



S E 2 4 7 8 7 9  
No.  
Vancouver Registry

Between

**Sandra Martin and Dawn Bazely**

Plaintiffs

and

**BANNER GMBH, CLARIOS CANADA, INC., CLARIOS  
INTERNATIONAL INC., EUROBAT AISBL, EXIDE  
TECHNOLOGIES SAS, FIAMM ENERGY TECHNOLOGY  
S.P.A., KELLEN COMPANY, ROMBAT SA, and STRYTEN  
ENERGY LLC**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

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**NOTICE OF CIVIL CLAIM**

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This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff(s).

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff(s) and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

**Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

**PART 1: STATEMENT OF FACTS**

**NATURE OF THE ACTION**

1. Starting-Lighting-Ignition Batteries (“**Starter Batteries**”) are used in automobiles. Starter Batteries are used in almost every type of vehicle, including combustion and electric cars, trucks, RVs, boats, and motorcycles.

2. This action arises from a conspiracy between the Defendants and their co-conspirators to fix, raise, maintain, or stabilize prices, rig bids and allocate the market and customers in North America and elsewhere of Starter Batteries sold in Canada, including British Columbia, and elsewhere, with conspiratorial discussions and agreements starting

at least as early as 2004 until at least September 2017, with damages ongoing until 2024 and thereafter.

3. The Defendants manufacture, market, sell, and distribute Starter Batteries throughout the world, including in Canada and British Columbia.

4. During the Class Period, the Manufacturer Defendants (as defined in paragraph 24 below) and their co-conspirators agreed to share confidential competitive pricing and other information with each other, and with a trade organization, Eurobat ASBL. The Defendants' goal was to fix, maintain or increase prices for Starter Batteries by agreeing that Eurobat ASBL would create and publish common "pricing indices" in Defendants' negotiations with Original Equipment Manufacturers ("**OEMs**"). The Defendants described their conspiratorial pricing agreement as the "Eurobat Premium System". The Manufacturer Defendants agreed to and did use the Eurobat Premium System to fix, maintain or increase the prices of Starter Batteries around the world, and to allocate customers, including in Canada and British Columbia.

5. As a direct result of the unlawful conduct alleged herein, the Plaintiffs and other members of the Proposed Class (as defined in paragraph 8 below) paid artificially inflated prices for Starter Batteries and/or new Affected Automotive Vehicles (as defined in paragraph 8 below) containing Starter Batteries manufactured, marketed or sold during the Class Period and/or replacement Starter Batteries sold through authorized repairers during the Class Period, and have thereby suffered losses and damages.

#### **THE PLAINTIFFS AND THE CLASS**

6. The Plaintiff, Sandra Martin, purchased a new Mercedes-Benz ML350 BlueTEC for personal use in 2011, which contained a Starter Battery.

7. The Plaintiff, Dawn Bazely, an Ontario resident, bought a new MINI Cooper Clubman containing a Starter Battery, manufactured by the Defendant Exide, on November 18, 2011.

8. The Plaintiffs seek to represent a proposed class consisting of:

All persons in Canada, who, during the Class Period, purchased Starter Batteries (“**Direct Purchasers**”) for installation in an Affected Automotive Vehicle, or who purchased and/or leased a new Affected Automotive Vehicle containing Starter Batteries (“**Indirect Purchasers**”) and/or replacement Starter Batteries sold through authorized repairers in Canada.

“**Class Period**” means between January 1, 2004 and the date of certification.

“**Affected Automotive Vehicle**” means passenger vans, sport utility vehicles, vans, and light trucks (up to 10,000 lbs) manufactured by Bayerische Motoren Werke AG, Daimler AG, Volkswagen AG, Volvo Group, and/or their subsidiaries or affiliated companies, under the following brand names: BMW, MINI, Mercedes-Benz, Smart, Volkswagen, Audi and Volvo.

Excluded from the class are the Defendants, their parent companies, subsidiaries and affiliates.

## **THE DEFENDANTS**

9. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as Defendants in this lawsuit, the identities of which are presently unknown, have participated as co-conspirators with the Defendants in the unlawful behaviour alleged in this Notice of Civil Claim, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.

