

AMENDED THIS Aug 8/16 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À

☒ RULE/LA RÈGLE 26.02 (A)

☐ THE ORDER OF _____
L'ORDONNANCE DU _____
DATED / FAIT LE _____

Court File No.: CV-13-478644-00CP

.....**ONTARIO**
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE
SUPERIOR COURT OF JUSTICE

B E T W E E N:

**SHERIDAN CHEVROLET CADILLAC LTD., THE PICKERING AUTO MALL LTD.,
FADY SAMAHA and URLIN RENT A CAR LTD.**

Plaintiffs

- and -

**JTEKT CORPORATION, JTEKT NORTH AMERICA CORPORATION, KOYO
CORPORATION OF U.S.A., KOYO CANADA INC., KOYO FRANCE SA, KOYO
DEUTSCHLAND GMBH, NACHI-FUJIKOSHI CORP., NACHI AMERICA INC.,
NACHI CANADA INC., NACHI EUROPE GMBH, NACHI TECHNOLOGY INC., NSK
LTD., NSK AMERICAS, INC., NSK CANADA INC., NSK EUROPE LTD.,
SCHAEFFLER AG, SCHAEFFLER GROUP USA INC., SCHAEFFLER CANADA INC.,
SCHAEFFLER TECHNOLOGIES GMBH & CO. KG, FAG KUGELFISCHER GMBH
AB SKF, SKF USA INC., SKF CANADA LIMITED, SKF GMBH, NTN CORPORATION,
NTN USA CORPORATION, NTN BEARING CORP. OF AMERICA, NTN BEARING
CORP. OF CANADA LTD., NTN WÄLZLAGER (EUROPA) GMBH, NTN-SNR
ROULEMENTS SA, MINEBEA CO., LTD. and NMB TECHNOLOGIES
CORPORATION**

Defendants

Proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c. C. 6

**SECOND FRESH AS AMENDED CONSOLIDATED STATEMENT OF CLAIM
(Bearings)**

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: "April 18, 2013"

Issued by: "S. De Souza"
Local Registrar

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

TO: JTEKT CORPORATION
15th Floor, Midland Square, 4-7-1 Meieki,
Nakamura-ku, Nagoya 450-8515 Japan

AND TO: JTEKT NORTH AMERICA CORPORATION
47771 Halyard Drive
Plymouth, MI 48170

AND TO: KOYO CORPORATION OF U.S.A.
29570 Clemens Road
Westlake, OH 44145, USA

AND TO: KOYO CANADA INC.
5324 South Service Road
Burlington, ON L7L 5H5, Canada

- AND TO: KOYO FRANCE SA**
6 Avenue du Marais-BP 20189
95105 Argenteuil Cedex, France
- AND TO: KOYO DEUTSCHLAND GMBH**
Bargkoppelweg 4
22145 Hamburg, Germany
- AND TO: NACHI-FUJIKOSHI CORP.**
1-1-1 Fujikoshi-Honmachi,
Toyama 930-8511 Japan
- AND TO: NACHI AMERICA INC.**
715 Pushville Road
Greenwood, IN 46143, USA
- AND TO: NACHI CANADA INC.**
89 Courtland Avenue, Unit No. 2
Concord, ON L4K 3T4, Canada
- AND TO: NACHI EUROPE GMBH**
Bischofstrasse 99
D-47809 Krefeld, Germany
- AND TO: NACHI TECHNOLOGY INC.**
713 Pushville Road
Greenwood, IN 46143
- AND TO: NSK LTD.**
Nissei Building, 1-6-3 Ohsaki,
Shinagawa-Ku, Tokyo, 141-8560, Japan
- AND TO: NSK AMERICAS, INC.**
4200 Goss Road
Ann Arbor, MI 48105, USA
- AND TO: NSK CANADA INC.**
5585 McAdam Road
Mississauga, ON L4Z 1N4, Canada
- AND TO: NSK EUROPE LTD.**
Belmont Place, Belmont Road, Maidenhead,
Berkshire, England SL6 6TB

