

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-001088-208

(Class Action)  
SUPERIOR COURT

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**L. HAND**

*Applicant*

-vs.-

**DENSO INTERNATIONAL AMERICA, INC.**

and

**DENSO SALES CANADA, INC.**

(...)

and

**TOYOTA CANADA INC.**

and

**HONDA CANADA INC.**

and

**SUBARU CANADA, INC.**

*Defendants*

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**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A  
CLASS ACTION & TO APPOINT THE APPLICANT AS REPRESENTATIVE  
(Art. 574 C.C.P. and following)**

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TO THE HONOURABLE MR. JUSTICE PIERRE-C. GAGNON OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS FOLLOWS:

## **VI. GENERAL PRESENTATION**

### **A) The Action**

1. Applicant wishes to institute a class action on behalf of the following group, of which he is a member, namely:
  - all persons, entities, or organizations resident in Quebec who purchased and/or leased a Subject Vehicle equipped with a fuel pump designed and manufactured by DENSO, or any other group to be determined by the Court;
2. "Subject Vehicles" means all vehicles purchased or leased in Canada that contain defective low-pressure fuel pumps designed and manufactured by the DENSO Defendants including, but not limited to, the following vehicles known at present to be:

Make	Model	Year(s)
Toyota	4Runner	2014 - <u>2019</u>
Toyota	Avalon	2019 - <u>2020</u>
Toyota	Camry	2018 - <u>2020</u>
Toyota	Corolla	2018 - <u>2020</u>
<u>Toyota</u>	<u>Corolla Hatchback</u>	<u>2019</u>
Toyota	FJ Cruiser	2014
Toyota	Highlander	<u>2017</u> - 2019
<u>Toyota</u>	<u>RAV4</u>	<u>2019</u> - <u>2020</u>
Toyota	Land Cruiser	2014 - 2015, <u>2018</u> - <u>2019</u>
Toyota	Sequoia	2018 - <u>2020</u>
Toyota	Sienna	2017 - <u>2020</u>
Toyota	Tacoma	2018 - <u>2020</u>
Toyota	Tundra	2018 - <u>2020</u>
Lexus	ES350	2018 - <u>2020</u>
<u>Lexus</u>	<u>GS200t</u>	<u>2017</u>
Lexus	GS300	2018 - 2019
Lexus	GS350	2013 - 2015 & <u>2017</u> - 2019
Lexus	GX460	2014 - <u>2019</u>
Lexus	IS-F	2014
Lexus	IS200t	2017
Lexus	IS300	<u>2017</u> - 2019
Lexus	IS350	2014 - 2015 & 2018 - 2019
Lexus	LC500	2018 - <u>2020</u>
Lexus	LC500h (Hybrid)	2018 - <u>2020</u>



Lexus	LS460	2013 - 2015
Lexus	LS500	2018 - 2019
Lexus	LS500h (Hybrid)	2018 - <u>2020</u>
Lexus	LX570	2014 - <u>2019</u>
Lexus	NX200t	2015
<u>Lexus</u>	<u>NX300</u>	<u>2018 - 2019</u>
Lexus	RC300	2018 - 2019
Lexus	RC200t	2017
Lexus	RC350	2015, 2018 - 2019
Lexus	RX350	2017 - <u>2020</u>
<u>Lexus</u>	<u>UX200</u>	<u>2019</u>
Lexus	RX350L	2018 - <u>2020</u>
Acura	MDX	2016 - 2018
Acura	NSX	2018 - 2019
Acura	RDX	2019
Acura	RLS	2019
Acura	RLX	2019
<u>Acura</u>	<u>RLX Sport Hybrid</u>	<u>2019</u>
Acura	TLX	2015 - 2019
Honda	Accord	2015 - 2019
Honda	Civic Hatchback	2018 - 2019
Honda	Civic Type R	2018 - 2019
Honda	Fit	2019
Honda	HR-V	2018 - 2019
Honda	Insight	2019 - 2020
Subaru	Ascent	2019 - 2020
Subaru	Impreza	2019 - 2020
Subaru	Outback	2019 - 2020
Subaru	Legacy	2019 - 2020

3. Should further investigation reveal that additional vehicles contain the same defective (...) fuel pumps and assemblies, then the models identified as Subject Vehicles may be amended. At present, DENSO has named the following vehicle manufacturers in addition to the Vehicle Manufacturer Defendants named herein: Ford Motor Company, Mazda North American Operations, and Mitsubishi Motors North America, Inc. (Exhibit R-24);

3.1 The respective DENSO low-pressure fuel pump and fuel pump assembly part number prefixes are the following:

- a) Toyota and Lexus Subject Vehicles: 23220 and 23221;
- b) Honda and Acura Subject Vehicles: 17045;
- c) Subaru Subject Vehicles: 42022;

4. Fuel pumps are used as part of a vehicle's fuel injection system that serve to manage the flow of fuel from the fuel tank to the engine in order to maintain operability and to prevent engine stalling (when working properly);
5. The fuel injection system is one of the most basic safety features in every modern vehicle because it controls speed and keeps the engine running until the engine is turned off. If the fuel delivery system in a vehicle is defective, then it is unsafe to operate because it cannot predictably respond to operator input to accelerate and it could stall or completely lose power while in motion;
6. To date, 309,365 Canadian Subject Vehicles containing a defective fuel pump designed and manufactured by DENSO have been recalled by three vehicle manufacturers, including, but not limited to Toyota (285,165), Honda (10,456), and Subaru (13,744) (the "Vehicle Manufacturer Defendants");
7. The DENSO fuel pumps are defective in that the impeller, which is manufactured with a lower density, (...) lower surface strength, and inadequately porous plastic material with inadequate heat resistance. The substandard plastic has a propensity to excessive fuel absorption, which causes it to warp or swell, creating mechanical friction. In addition, according to DENSO, the impeller could have been exposed to production solvent drying for a longer period of time, causing it to (...) become cracked and deformed, which causes the fuel pump to become inoperative, in turn causing systematic fuel system failures, and causing rough engine running, engine no start (...) vehicle stalling, engines to shut down, and failure to accelerate (the "Design Defect" and the "Fuel Pump Defect");
8. The Vehicle Manufacturer Defendants manufactured, distributed, and/or sold the Subject Vehicles with the DENSO fuel pumps, which were plagued by serious, pervasive, and dangerous design and manufacturing defects, which place vehicle occupants at risk of serious injury and/or death;
9. In addition, the Applicant contends that the Defendants failed to disclose the Design Defect despite longstanding knowledge. The Defendants actively concealed the Design Defect and the fact that its existence would diminish both the intrinsic and the resale value of the Subject Vehicles;
- 9.1 DENSO only began to offer a proposed "repair" in July 2020 and this supposed "repair" fails to adequately resolve the defect and, worse yet, it risks causing additional damage to the fuel pump module, rendering the Subject Vehicles even more hazardous;
10. By reason of this unlawful conduct, the Applicant and members of the Class:
  - (a) Purchased and/or leased Subject Vehicles that contained defective DENSO fuel pumps,
  - (b) Have suffered a diminished value of their Subject Vehicles,



- (c) Have suffered the loss of use of the Subject Vehicles and expenditures for rental vehicles,
- (d) Out-of-pocket loss including, costs of towing, cost of attempted repairs, and
- (e) Have suffered pain, suffering, trouble, and inconvenience;

