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PURSUANT TO
CONFORMÉMENT À

RULE/LA RÈGLE 26.02 (A)

THE ORDER OF
L'ORDONNANCE DU

DATED / FAIT LE

[Signature]

REGISTRAR
SUPERIOR COURT OF JUSTICE

GREFFIER
COUR SUPÉRIEURE DE JUSTICE

ONTARIO

SUPERIOR COURT OF JUSTICE

Court File No.: CV-16-549731 -00CP

BETWEEN:

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

Plaintiffs

- and -

**NISHIKAWA RUBBER CO., NISHIKAWA OF AMERICA, INC., COOPER-
STANDARD HOLDINGS INC., COOPER-STANDARD AUTOMOTIVE INC., COOPER-
STANDARD AUTOMOTIVE CANADA LIMITED, NISHIKAWA COOPER LLC,
TOYODA GOSEI CO., LTD., TOYODA GOSEI NORTH AMERICA CORPORATION,
WATERVILLE TG INC., TOKAI KOGYO CO., LTD. and GREEN TOKAI CO. LTD**

Defendants

Proceeding under the *Class Proceedings Act, 1992*, SO 1992 c 6

**FRESH AS AMENDED STATEMENT OF CLAIM
(Body Sealing Parts)**

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: "March 30, 2016"

Issued by: "Beverley Pinto"

Local Registrar

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

- TO: NISHIKAWA RUBBER CO.**
2-8, Masa-machi 2-chome
Nishi-ku, Hiroshima-shi, Japan
- AND TO: NISHIKAWA OF AMERICA, INC.**
39555 Orchard Hill Place Drive, Suite 320
Novi, MI 48375 USA
- AND TO: NISHIKAWA COOPER LLC**
324 Morrow Street
Topeka, Indiana 39555, USA
- AND TO: COOPER-STANDARD HOLDINGS INC.**
39550 Orchard Hill Place Drive
Novi, Michigan 48375, USA
- AND TO: COOPER-STANDARD AUTOMOTIVE INC.**
39550 Orchard Hill Place Drive
Novi, Michigan 48375, USA
- AND TO: COOPER-STANDARD AUTOMOTIVE CANADA LIMITED**
703 Douro Street
Stratford, Ontario N5A 3T1, Canada
- AND TO: TOYODA GOSEI CO., LTD.**
1 Haruhinagahata Kiyosu,
Aichi, Japan 452-8564

AND TO: TOYODA GOSEI NORTH AMERICA CORPORATION
1400 Stephenson Highway
Troy, MI 48083, USA

AND TO: WATERVILLE TG INC.
10 Depot Street
Waterville, Quebec, J0B 3H0

AND TO: TOKAI KOGYO CO., LTD.
4-1 Nagane-cho
Obu, Aichi, 474-0021 Japan

AND TO: GREEN TOKAI CO. LTD
55 Robert Wright Drive
Brookville, Ohio, 45309, 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 Body Sealing Products (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 Body Sealing Products 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 body sealing products used in automobiles and other light-duty vehicles (“**Body Sealing Products**”). Body Sealing Products include, without limitation, body-side opening seals, door-side weather stripping, glass-run channels, trunk lids, trunk lid weather stripping and other smaller seals, which are installed in automobiles to keep the interior dry from rain and free from wind and exterior noises. The unlawful conduct occurred from at least as early as January 1, 2000 and continued until at least September 30, 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 Body Sealing Products and/or new vehicles containing Body Sealing Products 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 Body Sealing Products,^{1,2} or who purchased and/or leased a new Automotive Vehicle³ containing Body Sealing Products during the Class Period.⁴ Excluded from the class are the defendants, their parent companies, subsidiaries, and affiliates.

¹ Body Sealing Products include, without limitation, body-side opening seals, door-side weather stripping, glass-run channels, trunk lids, trunk lid weather stripping and other smaller seals, which are installed in automobiles to keep the interior dry from rain and free from wind and exterior noises.

² Body Sealing Products 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 September 30, 2012 and/or during the subsequent period during which prices were affected by the alleged conspiracy.