- AND TO: SCHAEFFLER AG**
Industriestraße 1-3
91074 Herzogenaurach, Germany
- AND TO: SCHAEFFLER GROUP USA INC.**
308 Springhill Farm Road
Fort Mill, SC 29715, USA
- AND TO: SCHAEFFLER CANADA INC.**
801 Ontario Street
Stratford, ON N5A 6T2, Canada
- AND TO: SCHAEFFLER TECHNOLOGIES GMBH & CO. KG**
Industriestraße 1-3
91074 Herzogenaurach, Germany
- AND TO: FAG KUGELFISCHER GMBH**
Georg-Schäfer-Straße 30
97421 Schweinfurt, Germany
- AND TO: AB SKF**
SKF Treasury Centre
SE-415 50 Göteborg, Sweden
- AND TO: SKF USA INC.**
890 Forty Foot Rd.
Lansdale, PA 19446, USA
- AND TO: SKF CANADA LIMITED**
40 Executive Court
Scarborough, ON M1S 4N4, Canada
- AND TO: SKF GMBH**
Gunnar-Wester-Straße 12,
97421, Schweinfurt, Germany
- AND TO: NTN CORPORATION**
1-3-17, Kyomachibori, Nishi-ku,
Osaka-shi, Osaka 550-0003, Japan
- AND TO: NTN USA CORPORATION**
1600 E. Bishop Court
Mount Prospect, IL 60056, USA

- AND TO: NTN BEARING CORP. OF AMERICA**
1600 E. Bishop Court
Mount Prospect, IL 60056, USA
- AND TO: NTN BEARING CORP. OF CANADA LTD.**
305 Courtneypark Drive West,
Mississauga, ON L5W 1Y4, Canada
- AND TO: NTN WÄLZLAGER (EUROPA) GMBH**
Max-Planck-Str. 23
40699 Erkrath, Germany
- AND TO: NTN-SNR ROULEMENTS SA**
1 rue des Usines
74000 Annecy, France
- AND TO: MINEBEA CO., LTD.**
4106-73 Oaza Miyota, Miyota-machi,
Kitasaku-gun, Nagano, Japan 389-0293
- AND TO: NMB TECHNOLOGIES CORPORATION**
9730 Independence Avenue
Chatsworth, CA 91311

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 Bearings (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 Bearings 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 of Bearings. Bearings are friction-reducing devices that allow one moving part to glide past another moving part (“**Bearings**”). Bearings (including automotive wheel hub unit bearings) are used in automotive vehicles, light, medium, and heavy duty vehicles, buses, commercial vehicles, industrial machinery, construction equipment, mining equipment, and/or railway vehicles (collectively, “**Products Containing Bearings**”). The unlawful conduct occurred from at least as early as April 20, 1998 and continued until at least March 31, 2012 and impacted prices for several years thereafter. The unlawful conduct was targeted at the automotive and industrial machinery industries, 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 Bearings and/or Products Containing Bearings 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, Urlin Rent A Car Ltd. (“**Urlin**”), is a motor vehicle rental company located in London, Ontario that has been in operation since the early 1990s.
8. The plaintiffs seek to represent the following class (the “**Proposed Class**”):

All persons in Canada that purchased Bearings and/or purchased and/or leased a Product Containing Bearings¹ between April 20, 1998 and March 31, 2012 and/or during the subsequent period during which prices were affected by the alleged conspiracy (the “**Class Period**”). Excluded from the class are the defendants, their parent companies, subsidiaries and affiliates.

¹Bearings purchased for repair or replacement in a Product Containing Bearings are excluded from the class.

The Defendants

JTEKT Defendants

9. The defendant, JTEKT Corporation, is a Japanese corporation with its principal place of business in Osaka, Japan. During the Class Period, JTEKT Corporation manufactured, marketed,

sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and subsidiaries, including the defendants, JTEKT North America Corporation (“**JTEKT North America**”), Koyo France SA (“**Koyo France**”), Koyo Deutschland GmbH (“**Koyo Deutschland**”), Koyo Corporation of U.S.A. (“**Koyo**”) and Koyo Canada Inc. (“**Koyo Canada**”).

10. JTEKT North America is an American corporation with its principal place of business in Plymouth, Michigan. During the Class Period, JTEKT North America manufactured, marketed, sold and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. JTEKT North America is owned and controlled by JTEKT Corporation.

11. Koyo France is a French corporation with its principal place of business in Argenteuil, France. During the Class Period, Koyo France manufactured, marketed, sold and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Koyo France is owned and controlled by JTEKT Corporation.

