

AMENDED THIS
DATE

Feb 2/16

PURSUANT TO
CONFORMÉMENT À

THE RULES OF COURT

THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE

Justice Belobaba
Dec 9/15

REGISTRAR
SUPERIOR COURT OF JUSTICE

GREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE

Court File No.: CV-14-506637-00CP

BETWEEN:

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

Plaintiffs

- and -

VALEO S.A., VALEO INCORPORATED, VALEO JAPAN CO., LTD., VALEO CLIMATE
CONTROL CORP., VALEO COMPRESSOR NORTH AMERICA, INC., VALEO
ELECTRICAL SYSTEMS, INC., MITSUBISHI HEAVY INDUSTRIES, LTD., MITSUBISHI
HEAVY INDUSTRIES CLIMATE CONTROL INC., DENSO CORPORATION, DENSO
INTERNATIONAL AMERICA INC., DENSO MANUFACTURING CANADA, INC., DENSO
SALES CANADA, INC., CALSONIC KANSEI CORPORATION, CALSONIC KANSEI NORTH
AMERICA, INC., SANDEN CORPORATION, and SANDEN INTERNATIONAL (USA) INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

CONSOLIDATED SECOND FRESH AS AMENDED STATEMENT OF CLAIM
(Air Conditioning 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: ~~December~~, 2015

June 18/14

Issued by:

"N- Mohammed"

Local Registrar

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

TO: VALEO S.A.
43, rue Bayen
75848 Paris Cedex 17, France

AND TO: VALEO INCORPORATED
150 Stephenson Hwy
Troy, Michigan 48083, USA

AND TO: VALEO JAPAN CO. LTD.
3F Minamishinjuku Hoshino Bldg, 5-23-13
Sendagaya, Shibuya-ku, 151-0051, Tokyo, Japan

AND TO: VALEO CLIMATE CONTROL CORP
4100 N Atlantic Blvd
Auburn Hills, Michigan 48326, USA

AND TO: VALEO COMPRESSOR NORTH AMERICA, INC.
Trade Center IV 2520 Esters Blvd., Suite 100, PO Box 610870
Dallas, Texas 75261, USA

AND TO: VALEO ELECTRICAL SYSTEMS, INC.
3000 University Drive
Auburn Hills, MI 48326-2356, USA

AND TO: MITSUBISHI HEAVY INDUSTRIES, LTD.
16-5 Konan 2-chome,
Minato-ku, Tokyo

- AND TO: **mitsubishi heavy industries climate control, inc.**
1200 N. Mitsubishi Parkway
Franklin, Indiana 46131, USA
- AND TO: **DENSO CORPORATION**
1-1, Showacho
Kariya, Aichi, 448-0029, Japan
- AND TO: **DENSO INTERNATIONAL AMERICA, INC.**
24777 Denso Drive
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 L4X 1X3, Canada
- AND TO: **CALSONIC KANSEI CORPORATION**
2-1917 Nisshin-cho, Kita-ku
Saitama-city, Saitama 331-8501, Japan
- AND TO: **CALSONIC KANSEI NORTH AMERICA, INC.**
1 Calsonic Way
Shelbyville, Tennessee 37160, USA
- AND TO: **SANDEN CORPORATION**
20 Kotobuki-cho, Isesaki-shi
Gunma, Japan 372-8502
- AND TO: **SANDEN INTERNATIONAL (USA) INC.**
601 S. Sanden Blvd.
Wylie, TX 75098, USA

CLAIM

1. The plaintiffs claim on their own behalf and on behalf of other members of the Proposed Class (as defined in paragraph 8 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 Air Conditioning Systems (as defined in paragraph 2 below) sold in North America and elsewhere during the Class Period (as defined in paragraph 8 below);
- (b) A declaration that the defendants and their 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 Air Conditioning 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 air conditioning systems used in automobiles and other light-duty vehicles (“Air Conditioning Systems”). Air Conditioning Systems are systems that cool the interior environment of a vehicle and are part of an automobile’s thermal system. Air Conditioning Systems include, without limitation, the following components: compressors, condensers, HVAC units (blower motors, actuators, flaps, evaporators, heater cores, and filters embedded in a plastic housing), control panels, sensors, and associated hoses and pipes. The unlawful conduct occurred from at least as early as January 1, 2001 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 Air Conditioning Systems and/or new vehicles containing Air Conditioning 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 plaintiff, Jordan Ramsay, a resident of Lucan, Ontario, leased a new Nissan Sentra in 2006, which she subsequently purchased.