10. The Defendants and their co-conspirators agreed, combined, and conspired to inflate, fix, raise, maintain, or artificially stabilize prices of Starter Batteries sold in Canada, including in British Columbia.

11. The Defendants and their co-conspirators are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators, including unnamed co-conspirators.

12. Where a particular entity within a corporate family of defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into

agreements on behalf of, and reported these meetings and discussions to, their respective corporate families.

### **Banner Defendant**

13. The Defendant Banner GmbH (“**Banner**”) is a corporation incorporated under the laws of Austria, domiciled at Bannerstraße 1, Linz, Oberösterreich, 4021, Austria. During the Class Period, Banner, directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Starter Batteries in Canada, including British Columbia and elsewhere.

### **Clarios Defendants**

14. The Defendant Clarios Canada, Inc. (“**Clarios Canada**”) is a corporation incorporated under the laws of Canada, domiciled at 181 Bay Street, Suite 300, Toronto, Ontario. During the Class Period, Clarios Canada, directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Starter Batteries in Canada, including British Columbia and elsewhere.

15. The Defendant Clarios International Inc. (“**Clarios International**”) is a corporation incorporated under the laws of Wisconsin, domiciled at 5757 N Green Bay Ave, Milwaukee, Wisconsin, 53209, United States of America. During the Class Period, Clarios International, directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Starter Batteries in Canada, including British Columbia and elsewhere.

16. The businesses of each of Clarios Canada and Clarios International (collectively, “**Clarios**”) are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Starter Batteries.

17. Each member of Clarios is an agent for the others with respect to the conduct particularized herein. To the extent that allegations are made against Clarios, those allegations are made against all members of the corporate group, and damages for their actions are sought against them jointly and severally.

### **Exide Defendants**

18. The Defendant Exide Technologies S.A.S. (“**Exide Technologies**”) is a simplified limited liability company incorporated under the laws of France, domiciled at 5 allée des Pierres Mayettes, 92230 Gennevilliers, France. During the Class Period, Exide Technologies, directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Starter Batteries in Canada, including British Columbia and elsewhere.

19. The Defendant Stryten Energy LLC (“**Stryten Energy**”) is a corporation incorporated under the laws of Georgia, domiciled at 3700 Mansell Road, Suite 400, Alpharetta, Georgia, 30022, United States of America. During the Class Period, Cinven Ltd., directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Starter Batteries in Canada, including British Columbia and elsewhere.

20. The businesses of each of Exide Technologies and Stryten Energy (collectively, “**Exide**”) are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Starter Batteries.

21. Each member of Exide is an agent for the others with respect to the conduct particularized herein. To the extent that allegations are made against Exide, those allegations are made against all members of the corporate group, and damages for their actions are sought against them jointly and severally.

### **FET Defendant**

22. The Defendant FIAMM Energy Technology S.p.A. (“**FET**”) is a corporation incorporated under the laws of Italy, domiciled at Viale Europa, 75, 36075 Montecchio Maggiore (VI), Italy. During the Class Period, FET, directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Starter Batteries in Canada, including British Columbia and elsewhere.

### **Rombat Defendant**

23. The Defendant Rombat SA (“**Rombat**”) is a corporation incorporated under the laws of Romania, domiciled at Strada Drumul Cetatii Nr 4, Bistrita, Bistrita-Nasaud, 420129, Romania. During the Class Period, Rombat, directly or through its predecessors, affiliates and/or subsidiaries, manufactured, marketed, sold and/or distributed Starter Batteries in Canada, including British Columbia and elsewhere.

24. Banner, Clarios, Exide, FET, and Rombat are collectively referred to as the “**Manufacturer Defendants**”.

### **EUROBAT Defendants**

25. The Defendant, the Association of European Automotive and Industrial battery Manufacturers AISBL (the “**EUROBAT**”) is an international non-profit association organized under the laws of Belgium, domiciled at Avenue de Tervueren 188A, box 4 B - 1150 Brussels, Belgium. During the Class Period, EUROBAT, directly or through its predecessors, affiliates and/or subsidiaries, is a battery industry trade association, of which some members are involved in the manufacturing, marketing, sale and/or distribution of Starter Batteries in Canada, including British Columbia and elsewhere.