12. Koyo Deutschland is a German corporation with its principal place of business in Hamburg, Germany. During the Class Period, Koyo Deutschland manufactured, marketed, sold and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Koyo Deutschland is owned and controlled by JTEKT Corporation.

13. Koyo is an American corporation with its principal place of business in Westlake, Ohio. During the Class Period, Koyo manufactured, marketed, sold, and/or distributed Bearings to

customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Koyo is owned and controlled by JTEKT Corporation.

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

15. The business of each of JTEKT Corporation, JTEKT North America, Koyo France, Koyo Deutschland, Koyo and Koyo 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 Bearings in Canada and for the purposes of the conspiracy described hereinafter. JTEKT Corporation, JTEKT North America, Koyo France, Koyo Deutschland, Koyo and Koyo Canada are hereinafter referred to as “**JTEKT**”.

Nachi-Fujikoshi Defendants

16. The defendant, Nachi-Fujikoshi Corp. (“**Nachi-Fujikoshi**”), is a Japanese corporation with its principal place of business in Toyama, Japan. During the Class Period, Nachi-Fujikoshi manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, Nachi America, Inc. (“**Nachi America**”), Nachi Canada Inc. (“**Nachi Canada**”), Nachi Europe GmbH (“**Nachi Europe**”) and Nachi Technology Inc. (“**Nachi Technology**”).

17. Nachi America is an American corporation with its principal place of business in Greenwood, Indiana. During the Class Period, Nachi America manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Nachi America is owned and controlled by Nachi-Fujikoshi.

18. Nachi Canada is a Canadian corporation with its principal place of business in Concord, Ontario. During the Class Period, Nachi Canada manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Nachi Canada is owned and controlled by Nachi-Fujikoshi.

19. Nachi Europe is a German corporation with its principal place of business in Krefeld, Germany. During the Class Period, Nachi Europe manufactured, marketed, sold and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Nachi Europe is owned and controlled by Nachi-Fujikoshi.

20. Nachi Technology is an American corporation with its principal place of business in Greenwood, Indiana. During the Class Period, Nachi Technology manufactured, marketed, sold and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Nachi Technology is owned and controlled by Nachi-Fujikoshi.

21. The business of each of Nachi-Fujikoshi, Nachi America, Nachi Canada, Nachi Europe and Nachi Technology 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 Bearings in Canada and for the purposes of the conspiracy described hereinafter. Nachi-Fujikoshi, Nachi America, Nachi Canada Nachi Europe and Nachi Technology are hereinafter referred to as “**Nachi**”.

NSK Defendants

22. The defendant, NSK Ltd., is a Japanese corporation with its principal place of business in Shinagawa, Japan. During the Class Period, NSK Ltd. manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, NSK Americas, Inc. (“**NSK Americas**”), NSK Canada Inc. (“**NSK Canada**”) and NSK Europe Ltd. (“**NSK Europe**”).

23. NSK Americas is an American corporation with its principal place of business in Ann Arbor, Michigan. During the Class Period, NSK Americas manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. NSK Americas is owned and controlled by NSK Ltd.

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

25. NSK Europe is an English corporation with its principal place of business in Berkshire, England. During the Class Period, NSK Europe manufactured, marketed, sold and/or distributed

Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. NSK Europe is owned and controlled by NSK Ltd.

26. The business of each of NSK Ltd., NSK Americas, NSK Canada and NSK Europe 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 Bearings in Canada and for the purposes of the conspiracy described hereinafter. NSK Ltd., NSK Americas, NSK Canada and NSK Europe are hereinafter referred to as “NSK”.

Schaeffler Defendants

27. The defendant, Schaeffler AG, is a German corporation with its principal place of business in Herzogenaurach, Germany. During the Class Period, Schaeffler AG manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, Schaeffler Technologies GMBH & Co. KG (“**Schaeffler Technologies**”), FAG Kugelfischer GmbH (“**Kugelfischer**”), Schaeffler Group USA Inc. (“**Schaeffler America**”) and Schaeffler Canada Inc. (“**Schaeffler Canada**”).

28. Schaeffler Technologies is a German corporation with its principal place of business in Herzogenaurach, Germany. During the Class Period, Schaeffler Technologies manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Schaeffler Technologies is owned and controlled by Schaeffler AG.

