Injection Systems. They were, at all times, aware that their actions would have a significant adverse impact on all members of the Proposed Class. The conduct of the defendants and their unnamed co-conspirators was high-handed, reckless, without care, deliberate, and in disregard of the plaintiffs' and Proposed Class members' rights.

90. Accordingly, the plaintiffs request substantial punitive, exemplary and aggravated damages in favour of each member of the Proposed Class.

Service of Statement of Claim Outside Ontario

91. The plaintiffs are entitled to serve this statement of claim outside Ontario without a court order pursuant to the following rules of the *Rules of Civil Procedure*, RRO 1990, Reg 194 because:

- (a) Rule 17.02 (g) – the claim relates to a tort committed in Ontario;
- (b) Rule 17.02 (h) – the claim relates to damage sustained in Ontario arising from a tort; and
- (c) Rule 17.02 (o) – the defendants residing outside of Ontario are necessary and proper parties to this proceeding.

92. The plaintiffs propose that this action be tried at Toronto, Ontario.

June 18, 2015
Date: ~~December~~, 2015
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ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

CONSOLIDATED THIRD FRESH AS AMENDED STATEMENT OF CLAIM
(Fuel Injection Systems)

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