## **B) The Defendants**

### **(i) The DENSO Defendants**

11. Defendant DENSO International America, Inc. (hereinafter “DENSO International”) is an American corporation with its head office in Southfield, Michigan. It is DENSO’s North American regional headquarters and the parent company for its North American operations, which include designing, engineering, manufacturing, testing, validating, marketing, distributing, supplying, and selling fuel pumps, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises* and from a copy of an extract from the DENSO website at [www.denso.com](http://www.denso.com), produced herein *en liasse* as **Exhibit R-1**;
12. Defendant DENSO Sales Canada, Inc. (hereinafter “DENSO Sales”) is a Canadian corporation with its head office in Mississauga, Ontario. It is an automotive sales and distribution office of original equipment manufacturers and aftermarket components, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises* and from copies of extracts from the DENSO website at [www.denso.com](http://www.denso.com), produced herein *en liasse* as **Exhibit R-2**;
13. (...)
14. All DENSO Defendants are wholly-owned subsidiaries of DENSO Corporation, a global automotive components manufacturer headquartered in the city of Kariya, Aichi Prefecture, Japan. The trade-mark “DENSO” (TMA152331), which was filed on October 7, 1966 and that is owned by DENSO Corporation, describes DENSO as follows:

#### Goods

(1) Parts and accessories for automobiles, buses, trucks, and motorcycles, namely dynamos, alternators, starters, cell dynamos, distributors, breaking governors, regulators, coils, magnetos, A.C. dynamos, fuel pumps, wipers, washers, motor antennae, window regulating motors, power seat motors, ventilation motors, horns, combination meters, speed meters, tachometer, flashers, over-drive devices, auto-drive devices, buzzers, motor for air conditioners and heaters, relays, radiators, ventilators which may be used as a heater, air conditioners, oil coolers, sub-radiators, jet pumps, nozzles, pump testers, spark plugs, glow plugs, air filters and oil filters.



The whole as appears more fully from a copy of the trade-mark “DENSO” (TMA152331) from the CIPO website, produced herein as **Exhibit R-4**;

14.1 The DENSO Defendants comprise the world’s second largest Tier 1 Original Equipment Manufacturer (“OEM”), producing parts and products for vehicle manufacturers;

15. 33.33% of DENSO Corporation is owned by 2 Toyota entities; Toyota Motor Corporation and Toyota Industries Corporation, the whole as appears more fully from a copy of the 2019 DENSO annual report, produced herein as **Exhibit R-5**;

16. During the Class Period, Defendants DENSO International and DENSO Sales (...) (collectively, “DENSO”), either directly or through a wholly-owned subsidiary, agent or affiliate, designed, engineered, manufactured, tested, validated, marketed, distributed, supplied, and/or sold all the defective fuel pumps which may have been recalled by the NHTSA and/or by Transport Canada that are the subject of the present application for installation in the Subject Vehicles throughout Canada, including within the province of Quebec;

17. Given the close ties between the DENSO Defendants and considering the preceding, they are solidarily liable for the acts and omissions of the other;

**(ii) The Vehicle Manufacturer Defendants**

18. Defendant Toyota Canada Inc. (hereinafter “Toyota”) is a Canadian corporation with its head office in Scarborough, Ontario that does business throughout Canada, including within the province of Quebec. It is an automotive manufacturer of *inter alia* Toyota and Lexus vehicles, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-6**;

19. Toyota Vehicles, including Lexus, that are sold in Canada contain fuel pumps manufactured by the DENSO Defendants and include, but are not limited to the following models:

Make	Model	Year(s)
Toyota	4Runner	2014 - <u>2019</u>
Toyota	Avalon	2019 - <u>2020</u>
Toyota	Camry	2018 - <u>2020</u>
Toyota	Corolla	2018 - <u>2020</u>
<u>Toyota</u>	<u>Corolla Hatchback</u>	<u>2019</u>
Toyota	FJ Cruiser	2014
Toyota	Highlander	<u>2017 - 2019</u>
<u>Toyota</u>	<u>RAV4</u>	<u>2019 - 2020</u>
Toyota	Land Cruiser	2014 - 2015, <u>2018 - 2019</u>
Toyota	Sequoia	2018 - <u>2020</u>
Toyota	Sienna	2017 - <u>2020</u>
Toyota	Tacoma	2018 - <u>2020</u>



Toyota	Tundra	2018 - <u>2020</u>
Lexus	ES350	2018 - <u>2020</u>
<u>Lexus</u>	<u>GS200t</u>	<u>2017</u>
Lexus	GS300	2018 - 2019
Lexus	GS350	2013 - 2015 & <u>2017 - 2019</u>
Lexus	GX460	2014 - <u>2019</u>
Lexus	IS-F	2014
Lexus	IS200t	2017
Lexus	IS300	<u>2017 - 2019</u>
Lexus	IS350	2014-2015 & 2018 - 2019
Lexus	LC500	2018 - <u>2020</u>
Lexus	LC500h (Hybrid)	2018 - <u>2020</u>
Lexus	LS460	2013 - 2015
Lexus	LS500	2018 - 2019
Lexus	LS500h (Hybrid)	2018 - <u>2020</u>
Lexus	LX570	2014 - <u>2019</u>
Lexus	NX200t	2015
<u>Lexus</u>	<u>NX300</u>	<u>2018 - 2019</u>
Lexus	RC300	2018 - 2019
Lexus	RC200t	2017
Lexus	RC350	2015, 2018 - 2019
Lexus	RX350	2017 - <u>2020</u>
<u>Lexus</u>	<u>UX200</u>	<u>2019</u>
Lexus	RX350L	2018 - <u>2020</u>

20. Defendant Toyota is the second largest automobile manufacturer in the world (behind Volkswagen), the whole as appears more fully from a copy of an extract from the manufacturing.net website entitled “The World’s Largest Car Manufacturers” and from a copy of the 2019 Toyota annual report, produced herein *en liasse* as **Exhibit R-7**;
21. Defendant Honda Canada Inc. (hereinafter “Honda”) is a Canadian corporation with its head office in Markham, Ontario that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-8**;
22. Honda Vehicles, including Acura, that are sold in Canada contain fuel pumps manufactured by the DENSO Defendants and include, but are not limited to the following models:

Make	Model	Year(s)
Acura	MDX	2016 - 2018
Acura	NSX	2018 - 2019
Acura	RDX	2019
Acura	RLS	2019`

Acura	RLX	2019
Acura	RLX Sport Hybrid	2019
Acura	TLX	2015 - 2019
Honda	Accord	2015 - 2019
Honda	Civic Hatchback	2018 - 2019
Honda	Civic Type R	2018 - 2019
Honda	Fit	2019
Honda	HR-V	2018 - 2019
Honda	Insight	2019 - 2020

23. Defendant Honda is the seventh largest automobile manufacturer in the world (Exhibit R-7), the whole as appears more fully from a copy of the 2019 Honda annual report, produced herein as **Exhibit R-9**;

23.1 Even though two causes of the Design Defect were identified by DENSO (i.e. lower surface strength and/or overexposure to production solvent), Honda has inexplicably limited its recall to only those vehicles whose fuel pump impellers were exposed to solvent for an excessive amount of time;