29. Kugelfischer is a German corporation with its principal place of business in Schweinfurt, Germany. During the Class Period, Kugelfischer manufactured, marketed, sold, and/or

distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. Kugelfischer is owned and controlled by Schaeffler AG.

30. Schaeffler America is an American corporation with its principal place of business in Fort Mill, South Carolina. During the Class Period, Schaeffler America manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. Schaeffler America is owned and controlled by Schaeffler AG.

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

32. The business of each of Schaeffler AG, Schaeffler Technologies, Kugelfischer, Schaeffler America and Schaeffler 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 Bearings in Canada and for the purposes of the conspiracy described hereinafter. Schaeffler AG, Schaeffler Technologies, Kugelfischer, Schaeffler America and Schaeffler Canada are hereinafter referred to as “**Schaeffler**”.

AB SKF Defendants

33. The defendant, AB SKF, is a Swedish corporation with its principal place of business in Gothenburg, Sweden. During the Class Period, AB SKF manufactured, marketed, sold, and/or

distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, SKF USA Inc. (“**SKF USA**”), SKF GmbH, and SKF Canada Limited (“**SKF Canada**”)

34. SKF USA is an American corporation with its principal place of business in Lansdale, Pennsylvania. During the Class Period, SKF USA manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. SKF USA is owned and controlled by AB SKF.

35. SKF GmbH is a German corporation with its principal place of business in Schweinfurt, Germany. During the Class Period, SKF GmbH manufactured, marketed, sold and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. SKF GmbH is owned and controlled by AB SKF.

36. SKF Canada is a Canadian corporation with its principal place of business in Scarborough, Ontario. During the Class Period, SKF Canada manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. SKF Canada is owned and controlled by AB SKF.

37. The business of each of AB SKF, SKF USA, SKF GmbH and SKF 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 Bearings in Canada and for the purposes of the conspiracy described hereinafter. AB SKF, SKF USA, SKF GmbH and SKF Canada are hereinafter referred to as “**AB SKF**”.

NTN Defendants

38. The defendant, NTN Corporation, is a Japanese corporation with its primary place of business in Osaka, Japan. During the Class Period, NTN Corporation manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and subsidiaries, including the defendants, NTN USA Corporation (“**NTN USA**”), NTN Bearing Corp. of America (“**NTN America**”), NTN Bearing Corp. of Canada Ltd. (“**NTN Canada**”), NTN Wälzlager (Europa) GmbH (“**NTN Wälzlager**”) and NTN-SNR Roulements SA (“**NTN-SNR**”).

39. NTN USA is an American corporation and has its principal place of business in Mount Prospect, Illinois. During the Class Period, NTN USA manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. NTN USA is owned and controlled by NTN Corporation.

40. NTN America is an American corporation and has its principal place of business in Mount Prospect, Illinois. During the Class Period, NTN America manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates, and/or subsidiaries. NTN America is owned and controlled by NTN Corporation.

41. NTN Canada is a Canadian corporation and has its principal place of business in Mississauga, Ontario. During the Class Period, NTN Canada manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through

the control of its predecessors, affiliates, and/or subsidiaries. NTN Canada is owned and controlled by NTN Corporation.

42. NTN Wälzlager is a German corporation with its principal place of business in Berkshire, England. During the Class Period, NTN Wälzlager manufactured, marketed, sold and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. NTN Wälzlager is owned and controlled by NTN Corporation.

43. NTN-SNR is a French corporation with its principal place of business in Annecy, France. During the Class Period, NTN-SNR manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. NTN SNR is owned and controlled by NTN Corporation.

44. The business of each of NTN Corporation, NTN USA, NTN America, NTN Canada, NTN Wälzlager and NTN-SNR 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 Bearings in Canada and for the purposes of the conspiracy described hereinafter. NTN Corporation, NTN USA, NTN America, NTN Canada, NTN Wälzlager and NTN-SNR are hereinafter referred to as “NTN”.

Minebea Defendants

45. The defendant, Minebea Co., Ltd. (“**Minebea Co.**”), is a Japanese corporation with its principal place of business in Nagano, Japan. During the Class Period, Minebea Co. manufactured, marketed, sold and/or distributed Bearings to customers throughout Canada,

either directly or indirectly through its predecessors, affiliates and subsidiaries, including the defendant, NMB Technologies Corporation (“**NMB Technologies**”).

