

AMENDED THIS FEB 2, 2016 PURSUANT TO  
MODIFIÉ CE CONFORMÉMENT A

☐ RULE/LA RÉGLE 26.02 ( )

Court File No.: CV-12-449238-00CP

☒ THE ORDER OF Justice Belobaba  
L'ORDONNANCE DU

DATED / FAIT LE December 9, 2015

ONTARIO

SUPERIOR COURT OF JUSTICE

REGISTRAR  
SUPERIOR COURT OF JUSTICE  
GREFFIER  
COURT SUPÉRIEURE DE JUSTICE

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

Plaintiffs

- and -

YAZAKI CORPORATION, YAZAKI NORTH AMERICA INC., NIPPON SEIKI CO.,  
LTD., N.S. INTERNATIONAL, LTD., NEW SABINA INDUSTRIES, INC., CALSONIC  
KANSEI CORPORATION, CALSONIC KANSEI NORTH AMERICA, INC.,  
CONTINENTAL AG, CONTINENTAL AUTOMOTIVE SYSTEMS US, INC.,  
CONTINENTAL TIRE CANADA, INC. (FORMERLY KNOWN AS CONTINENTAL  
AUTOMOTIVE CANADA, INC.), DENSO CORPORATION, DENSO  
INTERNATIONAL AMERICA, INC., DENSO MANUFACTURING CANADA, INC.,  
DENSO SALES CANADA, INC., CONTINENTAL AUTOMOTIVE ELECTRONICS  
LLC, and CONTINENTAL AUTOMOTIVE KOREA LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**FOURTH FRESH AS AMENDED AND  
FURTHER CONSOLIDATED STATEMENT OF CLAIM  
(Instrument Panel Clusters)**

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.

*MARCH 19, 2012*  
Date: ~~December~~, 2015

Issued by: M. Sagaria  
Local Registrar

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

**TO: YAZAKI CORPORATION**  
17<sup>th</sup> Floor, Mita-Kokusai Bldg., 4-28 Mita 1-chome,  
Minato-ku, Tokyo, 108-8333, Japan

**AND TO: YAZAKI NORTH AMERICA INC.**  
6801 Haggerty Road  
Canton, Michigan, 48187, USA

**AND TO: NIPPON SEIKI CO., LTD.**  
2-2-34 Higashi zao Nagaoka City,  
Niigata, 940-8580, Japan

**AND TO: N.S. INTERNATIONAL, LTD.**  
800 Kirts Boulevard, Suite 300  
Troy, Michigan 48084, USA

- AND TO: NEW SABINA INDUSTRIES, INC.**  
12555 East U.S. Rt. 22 & St. Rt. 3  
Sabina, Ohio 45169, USA
- AND TO: CALSONIC KANSEI CORPORATION**  
2-1917 Nisshin-cho, Kita-ku  
Saitama-city, Saitama, 331-8501, Japan
- AND TO: CALSONIC KANSEI NORTH AMERICA, INC.**  
One Calsonic Way, P.O. Box 350  
Shelbyville, Tennessee 37162, USA
- AND TO: CONTINENTAL AG**  
Vahrenwalder Straße 9  
D-30165 Hanover, Germany
- AND TO: CONTINENTAL AUTOMOTIVE SYSTEMS US, INC.**  
2400 Executive Hills Drive  
Auburn Hills, Michigan 48326-2980, USA
- AND TO: CONTINENTAL TIRE CANADA, INC. (formerly known as Continental Automotive Canada, Inc.)**  
6110 Cantay Road  
Mississauga, Ontario L5R 3W5, Canada
- AND TO: DENSO CORPORATION**  
1-1, Showa-cho,  
Kariya, Aichi, 448-8661, 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: CONTINENTAL AUTOMOTIVE ELECTRONICS LLC**  
74-7 Geumhoseonmal-gil,  
Bugang-myeon, Sejong-si 339-942, South Korea

**AND TO:** CONTINENTAL AUTOMOTIVE KOREA LTD.  
12F, Jinyoung Bldg.  
560 Eonju-ro, Gangnam-gu, Seoul 135-917, South Korea

### 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 Instrument Panel Clusters (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 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 Instrument Panel Clusters were sold in North America and elsewhere during the Class Period;
- (c) Damages or compensation in an amount not exceeding \$50,000,000:
  - (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 \$5,000,000;
- (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 instrument panel clusters used in automobiles and other light-duty vehicles (“**Instrument Panel Clusters**”). Instrument Panel Clusters, also known as meters, are the mounted array of instruments and gauges housed in front of the driver of an automobile. The unlawful conduct occurred from at least as early as January 1, 1998 and continued until at least May 31, 2012 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 Instrument Panel Clusters and/or new vehicles containing Instrument Panel Clusters 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 an Instrument Panel Cluster;<sup>1,2</sup> or who purchased and/or leased a new Automotive Vehicle<sup>3</sup> containing an Instrument Panel Cluster during the Class Period.<sup>4</sup> Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.