23.2 In addition, Honda has improperly limited its recall by omitting earlier models of the Subject Vehicles;

24. Defendant Subaru Canada, Inc. (hereinafter "Subaru") is a Canadian corporation with its head office in Mississauga, Ontario that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises* and from a copy of the 2019 Subaru annual report, produced herein *en liasse* as **Exhibit R-10**;

25. Subaru Vehicles that are sold in Canada contain fuel pumps manufactured by the DENSO Defendants and include, but are not limited to the following models:

Make	Model	Year(s)
Subaru	Ascent	2019 - 2020
Subaru	Impreza	2019 - 2020
Subaru	Outback	2019 - 2020
Subaru	Legacy	2019 - 2020

26. During the Class Period, Defendants Toyota, Honda, and Subaru (collectively, "the Vehicle Manufacturer Defendants"), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured, sold, and warranted the Subject Vehicles in Canada, including in Quebec and designed, manufactured, and installed (or had installed) the defective fuel delivery system in the Subject Vehicles;



## C) The Situation

### (i) Fuel Injection Systems

27. One of the most significant advancements in the internal combustion engine over the last 40 years has been the widespread adoption of fuel injection systems instead of carburetors to supply fuel to a vehicle's engine. The fuel injection system uses fuel pumps to efficiently and effectively (when working correctly) manage the flow of fuel from the fuel tank to the engine where it is ignited in the combustion chamber and generates vehicle propulsion in order to maintain operability and to prevent engine stalling;

27.1 The fuel pump is critically important to the overall operation of a vehicle and is expected to last for the life of an automobile;

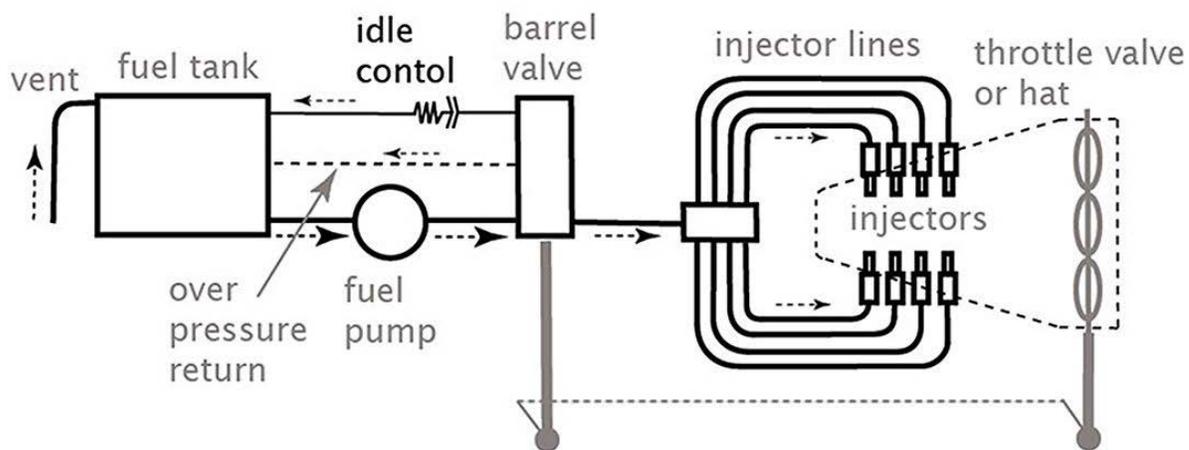
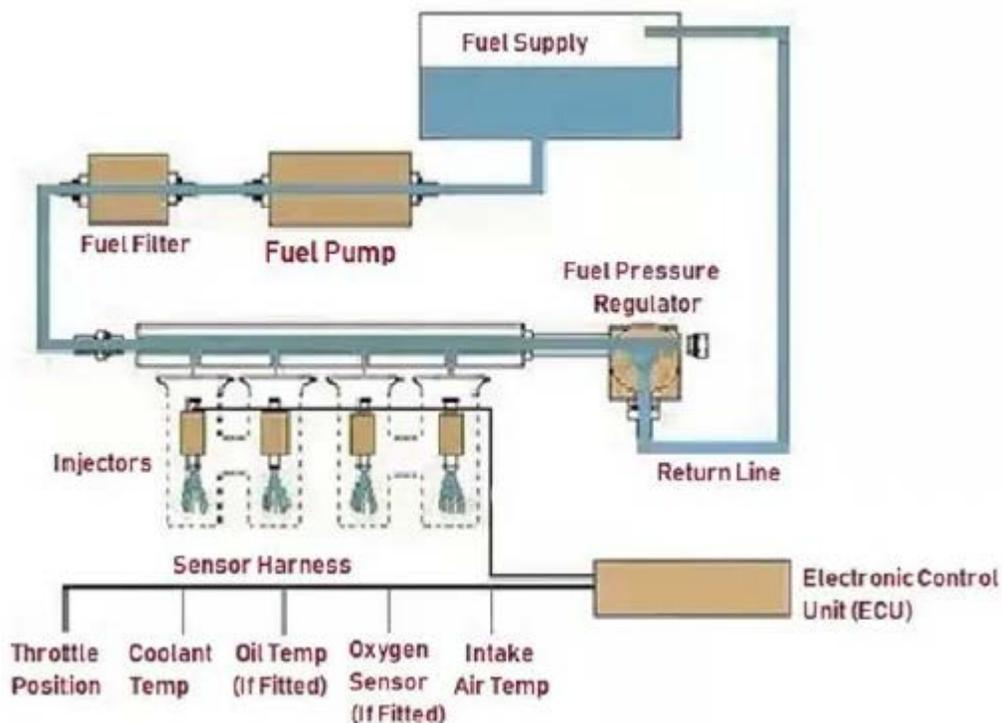
28. In petrol engines, fuel injection began to replace carburetors from the 1980s and onward. The primary difference between carburetion and fuel injection is that fuel injection atomizes the fuel through a small nozzle under high pressure, while a carburetor relies on suction created by intake air accelerated through a Venturi tube to draw the fuel into the airstream, the whole as appears more fully from a copy of the article entitled "A Brief History of Aircraft Carburetors and Fuel Systems" dated August 2013 which was prepared for the Aircraft Engine Historical Society, produced herein as **Exhibit R-11**;

29. Carburetors are good for performance, but due to their vague nature, they can't make great horsepower, get solid gas mileage, and pass an emission test, all with the same tune, they also had many mechanical parts that could become gummy over period. This meant they were more maintenance-intensive, with a carburetor rebuild often being part of a routine maintenance schedule, the whole as appears more fully from a copy of an extract from the Electricaldundablog.com website, produced herein as **Exhibit R-12**;

30. The components of a fuel injection system include injectors, fuel pump, fuel pressure regulator, engine control unit, wiring harness and various sensors. Fuel is transported from the fuel tank (via fuel lines) and pressurised using fuel pump(s);