46. NMB Technologies is an American corporation and has its principal place of business in Chatsworth, California. During the Class Period, NMB Technologies manufactured, marketed, sold, and/or distributed Bearings to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries. NMB Technologies is owned and controlled by Minebea Co.

47. The business of each of Minebea Co. and NMB Technologies are 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 Bearings and for the purposes of the conspiracy described hereinafter. Minebea Co. and NMB Technologies are hereinafter referred to as “**NMB**”.

Unnamed Co-conspirators

48. 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

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

50. 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 Bearings Industry

51. Bearings are friction-reducing devices that allow one moving part to glide past another moving part. Rolling bearings include both ball bearings and roller bearings. Ball bearings, also known as anti-friction bearings, are the most common type of bearing. Ball bearings are small metallic or ceramic spheres used to reduce friction between axles and shafts in numerous applications. Ball bearings are often used in individual cages to reduce friction in axle assemblies or in a series to absorb the weight placed on a moving part. Ball bearings are commonly found in fans, roller blades, wheel bearings, and under hood applications on automobiles.

52. Roller bearings, unlike ball bearings, use cylinders instead of spheres. Therefore, the load is spread over a larger area enabling the bearing to handle greater loads than ball bearings. Roller bearings include spherical roller bearings, needle roller bearings, cylindrical roller bearings, thrust roller bearings, and tapered roller bearings. Automotive wheel hub unit bearings are a type of roller bearings that enable the wheels of a vehicle to spin properly.

53. Tapered roller bearings are the second most popular bearing type, with only ball bearings being more common. Tapered roller bearings are generally found in heavy industrial, truck and wheel applications with combined radial and axial loads. Some examples are manual

transmissions, gearboxes, power generation and other process equipment. These bearings use conical rollers that run on conical races. Unlike other roller bearings, they support both radial and axial loads, and are able to carry higher loads. The conical geometry of tapered roller bearings provides a larger contact patch, which allows greater loads to be carried as compared to spherical ball bearings. Due to manufacturing complexities, tapered roller bearings are generally more expensive than ball bearings.

54. Bearings are installed by original equipment manufacturers (“**OEMs**”) in new Products Containing Bearings as part of the manufacturing process.

55. For new Products Containing Bearings, the OEMs purchase Bearings directly from the defendants. Bearings 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 Bearings directly to an OEM.

56. When purchasing Bearings, automotive 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. The RFQ process for industrial Bearings is similar to the RFQ process implemented by automotive OEMs.

57. During the Class Period, the defendants and their unnamed co-conspirators supplied Bearings to OEMs for installation in Products Containing Bearings manufactured and sold in North America and elsewhere. The defendants and their unnamed co-conspirators manufactured Bearings: (a) in North America for installation in Products Containing Bearings manufactured in North America and sold in Canada, (b) outside North America for export to North America and installation in Products Containing Bearings manufactured in North America and sold in Canada, and (c) outside North America for installation in Products Containing Bearings manufactured outside North America for export to and sale in Canada.

58. The defendants and their unnamed co-conspirators intended, as a result of their unlawful conspiracy, to inflate the prices for Bearings and new Products Containing Bearings sold in North America and elsewhere.

59. The defendants and their unnamed co-conspirators unlawfully conspired to agree and manipulate prices for Bearings 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 Bearings 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 Bearings, the prices of new Products Containing Bearings would also be artificially inflated. The defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Bearings and purchasers and lessees of new Products Containing

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

60. In 2011, the global Bearings market grew to approximately \$45 billion USD. The automotive industry has been the primary user of tapered roller bearings and ball bearings.

61. By virtue of their market shares, the defendants are the dominant manufacturers and suppliers of Bearings in Canada and the world.

62. The automotive and industrial machinery industries in Canada and the United States are integrated industries. Products Containing Bearings manufactured on both sides of the border are sold in Canada. The unlawful conspiracy affected prices of Bearings in the United States and Canada, including Ontario.

Investigations into International Cartel and Resulting Fines

Canada

63. JTEKT Corporation has agreed to plead guilty and pay a fine of \$5 million for bid-rigging relating to the sale of automotive wheel hub unit bearings.

64. NSK Ltd. has agreed to plead guilty and pay a fine of \$4.5 million for bid-rigging relating to the sale of automotive wheel hub unit bearings.