<sup>1</sup> Instrument Panel Clusters, also known as meters, are the mounted array of instruments and gauges housed in front of the driver of an automobile.

<sup>2</sup> Instrument Panel Clusters purchased for repair or replacement in an Automotive Vehicle are excluded from the Class.

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

<sup>4</sup> Class Period means between January 1, 1998 and May 31, 2012 and/or during the subsequent period during which prices were affected by the alleged conspiracy.

## The Defendants

### *Yazaki Defendants*

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

9. Yazaki NA is an American corporation with its principal place of business in Canton Township, Michigan. During the Class Period, Yazaki NA manufactured, marketed, sold, and/or distributed Instrument Panel Clusters to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Yazaki NA is owned and controlled by Yazaki Japan.

10. The business of each of Yazaki Japan and Yazaki 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 Instrument Panel Clusters throughout Canada and for the purposes of the conspiracy described herein. Yazaki Japan and Yazaki NA are referred to herein as “**Yazaki**.”

### *Nippon Seiki Defendants*

11. The defendant, Nippon Seiki Co., Ltd. (“**Nippon Seiki Co.**”), is a Japanese corporation with its principal place of business in Nagaoka, Japan. Nippon Seiki Co. manufactured, marketed, sold, and/or distributed Instrument Panel Clusters throughout Canada either directly or



indirectly through the control of its predecessors, affiliates and subsidiaries, including the defendants, N.S. International. Ltd. (“N.S.”) and New Sabina Industries, Inc. (“New Sabina”).

12. N.S. is an American corporation with its principal place of business in Troy, Michigan. During the Class Period, N.S. manufactured, marketed, sold, and/or distributed Instrument Panel Clusters to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. N.S. is owned and controlled by Nippon Seiki Co.

13. New Sabina is an American corporation with its principal place of business in Sabina, Ohio. During the Class Period, New Sabina manufactured, marketed, sold, and/or distributed Instrument Panel Clusters to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. New Sabina is owned and controlled by Nippon Seiki Co.

14. The business of each of Nippon Seiki Co., N.S., and New Sabina 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 Instrument Panel Clusters throughout Canada and for the purposes of the conspiracy described herein. Nippon Seiki Co., N.S., and New Sabina are collectively referred to herein as “Nippon Seiki.”

#### *Calsonic Defendants*

15. The defendant, Calsonic Kansei Corporation (“Calsonic Kansei”), is a Japanese corporation with its principal place of business in Saitama, Japan. Calsonic Kansei manufactured, marketed, sold, and/or distributed Instrument Panel Clusters throughout Canada either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendant, Calsonic Kansei North America, Inc. (“Calsonic NA”).

16. 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 Instrument Panel Clusters 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.

17. The business of each of Calsonic Kansei 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 Instrument Panel Clusters throughout Canada and for the purposes of the conspiracy described herein. Calsonic Kansei and Calsonic NA are collectively referred to herein as “Calsonic.”

*Continental Defendants*

18. The defendant, **Continental AG** is a German corporation with its principal place of business in Hanover, Germany. Continental AG manufactured, marketed, sold, and/or distributed Instrument Panel Clusters throughout Canada either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, Continental Automotive Systems US, Inc. (“**Continental US**”), Continental Tire Canada, Inc. (formerly known as Continental Automotive Canada, Inc.) (“**Continental Canada**”), Continental Automotive Electronics LLC (“**Continental LLC**”) and Continental Automotive Korea Ltd. (“**Continental Korea**”).

19. Continental US is an American corporation with its principal place of business in Auburn Hills, Michigan. During the Class Period, Continental US manufactured, marketed, sold, and/or distributed Instrument Panel Clusters to customers throughout Canada, either directly or

indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Continental US is owned and controlled by Continental AG.