26. The Defendant Kellen Company (“**Kellen**”) is a corporation incorporated under the laws of Georgia, domiciled at 529 14th Street NW Suite 1280, Washington, District of Columbia 20005, United States of America. During the Class Period, Kellen described itself as one of the world’s largest providers of full-service management to associations. Kellen was a service provider to EUROBAT. The businesses of each of EUROBAT and Kellen are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the creation, implementation and enforcement of the Eurobat Premium System.

27. Banner, Clarios, Exide, FET, and Rombat are members of EUROBAT. Each member of EUROBAT is an agent for the others with respect to the creation, implementation and enforcement of the EUROBAT Premium System. To the extent that

allegations are made against EUROBAT, those allegations are made against all members of the group, and all liability against each member of EUROBAT is joint and several.

## **THE STARTER BATTERIES INDUSTRY**

28. Starter Batteries produce a short jolt of electricity to kickstart an engine, usually of a vehicle. They are also known as SLI (Starting-Lighting-Ignition) batteries.

29. There are three main types of Starter Batteries, all of which use lead: standard lead acid batteries, Enhanced Flooded Batteries (“**EFB**”), and Absorbent Glass Mat batteries (“**AGM**”).

30. Starter Batteries are installed by OEMs in new vehicles as part of the automotive manufacturing process. They are also installed in vehicles as replacement parts.

31. For new vehicles and for replacement parts supplied to authorized repairers, OEMs purchase Starter Batteries directly from the Manufacturer Defendants. Manufacturer Defendants providing Starter Batteries directly to OEMs are Tier I manufacturers.

32. When purchasing Starter Batteries, OEMs issue Requests for Quotation (“**RFQs**”) to suppliers like the Manufacturer Defendants. Suppliers submit quotations, or bids, to OEMs in response to RFQs. The RFQ is sought from pre-qualified suppliers of the product. OEMs usually award the business to a selected supplier for a fixed number of years consistent with the estimated production life of the parts program, usually four to six years. Typically, the bidding process begins approximately three years before the start of production of a new model.

33. The majority of market demand today is for EFB and AGM batteries because (1) they work better below freezing; (2) they last longer; (3) they are compatible with start-stop systems, which are used in many modern vehicles and improve efficiency; (4) they can provide more power, which is useful given that modern vehicles often have many components that need power; and (5) they do not spill acid and do not require frequent maintenance. Lithium batteries, while available, make up a miniscule share of the market



in large part because they do not work well (or at all) in cold temperatures. They are not a realistic substitute for EFB or AGM batteries.

34. For those reasons, most vehicle OEMs purchase EFB or AGM batteries.

35. By virtue of their market shares, the Manufacturer Defendants and their co-conspirators are the dominant manufacturers and suppliers of Starter Batteries in Canada, including in British Columbia, and the world.

36. During the Class Period, the Manufacturer Defendants and their co-conspirators supplied Starter Batteries for installation in new vehicles manufactured and sold in Canada and elsewhere. The Manufacturer Defendants and their co-conspirators manufactured Starter Batteries: (a) in North America for installation in new vehicles manufactured in North America and sold in Canada, (b) outside North America for export to North America and installation in new vehicles manufactured in North America and sold in Canada, and (c) outside North America for installation in new vehicles manufactured outside of North America for export to and sale in Canada.

## **THE CONSPIRACY**

37. The acts alleged under this heading are, collectively, the “**Conspiracy Acts**”.

38. In or around 2004, the Manufacturer Defendants conspired, agreed, or arranged to fix, maintain, increase, or control the price for the supply of Starter Batteries through the creation of the EUROBAT Premium System, which was aided, abetted and/or counselled by EUROBAT and Kellen.

39. The Manufacturer Defendants and their co-conspirators intended, as a result of their unlawful conspiracy, to inflate the prices for Starter Batteries and new Affected Automotive Vehicles containing Starter Batteries sold in Canada, including British Columbia and elsewhere.

40. EUROBAT and Kellen were aware of the Manufacturer Defendants’ intention to engage in their unlawful conspiracy and intended to assist the Manufacturer Defendants in inflating the prices for Starter Batteries and new Affected Automotive Vehicles

containing Starter Batteries sold in Canada, including British Columbia and elsewhere. Further, EUROBAT and Kellen knowingly counselled the commission of the unlawful conspiracy either with the intention that the Manufacturer Defendants engage in the unlawful conspiracy or with the knowledge of the unjustified risk that the Manufacturer Defendants would likely engage in the unlawful conspiracy as a result of EUROBAT and Kellen's conduct.