31. Below are schematic representations of a fuel injection system:



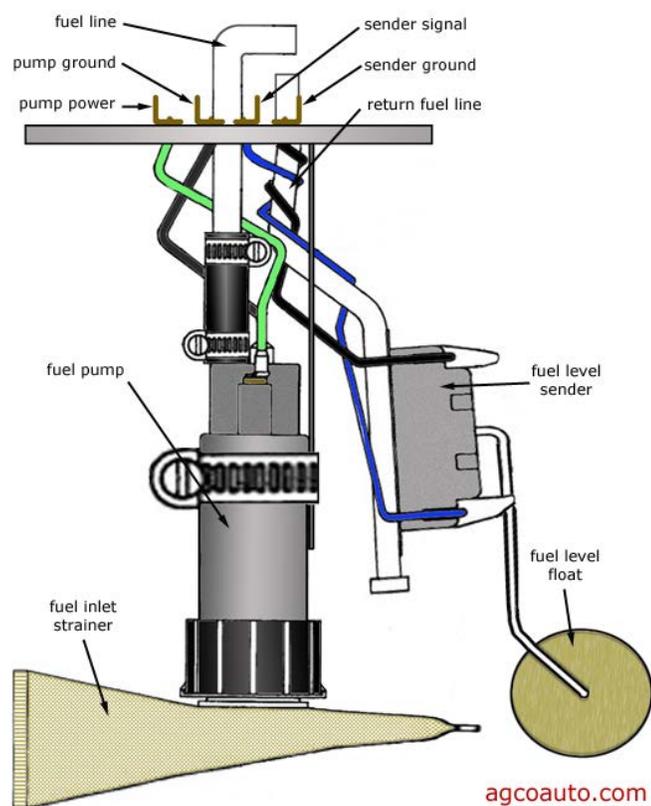


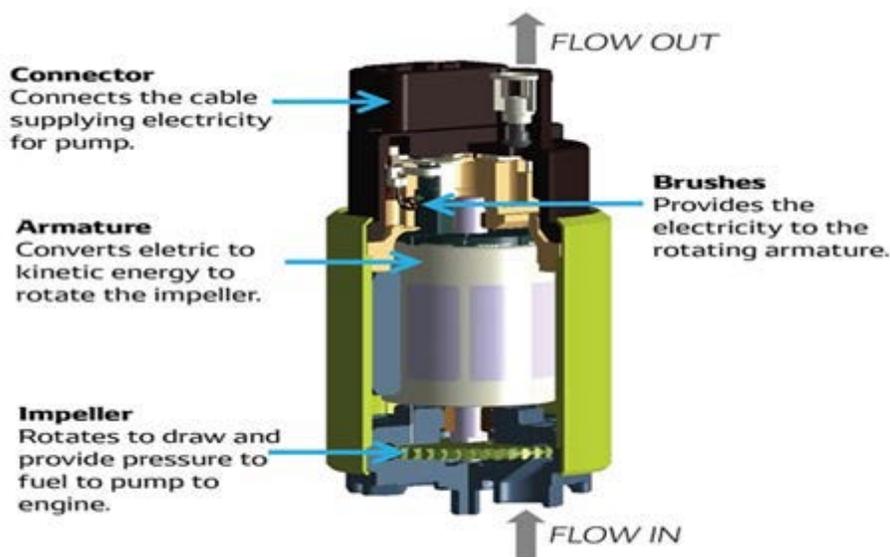
32. The fuel delivery system is one of the most basic safety features in every modern vehicle because it controls speed and keeps the engine running until the engine is turned off. If the fuel delivery system in a vehicle is defective, then it is unsafe to operate because it will not predictably respond to a driver's input to accelerate and it could stall or completely lose power while in motion;

32.1 The fuel pump assembly is inside of the fuel tank. The fuel pump assembly consists of a fuel intake strainer at one end and a fuel output line at the other. At the heart of the fuel pump assembly is an electric motor with a plastic impeller attached to a rotating shaft. The impeller is a plastic disk that rotates and draws in

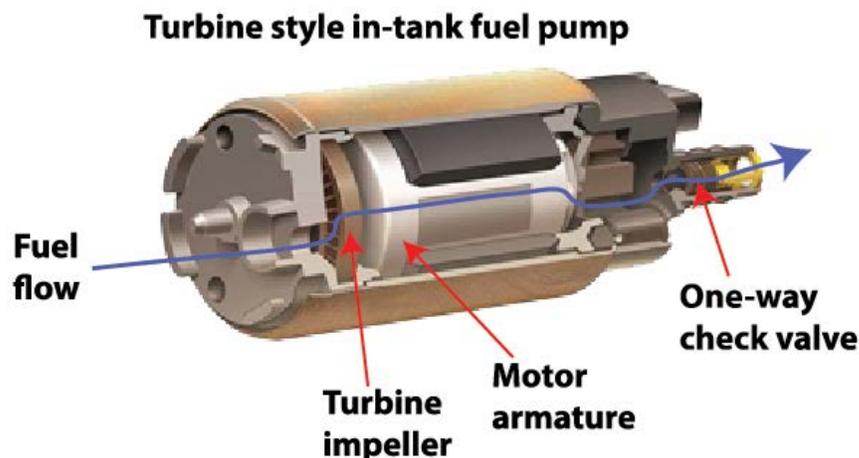


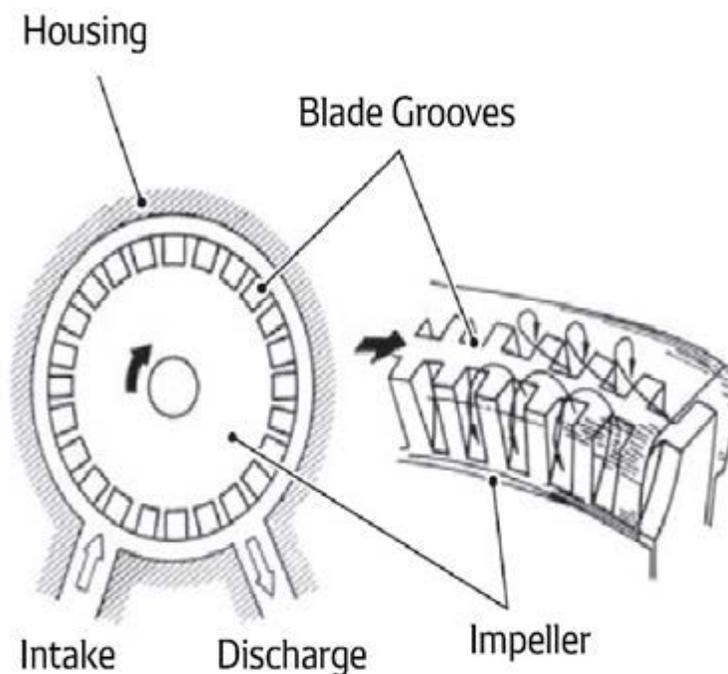
fuel and pushes it up through the pump. The impeller is equipped with vanes or blades that, when spun, creates negative pressure which lifts the gasoline out of the fuel tank and sends it to the engine. Protruding from the side of the fuel pump assembly is a fuel level float and a fuel level sender, the whole as appears more fully from a copy of an extract from the DENSO Defendants' website at [aftermarket.denso.com.sg](http://aftermarket.denso.com.sg), produced herein as **Exhibit R-39**;