20. Continental Canada is a Canadian corporation with its principal place of business in Mississauga, Ontario. During the Class Period, Continental Canada manufactured, marketed, sold, and/or distributed Instrument Panel Clusters to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Continental Canada is owned and controlled by Continental AG.

21. Continental LLC is a Korean corporation with its principal place of business in Bugangmyeon, South Korea. During the Class Period, Continental LLC manufactured, marketed, sold, and/or distributed Instrument Panel Clusters to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Continental LLC is owned and controlled by Continental AG.

22. Continental Korea is a Korean corporation with its principal place of business in Seoul, South Korea. During the Class Period, Continental Korea manufactured, marketed, sold, and/or distributed Instrument Panel Clusters to customers throughout Canada either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Continental Korea is owned and controlled by Continental AG.

23. The business of each of Continental AG, Continental US, Continental Canada, Continental LLC and Continental Korea 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 Instrument Panel Clusters throughout Canada and for the purposes of the

conspiracy described herein. Continental AG, Continental US, Continental Canada, Continental LLC and Continental Korea are collectively referred to herein as “**Continental**.”

*Denso Defendants*

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

25. Denso International is an American corporation with its principal place of business in Southfield, Michigan. During the Class Period, Denso International manufactured, marketed, sold, and/or distributed Instrument Panel Clusters to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Denso International is owned and controlled by Denso Corp.

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

27. Denso Sales is a Canadian corporation with its principal place of business in Mississauga, Ontario. During the Class Period, Denso Sales manufactured, marketed, sold, and/or distributed

Instrument Panel Clusters to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Denso Sales is owned and controlled by Denso Corp.

28. The business of each of Denso Corp, Denso International, Denso Manufacturing and Denso Sales 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 Instrument Panel Clusters throughout Canada and for the purposes of the conspiracy described herein. Denso Corp, Denso International, and Denso Sales are collectively referred to herein as "Denso."

*Unnamed Co-Conspirators*

29. 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*

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

31. 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 Instrument Panel Clusters Industry

32. Instrument Panel Clusters, also known as meters, are the mounted array of instruments and gauges housed in front of the driver of an automobile.

33. Instrument Panel Clusters are installed by automobile original equipment manufacturers (“OEMs”) in new vehicles as part of the automotive manufacturing process.

34. For new vehicles, the OEMs – mostly large automotive manufacturers such as General Motors, Chrysler, Toyota and others – purchase Instrument Panel Clusters directly from the defendants. Instrument Panel Clusters 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 Instrument Panel Clusters directly to an OEM.

35. When purchasing Instrument Panel Clusters, 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.

36. During the Class Period, the defendants and their unnamed co-conspirators supplied Instrument Panel Clusters to OEMs for installation in vehicles manufactured and sold in North America and elsewhere. The defendants and their unnamed co-conspirators manufactured Instrument Panel Clusters: (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.

37. The defendants and their unnamed co-conspirators intended, as a result of their unlawful conspiracy, to inflate the prices for Instrument Panel Clusters and new vehicles containing Instrument Panel Clusters sold in North America and elsewhere.

38. The defendants and their unnamed co-conspirators unlawfully conspired to agree and manipulate prices for Instrument Panel Clusters 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 Instrument Panel Clusters 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 Instrument Panel Clusters, the prices of new vehicles containing Instrument Panel Clusters would also be artificially inflated. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Instrument Panel Clusters and purchasers and lessees of new vehicles containing

Instrument Panel Clusters. The defendants' conduct impacted not only multiple bids submitted to OEMs, but also the price paid by all other purchasers of Instrument Panel Clusters.

39. By virtue of their market shares, the defendants are the dominant manufacturers and suppliers of Instrument Panel Clusters in Canada and the world. Their customers include Ford, Chrysler, Hyundai, Kia, General Motors, Honda, Audi, BMW, Mazda, Mitsubishi, Mercedes-Benz, Nissan, Saab, Suzuki, Volkswagen, Subaru and Toyota.

40. 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 Instrument Panel Clusters in the United States and Canada, including Ontario.

#### **Investigations into International Cartel and Resulting Fines**

##### ***United States***

41. Yazaki Japan, agreed plead guilty and pay a fine of US\$470 million million in respect of its role in various conspiracies to fix the prices of certain automotive parts, including Instrument Panel Clusters, sold to automobile manufacturers in the United States and elsewhere from at least as early as January 1998 and continuing until at least May 2012.