8. The plaintiffs seek to represent the following class (the "**Proposed Class**"):

All persons in Canada that purchased and/or leased an Air Conditioning System^{1,2} and/or a new Automotive Vehicle³ containing an Air Conditioning System during the Class Period.⁴ Excluded from the class are the defendants, their parent companies, subsidiaries and affiliates.

¹ Air Conditioning Systems are systems that cool the interior environment of an Automotive Vehicle and are part of an Automotive Vehicle's thermal system. Air Conditioning Systems include, without limitation, the following components: compressors, condensers, HVAC units (blower motors, actuators, flaps, evaporators, heater cores, and filters embedded in a plastic housing), control panels, sensors, and associated hoses and pipes.

² Air Conditioning 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, 2001 and March 1, 2010 and/or during the subsequent period during which prices were affected by the alleged conspiracy.

The Defendants

Valeo Defendants

9. The defendant, Valeo S.A., is a *société anonyme* incorporated under the laws of France and headquartered in Paris, France. During the Class Period, Valeo S.A. manufactured, marketed, sold and/or distributed Air Conditioning Systems to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendants Valeo Japan Co., Ltd. (“**Valeo Japan**”), Valeo Incorporated, Valeo Climate Control Corp. (“**Valeo Climate Control**”), Valeo Electrical Systems, Inc. (“**Valeo Electrical**”) and Valeo Compressor North America, Inc. (“**Valeo Compressor**”).

10. The defendant, Valeo Japan, is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Valeo Japan manufactured, marketed, sold and/or distributed Air Conditioning Systems to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Valeo Japan is owned and controlled by Valeo S.A.

11. The defendant, Valeo Incorporated, is an American corporation with its principal place of business in Troy, Michigan. During the Class Period, Valeo Incorporated manufactured, marketed, sold and/or distributed Air Conditioning Systems to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Valeo Incorporated is owned and controlled by Valeo Japan.

12. The defendant, Valeo Climate Control, is an American corporation with its principal place of business in Auburn Hills, Michigan. During the Class Period, Valeo Climate Control manufactured, marketed, sold and/or distributed Air Conditioning Systems to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Valeo Climate Control is owned and controlled by Valeo Electrical.

13. The defendant, Valeo Electrical, is an American corporation with its principal place of business in Auburn Hills, Michigan. During the Class Period, Valeo Electrical manufactured, marketed, sold and/or distributed Air Conditioning Systems to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Valeo Electrical is owned and controlled by Valeo Incorporated.

14. The defendant, Valeo Compressor, is a Japanese corporation headquartered in Tokyo, Japan with its principal place of business in Dallas, Texas. During the Class Period, Valeo Compressor manufactured, marketed, sold and/or distributed Air Conditioning Systems to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Valeo Compressor is owned and controlled by Valeo S.A.

15. The business of each of Valeo S.A., Valeo Incorporated, Valeo Japan, Valeo Climate Control, Valeo Electrical and Valeo Compressor 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 Air Conditioning Systems and for the purposes of the conspiracy described herein. Valeo Incorporated, Valeo Japan, Valeo Climate Control, Valeo Electrical and Valeo Compressor are hereinafter referred to as "Valeo."

Mitsubishi Heavy Defendants

16. The defendant, Mitsubishi Heavy Industries, Ltd. ("**Mitsubishi Heavy Industries**"), is a Japanese corporation with its principal place of business in Tokyo, Japan. During the Class Period, Mitsubishi Heavy Industries manufactured, marketed, sold and/or distributed Air Conditioning Systems to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendant Mitsubishi Heavy Industries Climate Control Inc. ("**Mitsubishi Climate Control**").

17. The defendant, Mitsubishi Climate Control, is an American corporation with its principal place of business in Franklin, Indiana. During the Class Period, Mitsubishi Climate Control manufactured, marketed, sold and/or distributed Air Conditioning Systems to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Mitsubishi Climate Control is owned and controlled by Mitsubishi Heavy Industries.

18. The business of each of Mitsubishi Heavy Industries and Mitsubishi Climate Control 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 Air Conditioning Systems and for the purposes of the conspiracy described herein. Mitsubishi Heavy Industries and Mitsubishi Climate Control are hereinafter referred to as "**Mitsubishi Heavy**."

Denso Defendants

19. The defendant, Denso Corporation, is a Japanese corporation with its principal place of business in Kariya, Japan. During the Class Period, Denso Corporation manufactured, marketed, sold and/or distributed Air Conditioning 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**") and Denso Sales Canada, Inc. ("**Denso Sales Canada**").