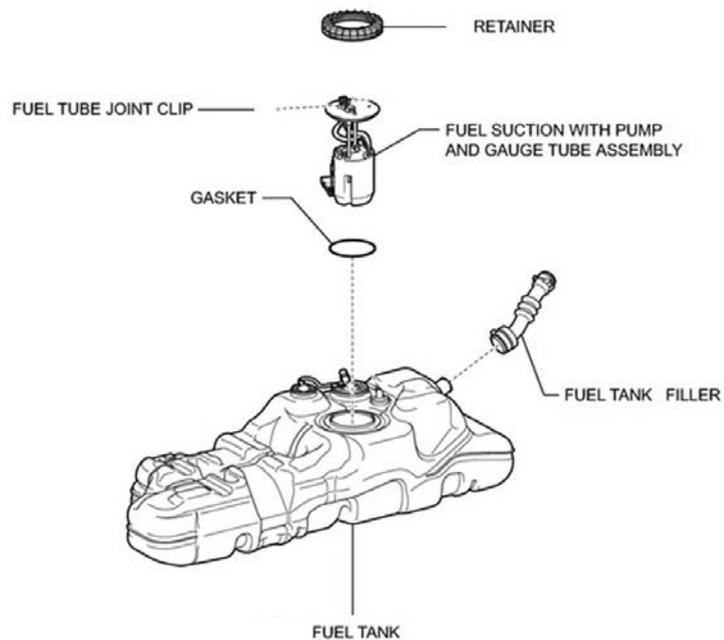
32.2 As the electric motor rotates, the impeller spins to generate negative pressure. The negative pressure pulls fuel into the pump housing where it passes through the electric motor assembly and exits through the output, into the fuel line and forward to the fuel filter. After exiting the fuel filter, the fuel flow is accelerated through a high-pressure pump which delivers pressurized fuel to injectors mounted in the engine. DENSO describes the operation of its intake fuel pump as “[w]hen the impeller of an in-tank [fuel] pump rotates, the blade moves around the impeller, creating a swirling motion inside the pump to deliver fuel. The fuel then passes around the motor, forcing the check valve upwards to supply fuel to the fuel pipe”, the whole as appears more fully from a copy of a DENSO product catalogue dated 2018/2019, produced herein as **Exhibit R-40**;



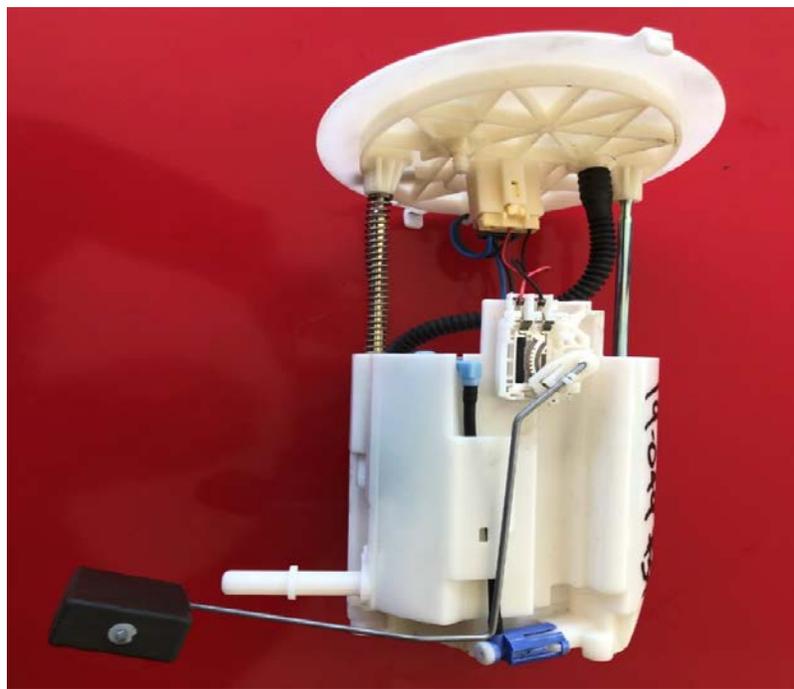


32.3 The fuel pump assembly and all its components are always exposed to gasoline within the fuel tank. Fuel pumps are designed to survive the harsh environment for at least 320,000 kms (200,000 miles). DENSO claims that its fuel pumps “offer more than triple the lifetime...”, the whole as appears more fully from a copy of the Autoblog article entitled “How Long Does a Fuel Pump Usually Last?” dated November 24, 2015 and from a copy of an extract from the DENSO Defendants’ website at densoautoparts.com, produced herein *en liasse* as **Exhibit R-41**;





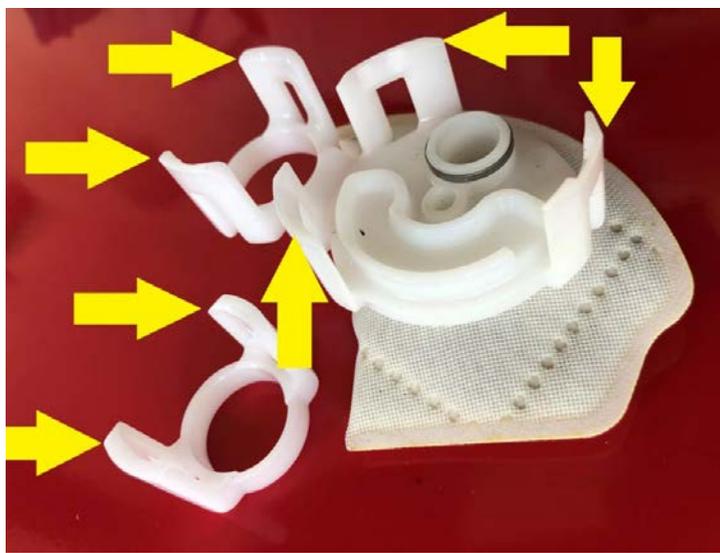
32.4 The fuel pump module hosts the fuel pump, associated plumbing and the fuel gauge sending unit. The fuel pump module drops into the fuel tank through an access hole on the topside of the tank. A retainer ring ensures that the flange and O-ring create a tight seal against the tank surface, preventing fuel escape:





32.5 The fuel pump module's housing protects the fragile internal components that fit together very specifically within the module and is held together with plastic tabs and clips:





32.6 As will be described more fully hereinbelow, fuel exposure weakens these plastic tabs and clips depleting durability and elasticity;

32.7 The fuel pump modules also contain numerous small and fragile parts, such as O-rings, that require precise installation. Disassembling the fuel pump module exposes these critical components to contamination, dislocation and breakage, thereby affecting vehicle performance;



32.8 Because of these concerns (and others), it is industry standard to replace the fuel pump module as a complete unit rather than remove and replace discrete failed internal components. Replacing the fuel pump module as a complete unit greatly reduces technician error frequency;

33. The Vehicle Manufacturer Defendants have knowingly marketed, sold, and/or leased the Subject Vehicles defined above with defective low-pressure fuel pumps

that cause unpredictable acceleration and engine stalls and render the Subject Vehicles unsafe to operate;

34. The Design Defect in the Subject Vehicles is dangerous to drivers, vehicle occupants, and innocent bystanders. A vehicle that fails to accelerate when demanded, or stalls while in motion, is simply unsafe to operate;

**(ii) The Design Defect**

34.1 The fuel pumps suffer from a fundamental design and manufacturing defect that causes them to prematurely fail, which results in engine stalling, hesitancy, and failure;