The Defendants

Nishikawa Defendants

8. The defendant, Nishikawa Rubber Co. (“**Nishikawa Rubber**”), is a Japanese corporation with its principal place of business in Hiroshima, Japan. During the Class Period, Nishikawa Rubber manufactured, marketed, sold, and/or distributed Body Sealing Products to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries, including the defendant, Nishikawa of America, Inc. (“**Nishikawa America**”).

9. Nishikawa America is an American corporation with its principal place of business in Novi, Michigan. During the Class Period, Nishikawa America manufactured, marketed, sold, and/or distributed Body Sealing Products to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries, including the defendant, Nishikawa Cooper LLC (“**Nishikawa Cooper**”). Nishikawa America is owned and controlled by Nishikawa Rubber.

10. The business of each of Nishikawa Rubber and Nishikawa America 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 Body Sealing Products in Canada and for the purposes of the conspiracy described hereinafter. Nishikawa Rubber and Nishikawa America are collectively referred to herein as “**Nishikawa**”.

Cooper-Standard Defendants

11. Cooper-Standard Holdings Inc. (“**Cooper-Standard Holdings**”) is an American corporation with its principal place of business in Novi, Michigan. During the Class Period,

Cooper-Standard Holdings manufactured, marketed, sold, and/or distributed Body Sealing Products to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries, including the defendant, Cooper-Standard Automotive Inc. (“**Cooper-Standard Automotive**”) and the defendant, Cooper-Standard Automotive Canada Limited (“**Cooper-Standard Automotive Canada**”).

12. Cooper-Standard Automotive is an American corporation with its principal place of business in Novi, Michigan. During the Class Period, Cooper-Standard Automotive manufactured, marketed, sold, and/or distributed Body Sealing Products to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries, including the defendant, Nishikawa Cooper. Cooper-Standard Automotive is owned and controlled by Cooper-Standard Holdings.

13. Cooper-Standard Automotive Canada is a Canadian corporation with its principal place of business in Stratford, Canada. During the Class Period, Cooper-Standard Automotive Canada manufactured, marketed, sold, and/or distributed Body Sealing Products to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries. Cooper-Standard Automotive Canada is owned and controlled by Cooper-Standard Holdings.

14. The business of each of Cooper-Standard Holdings, Cooper-Standard Automotive and Cooper-Standard Automotive 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 Body Sealing Products in Canada and for the purposes of the conspiracy described hereinafter.

Cooper-Standard Holdings, Cooper-Standard Automotive and Cooper-Standard Automotive Canada are collectively referred to as “**Cooper-Standard.**”

Nishikawa Cooper Joint Venture

15. Nishikawa Cooper is an American corporation with its principal place of business in Topeka, Indiana. During the Class Period, Nishikawa Cooper manufactured, marketed, sold, and/or distributed Body Sealing Products to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries. Nishikawa Cooper is jointly owned and controlled by the defendant, Nishikawa Rubber and Cooper-Standard Automotive.

16. With respect to the joint venture Nishikawa Cooper, the business of each of Nishikawa and Cooper Standard 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 Body Sealing Products in Canada and for the purposes of the conspiracy described hereinafter.

Toyoda Gosei Defendants

17. The defendant, Toyoda Gosei Co., Ltd (“**Toyoda**”), is a Japanese corporation with its principal place of business in Aichi, Japan. During the Class Period, Toyoda manufactured, marketed, sold, and/or distributed Body Sealing Products to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries, including the defendants, Toyoda Gosei North America Corporation (“**Toyoda North America**”), and Waterville TG Inc. (“**Waterville TG**”).

18. Toyoda North America is an American corporation with its principal place of business in Troy, Michigan. During the Class Period, Toyoda North America manufactured, marketed, sold

and/or distributed Body Sealing Products to customers throughout Canada, either directly or indirectly, through its predecessors, affiliates and/or subsidiaries. Toyoda North America is owned and controlled by Toyoda.