41. Under the EUROBAT Premium System:

- (a) The Manufacturer Defendants agreed to and did provide confidential pricing information to the industry association EUROBAT;
- (b) EUROBAT and its colleague, Kellen, agreed to and did use that confidential information to create pricing indices, known as the EUROBAT Premium System, which they distributed to the Manufacturer Defendants; and
- (c) The Manufacturer Defendants agreed to and did use the EUROBAT Premium System in their negotiations with OEMs to fix, maintain or increase the pricing of Starter Batteries.

42. EUROBAT and Kellen were charged with enforcing the EUROBAT Premium System. EUROBAT and Kellen used each Manufacturer Defendant's confidential pricing information to verify whether each Manufacturer Defendant was complying with the EUROBAT Premium System. If a Manufacturer Defendant did not comply with the System from time to time, EUROBAT and Kellen would take steps to enforce the EUROBAT Premium System.

43. The Manufacturer Defendants designed the EUROBAT Premium System through the assistance, encouragement, instigation, and promotion of the industry association EUROBAT and its colleague, Kellen. The EUROBAT Premium System operated as a hub-and-spokes conspiracy with EUROBAT and Kellen operating as the hub. EUROBAT and Kellen aided, abetted and counselled the conspiracy, contrary to ss. 21 and 22 of the *Criminal Code*, R.S.C., 1985, c. C-46 (the "*Criminal Code*") by knowingly assisting,

encouraging, instigating and promoting the formation of the conspiracy of the Manufacturer Defendants.

44. In summary, EUROBAT and Kellen aided, abetted and/or counselled the Manufacturer Defendants to enter into the unlawful conspiracy, including by:

- (a) developing and promulgating the EUROBAT Premium System;
- (b) providing a forum in and vehicle through which the conspirators have conspired;
- (c) collecting and distributing confidential pricing information using pricing indices; and
- (d) enforcing compliance with the EUROBAT Premium System.

45. The Manufacturer Defendants unlawfully conspired with known and unknown co-conspirators to agree upon and manipulate prices for Starter Batteries and to rig bids and to conceal their anti-competitive behaviour from their customers and other industry participants. The Manufacturer Defendants and their co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Starter Batteries would be sold to OEMs from the price that would otherwise be charged on a competitive basis. The Manufacturer Defendants and their co-conspirators were aware that, by unlawfully increasing the prices of Starter Batteries, the prices of new Affected Automotive Vehicles containing Starter Batteries would also be artificially inflated. The Manufacturer Defendants and their co-conspirators knew that their unlawful scheme and conspiracy would injure purchasers of Starter Batteries and new Affected Automotive Vehicles containing Starter Batteries.

46. During the Class Period, senior executives and employees of the Defendants, acting in their capacities as agents for the Defendants, engaged in communications, conversations, and attended meetings with each other at times and places, some of which are unknown to the Plaintiffs (the “**Communications**”).

47. As a result of the Communications, the Manufacturer Defendants and their co-conspirators unlawfully conspired and agreed to:

- (a) unreasonably enhance the prices of Starter Batteries in Canada, including in British Columbia, and elsewhere;
- (b) fix, maintain, increase, or control the prices of Starter Batteries in Canada, including in British Columbia, and elsewhere;
- (c) monitor and enforce adherence to an agreed-upon pricing scheme for Starter Batteries; and
- (d) lessen unduly competition in the sale of Starter Batteries in Canada, including in British Columbia, and elsewhere.

48. In furtherance of the conspiracy, during the Class Period, the Manufacturer Defendants and their co-conspirators, and/or their servants and agents:

- (a) fixed, maintained, increased, controlled, and/or enhanced unreasonably the prices of Starter Batteries in Canada, including in British Columbia, and elsewhere;
- (b) communicated secretly, in person, by telephone, and by email, text and other forms of electronic communications, to discuss and fix prices of Starter Batteries;
- (c) made formal agreements with respect to the prices of Starter Batteries;
- (d) exchanged information, including through provision and receipt of confidential information to and from EUROBAT and Keller regarding the prices of Starter Batteries for the purposes of monitoring and enforcing adherence to the agreed-upon prices;
- (e) fixed, maintained, controlled, prevented or lessened the supply of Starter Batteries;

- (f) rigged bids for the sale of Starter Batteries to OEMs and their subsidiaries;  
and
- (g) disciplined any conspirator which failed to comply with the conspiracy.