34.2 Based on the Defendants' own admissions, the failure results from a defectively designed plastic impeller in the fuel pump, which has a propensity to deform, change shape, and swell due to excessive fuel absorption;

34.3 The impeller is made from unsuitable and inferior plastic material that has inadequate heat resistance, which results in premature and unexpected failure due to component distortion, loss of structural integrity, and the swelling-induced friction when exposed to high temperatures or repeated temperature cycling (i.e. the intended and repeated temperature changes of operation);

34.4 The fuel pump impeller plastic is also highly porous, which can lead to fuel absorption and fuel contaminants becoming lodged in the impeller's pores;

34.5 Plastic materials absorb liquids – the degree of absorption depends on the type of plastic and on environmental conditions. When plastics absorb liquids, the plastic changes dimensions. Knowing this, manufacturers such as DENSO and the Vehicle Manufacturer Defendants must adequately design and validate plastic materials exposed to liquids to ensure dimensional stability – here the Defendants failed in this endeavour with respect to the fuel pumps, the whole as appears more fully from a copy of an extract from the Ensinger website at [www.ensingerplastics.com](http://www.ensingerplastics.com), produced herein as **Exhibit R-42**;

35. (...) Thus, the fuel pump and the fuel impeller were not designed and manufactured with the necessary robustness to operate safely under normal and expected operating conditions;

**(iii) The Recalls and the Investigation**

36. In the United States, on January 29, 2019, Honda America submitted a Part 573 Safety Recall Report to NHTSA recalling 437,032 vehicles manufactured from September 17, 2013 through December 3, 2018 that included the following:

- Acura MDX 2016 – 2018
- Acura TLX 2015 – 2019
- Honda Accord 2015 – 2017



The whole as appears more fully from a copy of the Part 573 Safety Recall Report for NHTSA Recall No. 19V-060 dated January 29, 2019 and from a copy of the Service Bulletin dated January 30, 2019, produced herein *en liasse* as **Exhibit R-14**;

37. Honda America described the defect as follows (Exhibit R-14):

Description of the Defect:	Sodium particulates contained in low quality fuels can adhere to certain internal components in the fuel pump, increasing electrical and mechanical resistance and reducing fuel pump performance.
Description of the Safety Risk:	If a vehicle is operated in high ambient temperature, reduced fuel pump performance can restrict vehicle acceleration and/or cause an engine stall, which increases the risk of a crash.

38. Honda America submitted the following chronology along with the recall (Exhibit R-14):

January 2016

Honda received the first report of an engine stall. As the frequency of claims was minimal, Honda decided to continue monitoring the market.

August to September 2017

After receipt of additional engine stall reports, Honda launched an investigation. Failed return parts were sent to the fuel pump supplier and the supplier was able to re-create the engine stalling condition with operating the fuel pump in 10 V mode. Fuel pump operating voltage can vary between 10 V-13 V.

October to November 2017

Sodium deposits were found on the brush and commutator components in the failed fuel pumps.

December 2017 to June 2018

Honda conducted additional tests and determined the source of sodium was from low quality fuels. No correlation between fuel and sodium content was found in any particular geographic region. Re-creation tests confirmed that fuel containing greater than one part per million of sodium could result in restricted vehicle acceleration and/or engine stall.

July to November 2018

Continued testing confirmed that fuel pump operation in 10 V mode allowed for the accumulation of sodium in the fuel pump, which resulted in increased mechanical and electrical resistance and reduction in fuel pump performance. Depending on ambient temperatures, reduced fuel



pump performance can lead to restricted/rough acceleration and/or an engine stall. The spark in higher voltage operation in the 11.2 V-13 V range was also confirmed to dissolve sodium accumulation, allowing for full fuel pump rotation speed and flow rate.

December 11, 2018

Fuel injection ECUs with software that eliminated low voltage operating modes began to be used in mass production.

January 22, 2019

Honda determined that a defect related to motor vehicle safety existed and decided to conduct a safety recall.

As of January 22, 2019, Honda has received 731 warranty claims, 102 field reports, and no reports of crashes or injuries related to this issue.

38.1 As a remedy, Honda America offered a software upgrade, which increased the voltage input for the DENSO fuel pump from 10 volts to 13 volts of power; however, this was inadequate and failed to fix the problem;

39. In the United States, on January 13, 2020, Toyota Motor Engineering & Manufacturing (the U.S. counterpart to Toyota and “Toyota America”) submitted a Part 573 Safety Recall Report to the NHTSA recalling 695,541 vehicles that included the following:

- Toyota 4Runner 2018 – 2019
- Toyota Highlander 2018 – 2019
- Toyota Avalon 2019
- Toyota Camry 2018 – 2019
- Toyota Corolla 2019
- Toyota Land Cruiser 2018 – 2019
- Toyota Sequoia 2018 – 2019
- Toyota Sienna 2018 – 2019
- Toyota Tacoma 2018 – 2019
- Toyota Tundra 2018 - 2019
- Lexus NS 2019
- Lexus RC 2018 – 2019
- Lexus ES 2019
- Lexus GS 2018 – 2019
- Lexus GX 2018 – 2019
- Lexus IS 2018 – 2019
- Lexus LC 2018 – 2019
- Lexus LS 2018 – 2019
- Lexus LX 2018 – 2019
- Lexus RX 2018 – 2019



The whole as appears more fully from a copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20V-012 dated January 13, 2020, produced herein as **Exhibit R-15**;

40. The Toyota Safety Recall Report (Exhibit R-15) described the recall as follows:

- (1) Although the involved vehicles are within the above production period, not all vehicles in this range were sold in the U.S.
- (2) This recall applies to vehicles with specific fuel pumps produced by Denso in which an increased rate of fuel pump failure is observed.

Description of the Defect:	The subject vehicles are equipped with a low-pressure fuel pump, located in the fuel tank, that supplies fuel pressure to the fuel injection system. These fuel pumps contain an impeller that could deform due to excessive fuel absorption. Although the cause is unknown, if impeller deformation occurs, the impeller may interfere with the fuel pump body, and this could result in illumination of check engine and master warning indicators, rough engine running, engine no start and/or vehicle stall while driving at low speed. However, in rare instances, vehicle stall could occur while driving at higher speeds, increasing the risk of a crash.
Description of the Safety Risk:	Although the cause is unknown, if impeller deformation occurs, the impeller may interfere with the fuel pump body, and this could result in illumination of check engine and master warning indicators, rough engine running, engine no start and/or vehicle stall while driving at low speed. However, in rare instances, vehicle stall could occur while driving at higher speeds, increasing the risk of a crash.

41. Toyota America submitted the following chronology along with the recall:

June 2019 – August 2019

In early June 2019, Toyota observed an increase in field reports related to the low pressure fuel pumps produced by the supplier. These reports indicated that customers alleged rough engine running, engine no start, and/or loss of motive power while driving at low speed (less than 20 mph) and occurred more commonly in areas of the southern U.S. with hotter climates.

In mid-June, Toyota began an investigation, including the recovery of failed parts from the field. The supplier began inspection and analysis of

the recovered parts and identified impeller deformation inside the fuel pump assembly due to more fuel absorption into the impeller material, with signs of binding/interference between the pump impeller and the pump casing/cover. A further analysis of failed impellers was conducted and it was confirmed that the failed impellers had a lower density. Generally, impellers with lower density are more susceptible to fuel absorption.