19. Waterville TG is a Canadian corporation with its principal place of business in Waterville, Quebec. During the Class Period, Waterville TG manufactured, marketed, sold and/or distributed Body Sealing Products to customers throughout Canada, either directly or indirectly, through its predecessors, affiliates and/or subsidiaries. Waterville TG is owned and controlled by Toyoda.

20. The business of each of Toyoda, Toyoda North America and Waterville TG 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 Body Sealing Products in Canada and for the purposes of the conspiracy described hereinafter.

Tokai Defendants

21. The defendant, Tokai Kogyo Co., Ltd. ("**Tokai Kogyo**") is a Japanese corporation with its principal place of business in Obu, Japan. During the Class Period, Tokai Kogyo manufactured, marketed, sold, and/or distributed Body Sealing Products to customers throughout Canada, either directly or indirectly, through the control of its predecessors, affiliates, and/or subsidiaries, including the defendant Green Tokai Co. Ltd ("**Green Tokai**").

22. Green Tokai is an American corporation with its principal place of business in Brookville, Ohio. During the Class Period, Green Tokai manufactured, marketed, sold, and/or distributed Body Sealing Products to customers throughout Canada, either directly or indirectly,

through the control of its predecessors, affiliates, and/or subsidiaries. Green Tokai is owned and controlled by Tokai Kogyo.

23. The business of each of Tokai Kogyo and Green Tokai 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 Body Sealing Products in Canada and for the purposes of the conspiracy described hereinafter.

Unnamed Co-Conspirators

24. 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

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

26. 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 Body Sealing Products Industry

27. Body Sealing Products consist of rubber products affixed to the vehicle body, serving to keep the interior dry from rain and free from wind and exterior noises. They also allow for the smooth opening and closing of doors and raising and lowering of windows. Body Sealing Products may include body-side opening seals, door-side weather stripping, glass-run channels, trunk lids, trunk lid weather stripping and other smaller seals. Body Sealing Products are installed by automobile original equipment manufacturers (“**OEMs**”) in new vehicles as part of the automotive manufacturing process.

28. For new vehicles, the OEMs – mostly large automotive manufacturers such as Honda, Toyota, Volvo, General Motors and others – purchase Body Sealing Products directly from the defendants. Body Sealing Products 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 Body Sealing Products directly to an OEM.

29. When purchasing Body Sealing Products, 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.

30. During the Class Period, the defendants and their unnamed co-conspirators supplied Body Sealing Products to OEMs for installation in vehicles manufactured and sold in North America and elsewhere. The defendants and their unnamed co-conspirators manufactured Body Sealing Products: (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.

31. The defendants and their unnamed co-conspirators intended as a result of their unlawful conspiracy to inflate the prices for Body Sealing Products and new vehicles containing Body Sealing Products sold in North America and elsewhere.

32. The defendants and their unnamed co-conspirators unlawfully conspired to agree and manipulate prices for Body Sealing Products 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 Body Sealing Products 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 Body Sealing Products, the prices of new vehicles containing Body Sealing Products would also be artificially inflated. The defendants and their unnamed co-

conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Body Sealing Products and purchasers and lessees of new vehicles containing Body Sealing Products. The defendants' conduct impacted not only multiple bids submitted to OEMs, but also the price paid by all other purchasers of Body Sealing Products.

33. By virtue of their market shares, the defendants are the dominant manufacturers and suppliers of Body Sealing Products in Canada and the world. Their customers include Honda and Toyota.

34. The defendants are some of the largest manufacturers and suppliers of Body Sealing Products in Canada and the world.

35. 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 Body Sealing Products in the United States and Canada, including Ontario.

Investigations into International Cartel and Resulting Fines

United States

36. Tokai Kogyo and Green Tokai have been charged with conspiring to allocate sales of, to rig bids for, and to fix, stabilize and maintain the prices of Body Sealing Products sold to Honda in the United States and elsewhere from at least as early as March 2008 and continuing until at least August 2011.

37. One executive from Tokai Kogyo has been also charged with conspiring to allocate sales of, to rig bids for, and to fix, stabilize and maintain the prices of Body Sealing Products sold to

Honda in the United States and elsewhere from at least as early as March 2008 and continuing until at least August 2011.