49. During the Class Period and continuing to the present, the Defendants and their co-conspirators and their servants and agents took active steps to, and did, conceal the unlawful conspiracy from the Proposed Class.

50. The Manufacturer Defendants and their co-conspirators were motivated to conspire and their predominant purposes and predominant concerns were to harm the Plaintiffs and other persons in British Columbia who purchased Starter Batteries and Affected Automotive Vehicles containing Starter Batteries.

51. The Canadian subsidiaries of the foreign defendants and the foreign co-conspirators participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies, and thereby acted as their agents in carrying out the conspiracy and are liable for such acts.

52. The Conspiracy Acts alleged in this claim to have been done by each Defendant and each co-conspirator were authorized, ordered, and done by each Defendant's officers, directors, agents, employees, or representatives while engaged in the management, direction, control, or transaction of its business affairs.

53. Relying on the higher price umbrella set by the Manufacturer Defendants, the non-conspirator Starter Batteries manufacturers supplying to Affected Automotive Vehicles were able to, and did, maximize their profits by charging higher prices for Starter Batteries than they would have in a competitive market. The non-conspirator Starter Batteries manufacturers' conduct in charging higher prices was a direct response to the higher prices for Starter Batteries caused by the Defendants' conspiratorial conduct and exercise of collective market power. But for the conspiracy, the Defendants would have charged lower, competitive prices for Starter Batteries, and the non-cartel Starter Batteries

manufacturers would have needed to follow those lower prices or risk losing market share.

54. The Defendants and their unnamed co-conspirators knew that their unlawful scheme and conspiracy would unlawfully increase the price at which Starter Batteries would be sold from the price that otherwise would be charged on a competitive basis. The Defendants and their unnamed co-conspirators knew or should have known that their unlawful scheme and conspiracy would injure purchasers of Starter Batteries and purchasers of Affected Automotive Vehicles containing Starter Batteries by requiring them to pay excessive prices for Starter Batteries in Canada (including British Columbia) and elsewhere. The Defendants' conduct inflated the price paid by Class Members for Starter Batteries.

55. During the Class Period, members of the Proposed Class who directly and indirectly purchased Starter Batteries from the Manufacturer Defendants suffered damages measured as the difference between the actual prices paid by them and the "but for" prices that they would have obtained had there been a competitive market for Starter Batteries. The Defendants were aware and intended that the alleged conspiracy would cause the Proposed Class to pay *supra*-competitive prices for Starter Batteries.

56. During the Class Period, Class Members who purchased Starter Batteries from non-conspirator manufacturers suffered damages measured as the difference between the actual prices paid by them and the "but for" prices that they would have obtained in a competitive market. The Defendants were aware and intended that the alleged conspiracy would result in the Class Members paying *supra*-competitive prices for Starter Batteries during the Class Period.

### **Global Investigations**

57. On November 30, 2023, the EC confirmed that it sent a Statement of Objections to Banner, Clarios, Exide, FET, Rombat, EUROBAT, and EUROBAT's service provider Kellen. The Statement of Objections alleged that the Conspiracy Acts violated Article 101 of the *Treaty on the Functioning of the European Union* ("TFEU") and Article 53 of the *European Economic Area Agreement* ("EEAA").

58. A Statement of Objections occurs after an initial investigation has occurred, and the EC concludes the case warrants further investigation. The Statement of Objections constitutes the formal opening of proceedings, which signals a commitment by the Commissioner to further investigate the case.

59. On May 31, 2024, in a filing with the US Securities and Exchange Commission, Clarios International stated that:

On November 30, 2023, the European Commission (“EC”) announced an investigation into the starter automotive battery market. ... the Company does not foresee any material adverse exposures in its future earnings or net cash flows in relation to the matter because, among other things, it has received conditional immunity from the EC ...