As part of ongoing parts analysis, an additional observation was made of cracking to the impeller surface. To understand the relationship between surface cracks and pump failure, Toyota began an investigation to identify factors potentially contributing to cracking.

#### September 2019 – December 2019

As part of the investigation, Toyota hypothesized that solvent used during the manufacturing process was a factor in fuel pump impeller cracking and began duplication testing. During the testing, cracks occurred on the surface of the impellers as the solvent dried over time. However, the duplication test could not match impeller crack that was observed in the parts recovered from the field.

Toyota also conducted vehicle testing to understand potential failure modes of incidents identified in the field. Starting with a review of operation parameters to support duplication, recovered failed parts were installed in a Toyota fleet vehicle. After confirming that no DTC was initially present, the vehicle was parked for a period of time and then started; low fuel pressure was detected. Shortly thereafter, the check engine light and master warning were displayed. The vehicle was then driven until a rough running condition/loss of power became noticeable, and vehicle speed was gradually reduced until low speed engine stall occurred. The vehicle returned to normal operation immediately after restarting it.

This evaluation suggested that this issue occurs at lower speeds, but Toyota continued to investigate whether this condition could lead to a loss of motive power at higher speeds. As part of this investigation, a manual review of available freeze frame data from all field incidents was done. Based on a detailed analysis of these data, three alleged cases were identified where loss of motive power occurred at higher speed (>20mph).

#### January 9, 2020

While continuing its investigation into the cause of impeller swelling, Toyota could not rule out the possibility of loss of motive power at higher speeds in the subject vehicles. Therefore, the decision was made to conduct a voluntary safety recall campaign.



As of January 7, 2020, based on a diligent review of records, Toyota's best engineering judgment is that there are 66 Toyota Field Technical Reports and 2,571 warranty claims that have been received from U.S. sources that relate to the fuel pump failure investigated in this chronology and which were considered in the decision to submit this report.

The whole as appears more fully from a copy of the Defect Information Report for NHTSA Recall No. 20V-012 dated January 13, 2020, produced herein as **Exhibit R-16**;

41.1 In Canada, also on January 13, 2020, Transport Canada issued Recall # 2020-005 with respect to 46,733 Toyota vehicles and stated:

"Issue:

On certain vehicles, the low-pressure fuel pump could fail. If this happens, then engine may run rough or may not start and the check engine light may turn on. This could also result in a sudden loss of engine power while driving.

Safety Risk:

A sudden loss of engine power could increase the risk of a crash.

Corrective Actions:

The company will notify owners by mail and instruct you to take your vehicle to a dealer to replace the fuel pump."

The whole as appears more fully from a copy of Transport Canada issued Recall # 2020-005 dated March 4, 2020, produced herein as **Exhibit R-43**;

42. In Canada, on March 4, 2020, Transport Canada issued Recall # 2020-088 with respect to 111,835 Toyota vehicles (...) stating the same details, the whole as appears more fully from a copy of Transport Canada issued Recall # 2020-088 dated March 4, 2020, produced herein as **Exhibit R-17**;

43. (...)

44. On March 4, 2020, Toyota America amended its Part 573 Safety Recall Report (Exhibit R-15), which had originally recalled 695,541 Toyota vehicles, for a total of 1,817,969 Toyota vehicles. On March 19, 2020 Toyota America again amended its Part 573 Safety Recall Report, to a total of 1,830,752 Toyota vehicles. On April 9, 2020, yet again Toyota America amended due to a clerical error. The recalled Toyota vehicles included the following:

- Toyota Corolla 2018 - 2019
- Toyota Sienna 2017 - 2019
- Toyota Avalon 2018 - 2019



- Toyota 4Runner 2014 - 2015
- Toyota Sequoia 2018 - 2019
- Toyota FJ Cruiser 2014
- Toyota Land Cruiser 2014 - 2015
- Toyota Highlander 2018 - 2019
- Toyota Tacoma 2018 - 2019
- Toyota Tundra 2018 - 2019
- Toyota Camry 2018 - 2019
- Lexus IS300 2018 - 2019
- Lexus GS300 2018 - 2019
- Lexus GS350 2013 – 2015 & 2018 - 2019
- Lexus IS-F 2014
- Lexus IS200t 2017
- Lexus IS350 2014 – 2015 & 2018 - 2019
- Lexus LC500h 2018 - 2019
- Lexus LS460 2013 - 2015
- Lexus LS500h 2018 - 2019
- Lexus RC200t 2017
- Lexus RC350 2015, 2018 - 2019
- Lexus RX350 2017 - 2019
- Lexus RX350L 2018 - 2019
- Lexus ES350 2018 - 2019
- Lexus GX460 2014 - 2015
- Lexus LC500 2018 - 2019
- Lexus LS500 2018 - 2019
- Lexus LX570 2014 - 2015
- Lexus MX200t 2015
- Lexus RC300 2018 - 2019

The whole as appears more fully from a copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20V-012, dated March 4, 2020, March 19, 2020, and April 9, 2020, produced herein *en liasse* as **Exhibit R-18**;

45. On April 16, 2020, Subaru of America Inc. (the U.S. counterpart to Subaru) submitted a Part 573 Safety Recall Report to NHTSA recalling 188,207 vehicles that included the following:

- Subaru Impreza Stationwagon 2019
- Subaru Impreza 4Door 2019
- Subaru Outback 2019
- Subaru Legacy 2019
- Subaru Ascent 2019



The whole as appears more fully from a copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20V-218 dated April 16, 2020, produced herein as **Exhibit R-19**;

46. The Subaru Safety Recall Report (Exhibit R-19) described the recall as follows:

Description of the Defect:	The affected vehicles may be equipped with a low pressure fuel pump produced during a specific timeframe that may include an impeller which has been manufactured with a lower density. If the surface of the lower density impeller is exposed to solvent drying for longer periods of time, it may develop fine cracks. These cracks may lead to excessive fuel absorption, resulting in impeller deformation. Over time, the impeller may become deformed enough to interfere with the body of the fuel pump, potentially causing the low pressure fuel pump to become inoperative.
Description of the Safety Risk:	If the low pressure fuel pump becomes inoperative, the check engine warning light or malfunction indicator light may illuminate, and/or the engine may run rough. In the worst case, an inoperative fuel pump may result in the engine stalling without the ability to restart the vehicle, increasing the risk of a crash.
Description of the Cause:	Certain impeller production lots may have a lower impeller density. If the surface of the lower density impeller is exposed to solvent drying for longer periods of time, it may develop fine cracks. Low pressure fuel pumps manufactured between April 2018 and July 2018 may have an impeller produced under both conditions, lower density and exposure to solvent drying for longer periods of time.

47. Subaru America submitted the following chronology (Exhibit R-19):

July 2019 – January 2020 – Subaru received 32 field reports of which 24 indicated an engine no-start condition only. The remaining 8 reports indicated an engine loss of power either immediately after start or while driving at low speeds.