65. The statements of admissions indicate that JTEKT Corporation and NSK Ltd. engaged in unlawful agreements and/or arrangements with respect to bids made in response to RFQs from Toyota Motor Corporation and/or its affiliates in respect of:

- (a) the third generation Toyota RAV4 produced in Canada from 2008 to 2012; and

- (b) the tenth generation Toyota Corolla and second generation Toyota Matrix produced in Canada from 2007 to 2013.

66. The statements of admissions indicate that JTEKT Corporation and NSK Ltd. were the principal pre-qualified suppliers of automotive wheel hub unit bearings for Toyota. The statements of admissions further indicate that JTEKT Corporation and NSK Ltd. submitted bids or tenders that were arrived at by agreement or arrangement.

67. With respect to the RAV4 RFQ, bilateral discussions between JTEKT Corporation and NSK Ltd. resulted in an agreement that each company would win the RFQ for certain automotive wheel hub unit bearings. The parties submitted bids in accordance with the agreement. JTEKT Corporation's sales of the relevant bearings were approximately \$23.4 million. NSK Ltd.'s sales of the relevant bearings were approximately \$17.6 million.

68. With respect to the Corolla/Matrix RFQs, bilateral discussions between JTEKT Corporation and NSK Ltd. resulted in an agreement that each company would win the RFQs for certain automotive wheel hub unit bearings. The parties submitted bids in accordance with the agreement. JTEKT Corporation's sales of the relevant bearings were approximately \$15.2 million. NSK Ltd.'s sales of the relevant bearings were approximately \$35.8 million.

69. In Canada, NSK Ltd. is the "first-in" leniency applicant in respect of the market for automotive wheel hub unit bearings and JTEKT Corporation is the "second-in" leniency applicant.

United States

70. JTEKT Corporation has agreed to plead guilty and pay a fine of US\$103.27 million in respect of JTEKT Corporation's role in conspiracies to fix the prices of Bearings and electric

powered steering assemblies sold to automobile manufacturers in the United States and elsewhere from at least as early as January 1, 2000 and continuing until at least July 2011.

71. NSK Ltd. has agreed to plead guilty and pay a fine of US\$68.2 million in respect of NSK Ltd.'s role in the alleged conspiracy to fix prices of Bearings sold to automobile manufacturers in the United States and elsewhere from at least as early as January 1, 2000 and continuing until at least July 2011.

72. Minebea Co. has agreed to plead guilty and pay a fine of US\$13.5 million in respect of Minebea Co.'s role in the alleged conspiracy to fix prices of small-sized ball bearings to customers in the United States and elsewhere from as at least as early as early-to-mid 2008 and continuing until at least October 2011.

Japan

73. The Japan Fair Trade Commission (“JFTC”) launched an investigation in July 2011 after JTEKT Corporation sought leniency by alerting the regulatory agency of the Bearings conspiracy. JTEKT Corporation voluntarily confessed to the conspiracy and was exempted from a criminal complaint by the JFTC.

74. On July 26, 2011, the JFTC conducted on-site inspections of defendants NSK Ltd., NTN Corporation, JTEKT Corporation and Nachi-Fujikoshi amid suspicions that the companies violated Japan's anti-monopoly law in relation to their sales of Bearings.

75. On June 14, 2012, the JFTC filed criminal charges against defendants NSK Ltd., NTN Corporation, and Nachi-Fujikoshi for violations of Japan's Antimonopoly Act (“AMA”). The JFTC found that the three companies had raised the prices of automotive and industrial Bearings five times since 2004. On March 29, 2013, the JFTC issued cease and desist orders and

surcharge payment orders totaling over ¥13 billion (approximately US\$124.5 million) against NSK Ltd., NTN Corporation, and Nachi-Fujikoshi for violations of the AMA in relation to anti-competitive conduct in the sale of Bearings. JTEKT Corporation was named as a violator of the AMA.

Europe

76. On November 8, 2011, the European Commission (“EC”) announced that it had made unannounced inspections at the premises of companies that manufacture bearings for automotive and industrial use over concerns that these companies may have violated antitrust rules. Defendants AB SKF and Schaeffler have admitted that their facilities were inspected by the EC.