42. Nippon Seiki Co., agreed to plead guilty and pay a fine of US\$1 million in respect of its role in the conspiracy to fix the prices of Instrument Panel Clusters, sold to automobile manufacturers in the United States and elsewhere from at least as early as January 1998 and continuing until at least May 2012



43. Continental LLC and Continental Automotive Korea Ltd. both agreed to plead guilty and pay a fine of US\$4 million in respect of their role in the conspiracy to fix the prices of Instrument Panel Clusters, sold to automobile manufacturers in the United States and elsewhere from at least as early as January 1998 and continuing until at least May 2012.

#### *South Korea*

44. South Korea's Fair Trade Commission fined Continental LLC ₩46,000,000,000 (US \$42.3 million) in December 2013 for its alleged participation in an unlawful conspiracy to fix prices of Instrument Panel Clusters from at least as early as January 2008, continuing to at least March 2012.

45. South Korea's Fair Trade Commission fined Denso Corporation and Denso Korea Electronics were fined ₩63,000,000,000 (US \$53.85 million), for their alleged participation in an unlawful conspiracy to fix prices and rig bids for Instrument Panel Clusters from at least as early as January 2008, continuing to at least March 2012.

#### **Plaintiffs Purchased New Vehicles Containing Instrument Panel Clusters**

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

47. 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.

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

49. 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.

50. 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.

51. Sheridan and Pickering purchased new vehicles containing Instrument Panel Clusters.

52. Fady Samaha purchased a new Honda Civic in 2009, which contained an Instrument Panel Cluster.

**Breaches of Part VI of *Competition Act***

53. From at least as early as January 1998 until at least May 2012, 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 Instrument Panel Clusters sold to customers in North America and elsewhere. The defendants and their unnamed co-conspirators conspired to enhance unreasonably the prices of Instrument Panel Clusters and/or to lessen unduly competition in the production, manufacture, sale, and/or distribution of Instrument Panel Clusters in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Instrument Panel Clusters and new vehicles containing Instrument Panel Clusters.

54. 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 Instrument Panel Clusters 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 Instrument Panel Clusters 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 Instrument Panel Clusters sold in North America and elsewhere;

- (h) selling Instrument Panel Clusters to OEMs in North America and elsewhere for the agreed-upon prices, controlling discounts and otherwise fixing, increasing, maintaining or stabilizing prices for Instrument Panel Clusters in North America and elsewhere;
- (i) allocating the supply of Instrument Panel Clusters sold to OEMs in North America and elsewhere on a model-by-model basis;
- (j) accepting payment for Instrument Panel Clusters 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 Instrument Panel Clusters.

55. 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 Instrument Panel Clusters and/or new vehicles containing Instrument Panel Clusters.

56. 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**

57. 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**

58. 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 Instrument Panel Clusters 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.

59. In furtherance of the conspiracy, the defendants, their servants, agents and unnamed co-conspirators carried out the acts described in paragraph 54 above.

60. 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 Instrument Panel Clusters, and to illegally increase their profits on the sale of Instrument Panel Clusters.

61. 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**

62. Instrument Panel Clusters are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Instrument Panel Clusters 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 Instrument Panel Clusters.

63. 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**

64. 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.

65. The defendants' anti-competitive conspiracy was self-concealing. As detailed in paragraph 54 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

66. Because the defendants' agreements, understandings and conspiracies were kept secret, the 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 Instrument Panel Clusters and/or new vehicles containing Instrument Panel Clusters.

### **Unjust Enrichment**

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

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

69. 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**

70. 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.

71. As a direct, proximate, and foreseeable result of the defendants' wrongful conduct, the plaintiffs and other members of the Proposed Class overpaid for Instrument Panel Clusters. As a result of the unlawful conspiracy, the defendants profited from the sale of Instrument Panel Clusters 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**

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

- (a) price competition has been restrained or eliminated with respect to Instrument Panel Clusters 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 Instrument Panel Clusters 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 Instrument Panel Clusters in Ontario and the rest of Canada.

73. Instrument Panel Clusters are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Instrument Panel Clusters 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 Instrument Panel Clusters can be traced through the distribution chain.

74. 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 Instrument Panel Clusters and/or new vehicles containing Instrument Panel Clusters 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**

75. 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 Instrument Panel Clusters. 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.

76. 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**

77. 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.

78. 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*

FOURTH FRESH AS AMENDED AND  
FURTHER CONSOLIDATED STATEMENT OF CLAIM  
(Instrument Panel Clusters)

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