38. Nishikawa Rubber has agreed to plead guilty and pay a fine of US\$130 million in respect of its role in the alleged conspiracy to fix the prices of Body Sealing Products from as early as January 2000 and continuing until at least September 2012 sold to Toyota, Honda, and Fuji Heavy Industries (Subaru) in the United States, Canada and elsewhere. The Department of Justice worked cooperatively with the Canadian Competition Bureau in this investigation. As a result, once final judgment as against Nishikawa Rubber is entered in the United States, the Canadian Competition Bureau has agreed that it will not pursue further enforcement against Nishikawa in Canada.

39. One executive affiliated with Nishikawa Rubber has agreed to plead guilty and pay a fine of US\$20,000 along with 18 months imprisonment in respect of his role in the alleged conspiracy to fix the prices of Body Sealing Products from as early as September 2003 and continuing until at least October 2011.

40. Two further executives affiliated with Nishikawa Rubber have been charged with conspiring to allocate sales of, rig bids for, and fix, stabilize and maintain the prices of Body Sealing Products sold to automotive manufacturers for installation in vehicles manufactured and sold in the United States and elsewhere from at least as early as September 2003 and continuing until at least October 2011. Each individual faces a maximum penalty of 10 years in prison and a \$1 million criminal fine if convicted.

Plaintiffs Purchased New Vehicles Containing Body Sealing Products

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

42. 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.

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

44. 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.

45. 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.

46. Sheridan and Pickering purchased new vehicles containing Body Sealing Products.

47. Fady Samaha purchased a new Honda Civic in 2009, which contained Body Sealing Products.

Breaches of Part VI of *Competition Act*

48. From at least as early as January 1, 2000 until at least September 30, 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 Body Sealing Products sold to customers in North America and

elsewhere. The defendants and their unnamed co-conspirators conspired to enhance unreasonably the prices of Body Sealing Products and/or to lessen unduly competition in the production, manufacture, sale, and/or distribution of Body Sealing Products in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Body Sealing Products and new vehicles containing Body Sealing Products.

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

50. 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 Body Sealing Products and/or new vehicles containing Body Sealing Products.

51. 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

52. 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

53. 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 Body Sealing Products 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.

54. In furtherance of the conspiracy, the defendants, their servants, agents and unnamed co-conspirators carried out the acts described in paragraph 49 above.

55. 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 Body Sealing Products, and to illegally increase their profits on the sale of Body Sealing Products.

56. 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

57. Body Sealing Products are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Body Sealing Products 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 Body Sealing Products.

58. 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

59. 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.

60. The defendants' anti-competitive conspiracy was self-concealing. As detailed in paragraph 49 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

61. 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 Body Sealing Products and/or new vehicles containing Body Sealing Products.

Unjust Enrichment

62. As a result of their conduct, the defendants benefited from a significant enhancement of their revenues on the sale of Body Sealing Products. All members of the Proposed Class have

suffered a corresponding deprivation as a result of being forced to pay inflated prices for Body Sealing Products and/or new vehicles containing Body Sealing Products. 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.

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

64. 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

65. 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.

66. As a direct, proximate, and foreseeable result of the defendants' wrongful conduct, the plaintiffs and other members of the Proposed Class overpaid for Body Sealing Products. As a result of the unlawful conspiracy, the defendants profited from the sale of Body Sealing Products 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

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

- (a) price competition has been restrained or eliminated with respect to Body Sealing Products 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 Body Sealing Products 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 Body Sealing Products in Ontario and the rest of Canada.

68. Body Sealing Products are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Body Sealing Products 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 Body Sealing Products can be traced through the distribution chain.

69. 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 Body Sealing Products and/or new vehicles containing Body Sealing Products 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

70. 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 Body Sealing Products. 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.

71. 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

72. 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; and
- (b) Rule 17.02 (p) – the claim relates to a person ordinarily resident or carrying on business in Ontario.

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

DATE: "March 30, 2016"

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**FRESH AS AMENDED STATEMENT OF CLAIM
(Body Sealing Parts)**

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