### **Damages**

60. As a result of the Conspiracy Acts:

- (a) the prices of Starter Batteries and Affected Automotive Vehicles containing Starter Batteries have been, directly or indirectly, enhanced unreasonably and/or fixed at artificially high and non-competitive levels; and
- (b) competition in the sale of Starter Batteries has been unduly restrained.

61. During the Class Period, the Plaintiffs and the Proposed Class purchasers of Starter Batteries and purchasers of Affected Automotive Vehicles containing Starter Batteries. By reason of the alleged violations of the *Competition Act*, RSC 1985, c 19 (2nd Suppl.) (the "**Competition Act**") and the common law, the Plaintiffs and the Proposed Class paid more for those Starter Batteries and Affected Automotive Vehicles containing Starter Batteries than they would have paid in the absence of the illegal conspiracy and, as a result, the Plaintiffs and the Proposed Class have suffered damages (the "**Overcharge**").

62. The Plaintiffs asserts that the Overcharge is capable of being quantified on an aggregate basis as the difference between the prices of Starter Batteries and Affected Automotive Vehicles containing Starter Batteries actually paid by the Proposed Class and the prices which would have been paid in the absence of the unlawful conspiracy. The

Defendants and their co-conspirators are jointly and severally liable for the entire Overcharge.

63. The Manufacturer Defendants shared the Overcharge with EUROBAT and Kellen as payment for their conduct in furtherance of the Conspiracy Acts.

## **PART 2: RELIEF SOUGHT**

64. The Plaintiffs, on their own behalf, and on behalf of the Proposed Class, claims against the Defendants and their co-conspirators:

- (a) a declaration that the Defendants and their co-conspirators, and each of them, conspired each with the other to raise, maintain, fix, and stabilize the price of Starter Batteries during the Class Period, in violation of statutory, common law, and equitable laws as alleged in this claim;
- (b) a declaration that the Defendants and their co-conspirators, and each of them, conspired, combined, agreed or arranged to prevent or lessen, unduly, competition in the manufacture or production of Starter Batteries or to enhance unreasonably the price thereof;
- (c) a declaration that EUROBAT and Kellen aided, abetted and/or counselled the conspiracy to raise, maintain, fix, and stabilize the price of Starter Batteries during the Class Period, in violation of statutory, common law, and equitable laws as alleged in this claim;
- (d) a declaration that EUROBAT and Kellen aided, abetted and/or counselled the conspiracy to prevent, or lessen unduly, competition in the manufacture or production of Starter Batteries or to enhance unreasonably the price thereof;
- (e) an order certifying this action as a class proceeding against the Defendants and appointing the Plaintiffs as representative plaintiffs in respect of the Proposed Class;



- (f) general damages for conspiracy and unlawful interference with economic interests in the amount of the Overcharge;
- (g) a declaration that the Defendants account for and make restitution to the Plaintiffs and the Proposed Class in an amount equal to the Overcharge;
- (h) judgment in the amount of the Overcharge;
- (i) general damages for conduct that is contrary to Part VI of the *Competition Act*;
- (j) punitive damages;
- (k) an injunction enjoining the Defendants and their co-conspirators from conspiring or agreeing with each other, or others, to raise, maintain, fix, or stabilize the price of Starter Batteries;
- (l) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*;
- (m) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 78, s 128;
- (n) disgorgement of the revenues generated by the Defendants from their unlawful misconduct; and
- (o) such further and other relief as to this Honourable Court may deem just.

### **PART 3: LEGAL BASIS**

65. The Plaintiffs plead and rely upon the *Class Proceedings Act*, RSBC, 1996 c. 50, the *Competition Act*, and the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28 (the "**CJPTA**").

## CAUSES OF ACTION

### **Breach of the Competition Act**

66. The Conspiracy Acts are in breach of section 45 of Part VI of the *Competition Act* as they involved unlawful agreements between competitors to fix prices, allocate markets and control supply of Starter Batteries, caused injury to the Plaintiffs and the Proposed Class and render the Defendants and their co-conspirators jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*. Further, the Canadian subsidiaries of the foreign Defendants and their foreign co-conspirators are jointly and severally liable to the Plaintiffs and the Proposed Class pursuant to s. 36 of the *Competition Act* for acts in contravention of s. 46(1) of the *Competition Act* by implementing directives, instructions, intimations of policy or other communications from a foreign Defendant.