20. The defendant, 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 Air Conditioning 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.

21. The defendant, 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 Air Conditioning 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.

22. The defendant, 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 Air Conditioning 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.

23. The business of each of Denso Corporation, Denso US, Denso Manufacturing Canada and Denso Sales Canada 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 Air

Conditioning Systems and for the purposes of the conspiracy described herein. Denso Corporation, Denso US, Denso Manufacturing Canada and Denso Sales Canada are hereinafter referred to as “**Denso.**”

Calsonic Kansei Defendants

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

25. The defendant, Calsonic NA, is an American corporation with its principal place of business in Shelbyville, Tennessee. During the Class Period, Calsonic NA manufactured, marketed, sold and/or distributed Air Conditioning Systems to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Calsonic NA is owned and controlled by Calsonic Kansei Corporation.

26. The business of each of Calsonic Kansei Corporation and Calsonic NA 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 Air Conditioning Systems and for the purposes of the conspiracy described herein. Calsonic Kansei Corporation and Calsonic NA are hereinafter referred to as “**Calsonic Kansei.**”

Sanden Defendants

27. The defendant, Sanden Corporation is a Japanese corporation with its principal place of business in Gunma, Japan. During the Class Period, Sanden Corporation manufactured, marketed, sold and/or distributed Air Conditioning Systems to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries, including the defendant Sanden International (U.S.A.) Inc. ("Sanden US").

28. Sanden US, is an American corporation and has its principal place of business in Wylie, Texas. During the Class Period, Sanden US manufactured, marketed, sold and/or distributed Air Conditioning Systems to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Sanden US is owned and controlled by Sanden Corporation.

29. The business of each of Sanden Corporation and Sanden 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 Air Conditioning Systems in Canada and for the purposes of the conspiracy described hereinafter. Sanden Corporation and Sanden US are collectively referred to herein as "Sanden."

Unnamed Co-conspirators

30. 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

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

32. 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 Air Conditioning Systems Industry

33. Air Conditioning Systems are systems that cool the interior environment of a vehicle and are part of an automobile's thermal system. Air Conditioning Systems include, without limitation, the following components: compressors, condensers, HVAC units (blower motors, actuators, flaps, evaporators, heater cores, and filters embedded in a plastic housing), control panels, sensors, and associated hoses and pipes.

34. Air Conditioning Systems are installed by automobile original equipment manufacturers ("OEMs") in new vehicles as part of the automotive manufacturing process.

35. For new vehicles, the OEMs – mostly large automotive manufacturers such as General Motors, Chrysler, Toyota and others – purchase Air Conditioning Systems directly from the defendants. Air Conditioning 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 Air Conditioning Systems directly to an OEM.

36. When purchasing Air Conditioning 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.

37. During the Class Period, the defendants and their unnamed co-conspirators supplied Air Conditioning Systems to OEMs for installation in vehicles manufactured and sold in North America and elsewhere. The defendants and their unnamed co-conspirators manufactured Air Conditioning 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.

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

39. The defendants and their unnamed co-conspirators unlawfully conspired to agree and manipulate prices for Air Conditioning 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 Air Conditioning 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 Air Conditioning Systems, the prices of new vehicles containing Air Conditioning Systems would also be artificially inflated. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Air Conditioning Systems and purchasers and lessees of new vehicles containing Air Conditioning Systems. The defendants' conduct impacted not only multiple bids submitted to OEMs, but also the price paid by all other purchasers of Air Conditioning Systems.

40. The global Air Conditioning Systems market was valued at US \$36 billion in 2012.

41. The global Air Conditioning Systems market is dominated and controlled by four key players. Denso is the largest North American producer of thermal systems, which include Air Conditioning Systems, followed by Valeo.

42. By virtue of their market shares, the defendants and their co-conspirators are the dominant manufacturers and suppliers of Air Conditioning Systems in Canada and the world. Their customers include General Motors, Ford, BMW, Mercedes-Benz, Hyundai, Kia, Toyota,

Honda, Subaru, Mazda, Isuzu, Saab, Volkswagen, Suzuki, Mitsubishi, Nissan, Land Rover and Volvo.

43. 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 Air Conditioning Systems in the United States and Canada, including Ontario.

Investigations into International Cartel and Resulting Fines

44. In May 2012, the European Commission conducted investigations and raids respecting the thermal systems industry, which includes the Air Conditioning Systems industry.