77. On March 19, 2014, the EC announced that it had issued fines totaling €953.3 million (approximately \$1.3 billion) for the alleged conspiracy, which lasted from April 2004 to July 2011 in Europe. Schaeffler was fined €370.5 million, AB SKF was fined €315.1 million, NTN Corporation was fined €201.35 million, NSK Ltd. was fined €62.4 million, and Nachi-Fujikoshi was fined €3.96 million.

South Korea

78. On November 17, 2014, the Korea Fair Trade Commission (“KFTC”) announced that it had decided to impose a penalty surcharge on various Bearings manufacturers for their alleged involvement in jointly deciding the price, quantity, and prospective clients of bearings from at least as early as April 20, 1998, and continuing to at least as early as March 31, 2012.

79. The four manufacturers were fined for their specific involvement in the sale of bearings at commercial scale (sold through distributors) from at least as early as April 20, 1998, and continuing to at least as early as March 31, 2012: NSK Ltd. was fined 26,043 million won,

JTEKT Corporation was fined 7,872 million won, Nachi-Fujikoshi was fined 3,651 million won, and Schaeffler Korea was fined 16,475 million won.

80. Two manufacturers were fined for their specific involvement in the sale of small-sized bearings from at least as early as June 2003 and continuing to at least August 2011. NSK Ltd. was fined 3,668 million won, and Minebea Co. was fined 4,912 million won.

81. Two manufacturers were fined for their specific involvement in the sale of large-sized bearings for steel facilities. NSK Ltd. was fined 3,755 million won, and JTEKT Corporation was fined 3,038 million won.

Plaintiffs Purchased New Vehicles Containing Bearings

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

83. 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.

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

85. 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.

86. During the Class Period, Urlin purchased for use, as part of its fleet of rental vehicles, the following brands of vehicles: Toyota, Ford, General Motors, Chevrolet, Mazda, Dodge, Jeep, Mercedes, Nissan, Volkswagen and Hyundai.

87. The vehicles purchased by Sheridan, Pickering and Urlin 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.

88. Sheridan, Pickering and Urlin purchased new vehicles containing Bearings.

89. Fady Samaha purchased a new Honda Civic in 2009, which contained Bearings.

Breaches of Part VI of *Competition Act*

90. From at least as early as April 20, 1998 until at least March 31, 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 Bearings sold to customers in North America and elsewhere. The defendants and their unnamed co-conspirators conspired to enhance unreasonably the prices of Bearings and/or to lessen unduly competition in the production, manufacture, sale, and/or distribution of Bearings in North America and elsewhere. The conspiracy was intended to, and did, affect prices of Bearings and new Products Containing Bearings.

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

- (j) accepting payment for Bearings 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 Bearings.

92. 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 Bearings and/or new Products Containing Bearings.

93. 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

94. 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

95. 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 Bearings 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.

96. In furtherance of the conspiracy, the defendants, their servants, agents and unnamed co-conspirators carried out the acts described in paragraph 91 above.

97. 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 Bearings, and to illegally increase their profits on the sale of Bearings.

98. 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

99. Bearings are not exempt from competition regulation and thus, the plaintiffs reasonably considered the Bearings 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 Bearings.

100. 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

101. 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.

102. The defendants' anti-competitive conspiracy was self-concealing. As detailed in paragraph 91 above, the defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

103. 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 Bearings and/or new Products Containing Bearings.

Unjust Enrichment

104. As a result of their conduct, the defendants benefited from a significant enhancement of their revenues on the sale of Bearings. All members of the Proposed Class have suffered a corresponding deprivation as a result of being forced to pay inflated prices for Bearings and/or new Products Containing Bearings. 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.

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

106. 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

107. 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.

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

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

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

110. Bearings are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle or industrial machinery. As a result, Bearings for use in new Products Containing Bearings follow a traceable chain of distribution from the defendants to the OEMs or industrial machinery manufacturers (or alternatively to the Tier I Manufacturers and then to OEMs or industrial machinery manufacturers) and from the OEMs to automotive and/or industrial machinery dealers to consumers or other end user purchasers. Costs attributable to Bearings can be traced through the distribution chain.

111. 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 Bearings and/or

new Products Containing Bearings 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

112. 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 Bearings. 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.

113. 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

114. 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.

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

DATE: "April 18, 2013"

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**SECOND FRESH AS AMENDED CONSOLIDATED
STATEMENT OF CLAIM
(Bearings)**

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