67. Further or alternatively, the Conspiracy Acts are in breach of section 47 of Part VI of the *Competition Act* by agreeing to rig and/or rigging bids for the supply of Starter Batteries, caused injury to the Plaintiffs and the Proposed Class and render the Defendants and their co-conspirators jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*.

68. Further, or alternatively, the conduct of EUROBAT and Kellen in assisting the Manufacturer Defendants with the creation of the EUROBAT Premium System is in breach of ss. 21 and 22 of the *Criminal Code* in that EUROBAT and Kellen aided, abetted and/or counselled the commission of an offence under ss. 45 and 47 of the *Competition Act*.

### **Civil Conspiracy**

69. Further, or alternatively, the Conspiracy Acts were unlawful acts directed towards the Plaintiffs and the Proposed Class, which unlawful acts the Defendants and their co-conspirators knew in the circumstances would likely cause injury to the Plaintiffs and the Proposed Class and, as such, the Defendants and their co-conspirators are jointly and severally liable for the tort of civil conspiracy. Further, or alternatively, the predominant purpose of the Conspiracy Acts was to injure the Plaintiffs and the Proposed Class, and

the Defendants and their co-conspirators are jointly and severally liable for the tort of conspiracy to injure.

70. The Defendants and their co-conspirators voluntarily entered into agreements with each other to use unlawful means, which resulted in loss and damages to the Plaintiffs and the Proposed Class. The unlawful means include the following:

- (a) entering into agreements in contravention of section 45(1) of the *Competition Act*;
- (b) implementing directives or other communications in contravention of section 46(1) of the *Competition Act*; and
- (c) aiding, abetting, and/or counselling the commission of the above offences, contrary to section 21 and 22 of the *Criminal Code*.

71. In furtherance of the conspiracy, the Manufacturer Defendants and their co-conspirators carried out the acts described in paragraph 48 above.

72. The acts particularized in paragraph 48 were unlawful acts directed towards purchasers of Starter Batteries and Affected Automotive Vehicles containing Starter Batteries, including the Plaintiffs, which unlawful acts the Defendants and their co-conspirators knew in the circumstances would likely cause injury to those purchasers and the Plaintiffs.

73. The Manufacturer Defendants and their co-conspirators were motivated to conspire. Their predominant purposes and concerns were to harm the Plaintiffs and the Proposed Class by requiring them to pay artificially high prices for Starter Batteries and Affected Automotive Vehicles with Starter Batteries.

74. The Defendants and their co-conspirators intended to cause economic loss to the Plaintiffs and the Proposed Class. In the alternative, the Defendants and their co-conspirators knew that their unlawful acts would likely cause injury to the Plaintiffs and the Proposed Class.

75. The Canadian Defendants participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies and thereby acted as agents in carrying out the conspiracy and are liable for such acts.

76. EUROBAT and Kellen aided and abetted the formation of the conspiracy in breach of s. 21 of the *Criminal Code* by assisting, instigating or procuring the formation and expansion of the EUROBAT Premium System and/or counselled the commission of an offence in breach of s. 22 of the *Criminal Code* by deliberately encouraging participation in the conspiracy.

77. The Plaintiffs and the Proposed Class suffered damages as a result of the Defendants' conspiracy.

### **Unjust Enrichment**

78. Further, and in the alternative, the Plaintiffs and the Proposed Class are entitled to claim and recover based on equitable and restitutionary principles.

79. The Defendants have each been unjustly enriched by the receipt of the Overcharge. The Plaintiffs and the Proposed Class have suffered a corresponding deprivation in the amount of such Overcharge.

80. Since the Overcharge that was received by the Defendants from the Plaintiffs and the Proposed Class resulted from the Defendants' and their co-conspirators wrongful or unlawful acts, there is and can be no juridical reason justifying the Defendants retaining any part of it. In particular, any contracts upon which the Defendants purport to rely to receive the Overcharge are void because they are (1) prohibited by statute, entered into with the object of doing an act prohibited by statute, and/or require performance of an act prohibited by statute, (2) in contravention of common law principles, and/or (3) in contravention of public policy, in that they are, amongst other things, in restraint of trade.