45. In the United States, Valeo Japan agreed to plead guilty and pay a fine of US \$13.6 million in respect of its role in the alleged conspiracy to fix prices of Air Conditioning Systems sold to Nissan North American, Inc., Suzuki Motor Corporation and Fuji Heavy Industries Ltd. in the United States and elsewhere.

46. In the United States, Mitsubishi Heavy Industries agreed to plead guilty and pay a fine of US \$14.5 million in respect of its role in the alleged conspiracy to rig bids for, and to fix, stabilize and maintain the prices of compressors and condensers, components within Air Conditioning Systems, sold to Mitsubishi Motors North America, Inc. and General Motors LLC in the United States and elsewhere.

47. In the United States, Sanden Corporation agreed to plead guilty and pay a fine of US \$3.2 million in respect of its role in the alleged conspiracy to fix, stabilize and maintain the prices of compressors used in Air Conditioning Systems sold to Nissan in the United States and elsewhere.

Plaintiffs Purchased New Vehicles Containing Air Conditioning Systems

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

49. 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.

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

51. 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.

52. 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.

53. Sheridan and Pickering purchased new vehicles containing Air Conditioning Systems.

54. In 2009, Fady Samaha purchased a new Honda Civic, which contained an Air Conditioning System.

55. In 2006, Jordan Ramsay leased a new Nissan Sentra (which she subsequently purchased), which contained an Air Conditioning System.

Breaches of Part VI of *Competition Act*

56. From at least as early as January 1, 2001 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 Air Conditioning Systems sold to customers in North America and elsewhere. The defendants and their unnamed co-conspirators conspired to enhance unreasonably the prices of Air Conditioning Systems and/or to lessen unduly competition in the production, manufacture, sale, and/or distribution of Air Conditioning Systems in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Air Conditioning Systems and new vehicles containing Air Conditioning Systems.

57. 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 co-conspirators would win the RFQs for certain models);
- (c) agreeing on the prices to be charged and to control discounts (including APRs) for Air Conditioning 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 Air Conditioning 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 Air Conditioning Systems sold in North America and elsewhere;
- (h) selling Air Conditioning Systems to OEMs in North America and elsewhere for the agreed-upon prices, controlling discounts and otherwise fixing, increasing, maintaining or stabilizing prices for Air Conditioning Systems in North America and elsewhere;
- (i) allocating the supply of Air Conditioning Systems sold to OEMs in North America and elsewhere on a model-by-model basis;
- (j) accepting payment for Air Conditioning 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 Air Conditioning Systems.

58. 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 Air Conditioning Systems and/or new vehicles containing Air Conditioning Systems.

59. 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

60. 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

61. 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 Air Conditioning 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.

62. In furtherance of the conspiracy, the defendants, their servants, agents and unnamed co-conspirators carried out the acts described in paragraph 57 above.

63. 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 Air Conditioning Systems, and to illegally increase their profits on the sale of Air Conditioning Systems.

64. 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

65. Air Conditioning Systems are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Air Conditioning 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 Air Conditioning Systems.

66. 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

67. The defendants and their 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 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.

68. The defendants' anti-competitive conspiracy was self-concealing. As detailed in paragraph 57 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

69. 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 Air Conditioning Systems and/or new vehicles containing Air Conditioning Systems.

Unjust Enrichment

70. As a result of their conduct, the defendants benefited from a significant enhancement of their revenues on the sale of Air Conditioning Systems. All members of the Proposed Class have suffered a corresponding deprivation as a result of being forced to pay inflated prices for Air Conditioning Systems and/or new vehicles containing Air Conditioning 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.

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

72. 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

73. 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 as a result of their unlawful conspiracy.

74. As a direct, proximate, and foreseeable result of the defendants' wrongful conduct, the plaintiffs and other members of the Proposed Class overpaid for Air Conditioning Systems. As a

result of the unlawful conspiracy, the defendants profited from the sale of Air Conditioning 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

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

- (a) price competition has been restrained or eliminated with respect to Air Conditioning 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 Air Conditioning 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 Air Conditioning Systems in Ontario and the rest of Canada.

76. Air Conditioning Systems are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Air Conditioning Systems follow a traceable chain of distribution from the defendants 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 Air Conditioning Systems can be traced through the distribution chain.

77. 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 Air Conditioning Systems and/or new vehicles containing Air Conditioning 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

78. 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 Air Conditioning 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.

79. 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

80. 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.

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

Date: December , 2015

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ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

CONSOLIDATED SECOND FRESH AS AMENDED STATEMENT OF CLAIM
(Air Conditioning Systems)

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