81. The Defendants are required to make restitution to the Plaintiffs and the Proposed Class for the Overcharge because, among other reasons:

- (a) the Defendants were unjustly enriched by receipt of the Overcharge;
- (b) the Proposed Class suffered a deprivation by paying the Overcharge;
- (c) the Defendants and their co-conspirators engaged in inappropriate conduct and committed wrongful acts by engaging in the conspiracies alleged in this claim;
- (d) the Overcharge was acquired in such circumstances that the Defendants may not in good conscience retain it;
- (e) justice and good conscience require restitution;
- (f) the integrity of the marketplace would be undermined if the court did not order restitution; and
- (g) there are no factors that would, in respect of the artificially induced Overcharge, render restitution unjust.

82. The Plaintiffs plead that equity and good conscience requires the Defendants to make restitution to the Plaintiffs and the Proposed Class of the Overcharge, or alternatively to disgorge the Overcharge to the Plaintiffs and the Proposed Class.

83. Further, or alternatively, the Plaintiffs elect to pursue restitutionary remedies against the Defendants as set out above.

84. The Plaintiffs seek disgorgement of the revenues generated by the Defendants and their co-conspirators from their unlawful conspiracy and/or unlawful means misconduct. The Plaintiffs as consumers have a legitimate interest in the Defendants' profits earned through its price-fixing activities. To the extent their interests cannot be vindicated by other forms of relief and cannot be quantified in monetary terms, the Plaintiffs seek disgorgement.

85. It would be unconscionable for the Defendants to retain the unlawful overcharge obtained as a result of the Conspiracy Acts and/or unlawful means misconduct.

86. All amounts payable to the Proposed Class on account of disgorgement should be calculated on an aggregate basis pursuant to section 29 of the *Class Proceedings Act*, or otherwise.

### **Fraudulent Concealment**

87. The Defendants and their co-conspirators actively, intentionally, and fraudulently concealed the existence of the conspiracy from the public, including the Plaintiffs and the Proposed Class. The Defendants and their co-conspirators represented to purchasers and others that their pricing and bidding activities were unilateral, thereby misleading the Plaintiffs and the Proposed Class. 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.

88. The Defendants' anti-competitive conspiracy was self-concealing. The Defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

89. Because the Defendants' agreements, understandings and conspiracies were kept secret, the Plaintiffs and the Proposed Class were unaware of the Defendants' unlawful conduct and they did not know that they were paying supra-competitive prices for Starter Batteries or automobiles containing Starter Batteries.

### **Punitive Damages**

90. The Plaintiffs assert that the Defendants' and their co-conspirators conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the Plaintiffs' rights and the rights of the Proposed Class, and as such renders the Defendants liable to pay aggravated, exemplary and punitive damages.

## JURISDICTION

91. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiffs and the Proposed Class plead and rely upon the *CJPTA* in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (f) – (i) of the *CJPTA* because this proceeding:

- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Plaintiffs' address for service:

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Tel: (604) 689-7555  
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Email: [service@cfmlawyers.ca](mailto:service@cfmlawyers.ca)

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: November 14 2024



FOR:

Signature of lawyer  
for Plaintiffs

Michelle L. Segal

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**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE  
OUTSIDE BRITISH COLUMBIA**

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The Plaintiffs claims the right to serve this pleading on the Defendants outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the Plaintiffs and Proposed Class plead and rely upon the *CJPTA* in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to ss. 10 (f)-(i) of the *CJPTA* because this proceeding:

- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia and Canada;
- (g) concerns a tort committed in British Columbia and Canada;
- (h) concerns a business carried on in British Columbia and Canada
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.



Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

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**APPENDIX**

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**CONCISE SUMMARY OF NATURE OF CLAIM:**

This action arises from a conspiracy between the Defendants and their co-conspirators to fix, raise, maintain, or stabilize the price of Starter Batteries sold to purchasers in North America and worldwide. During the Class Period, the Defendants and their co-conspirators participated in illegal and secretive meetings and made agreements relating to the prices of Starter Batteries. The Plaintiff and the Proposed Class suffered damages as a result.

**THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

1. *Class Proceedings Act*, RSBC 1996, c 50;
2. *Competition Act*, RSC 1985, c 19 (2nd Suppl.); and
3. *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28