January 2020 – March 2020 – In January 2020, Subaru received a Technical Report from a foreign market alleging an engine loss of power while operating at highway speeds. Subaru collected the parts for additional inspection. From the part investigation, Subaru found that the impeller was deformed and was likely the cause of the loss of power.



April 9, 2020 – Subaru has identified, using best engineering judgement, 33 unique dealer and non-dealer field reports, 245 warranty claims indicating fuel pump replacement (excluding abnormal noise claims), and 1 VOQ. Subaru is not aware of any crashes or injuries that have occurred as a result of this condition. Although most cases appear to result in an inability to start the engine, out of an abundance of caution, Subaru decided to conduct a voluntary safety recall.

48. In Canada, also on April 16, 2020, Transport Canada issued Recall # 202-0162 with respect to 13,744 Subaru vehicles and stated:

“Issue: On certain vehicles, the low-pressure fuel pump could fail. If this happens, then engine may run rough or may not start and the check engine light may turn on. This could also result in a sudden loss of engine power while driving. Safety Risk: A sudden loss of engine power could increase the risk of a crash. Corrective Actions: Subaru will notify owners by mail and instruct you to take your vehicle to a dealer to replace the fuel pump.”

The whole as appears more fully from a copy of the Transport Canada Recall # 2020-162 dated April 16, 2020, produced herein as **Exhibit R-20**;

49. (...)

50. On April 27, 2020, Defendant DENSO International submitted a Part 573 Safety Recall Report to the NHTSA recalling 2,020,000 vehicles that were equipped with its low pressure fuel pumps that had been manufactured between September 1, 2017 and October 6, 2018. The description of the defect, safety risk and cause were as follows:

Description of the Defect:	An impeller in some low pressure fuel pumps may become deformed under certain conditions which could render the fuel pump inoperable.
Description of the Safety Risk:	If an impeller deforms to a point that creates sufficient interference with the fuel pump body, the fuel pump becomes inoperative. According to vehicle manufacturer’s system evaluation, an inoperative fuel pump may result in the illumination of the check engine light and/or master warning indicators, rough engine running, engine no start and/or vehicle stall while driving at low speed and, in rare instances, a vehicle stall could occur while driving at higher speeds, increasing the risk of a crash.
Description of the Cause:	Under current knowledge, if an impeller is manufactured with a lower density, and contains a lower surface strength or is exposed to production



	solvent drying for a longer period of time, higher levels of surface cracking may occur which, when excessive fuel absorption occurs, may result in impeller deformation. Geographic location and vehicle applications influence the potential for deformation resulting in fuel pump inoperability.
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The whole as appears more fully from a copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20E-026 dated April 27, 2020 and from a copy of the List of Parts Numbers submitted, produced herein *en liasse* as **Exhibit R-21**;

51. On May 28, 2020, a month after the DENSO recall, Honda America submitted a Part 573 Safety Recall Report to the NHTSA recalling 136,057 vehicles that included the following:

- Acura NSX 2018 - 2019
- Acura RDX 2019
- Acura RLX 2019
- Acura RLX Sport Hybrid 2019
- Honda Accord 2018 - 2019
- Honda Civic Hatchback 2018 – 2019
- Honda Civic Type R 2018 – 2019
- Honda Fit 2019
- Honda HR-V 2018 – 2019
- Honda Insight 2019 – 2020

The whole as appears more fully from a copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20V-314 dated May 28, 2020, produced herein as **Exhibit R-22**;

52. The Honda Safety Recall Report (Exhibit R-22) described the recall as follows:

Description of the Defect:	Affected vehicles may be equipped with a fuel pump module manufactured with low density impellers. If the surface of the lower density impeller is exposed to production solvent drying for longer periods of time, higher levels of surface cracking may occur. These cracks may lead to excessive fuel absorption, resulting in impeller deformation. Over time, if an impeller deforms to a point that creates sufficient interference with the fuel pump body, the fuel pump becomes inoperative, which may cause illumination of the Malfunction Indicator Lamp in the instrument panel.
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Description of the Safety Risk:	Fuel pump inoperability could prevent an engine from starting or stall an engine while driving, increasing the risk of a crash.
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53. Honda America submitted the following chronology (Exhibit R-22):

February – May 2019

Honda received the first report of fuel pump module failure from the Indian market and an investigation was launched. After supplier analysis of failed parts returned from the field, it was confirmed that impeller swelling resulted in fuel pump module failure.

June – October 2019

The investigation was elevated to the global Honda quality group for further handling. Honda hypothesized the impeller swelling was related to part toughness and investigated impeller density and clearance between the impeller and fuel pump wall. Re-creation testing confirmed the primary contributor to impeller swelling was the development of surface cracks on low density impellers exposed to production solvent drying for longer periods of time.

March 2020

Review of warranty data confirmed that vehicles equipped with fuel pump modules in transit for a longer period prior to vehicle assembly exhibited increased failure rates.

April 2020

Honda investigated the scope of vehicles installed with suspect fuel pump modules containing lower density impellers exposed to production solvent drying for longer periods of time.

May 21, 2020

Honda determined that a defect related to motor vehicle safety existed and decided to conduct a safety recall.

As of May 21, 2020, Honda has received 183 warranty claims, 68 field reports, and no reports of injuries or crashes related to this issue.

54. In Canada, also on May 28, 2020, Transport Canada issued Recall # 2020-236 with respect to 10,456 Honda vehicles and stated:

“Issue: On certain vehicles, the low-pressure fuel pump could fail. If this happens, then engine may run rough or may not start and the check engine light may turn on. This could also result in a sudden loss of engine power while driving. Safety Risk: A sudden loss of engine power could increase the risk of a crash. Corrective Actions: The company will notify



owners by mail and instruct you to take your vehicle to a dealer to replace the fuel pump motor.”

The whole as appears more fully from a copy of the Transport Canada Recall # 2020-236 dated May 28, 2020, produced herein as **Exhibit R-23**;

55.(...)

56. On June 11, 2020, DENSO International (...) expanded its Part 573 Safety Recall Report (Exhibit R-21), which had originally recalled 2,020,000 fuel pumps, to add an additional 136,057 parts, for a total of 2,156,057 fuel pumps. In addition, DENSO International amended its List of Part Numbers to include Honda vehicles, the whole as appears more fully from a copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20E-026, dated June 11, 2020, from a copy of the Amended List of Part Numbers, and from a copy of the Amended Defect Information Report (20E-026) dated June 9, 2020, produced herein *en liasse* as **Exhibit R-24**;

56.1 Despite admitting responsibility for the Design Defect, and that it poses a risk to consumer safety, Denso failed to take any corrective action itself saying that “The remedy program, if any, will be determined by vehicle manufacturers” (Exhibits R-21 and R-24);

56.2 On June 23, 2020, Honda America amended its Part 573 Safety Recall Report (Exhibit R-22) narrowing the number of recalled vehicles from 136,057 to 135,995. On June 24, 2020, Honda identified July 22, 2020 as the date on which it intends to notify consumers about the Fuel Pump Defect, the whole as appears more fully from copies of the Part 573 Safety Recall Reports for NHTSA Recall No. 20V-314 dated June 23, 2020, June 24, 2020, July 13, 2020, August 14, 2020, and September 30, 2020, produced herein *en liasse* as **Exhibit R-44**;

56.3 On October 28, 2020, Transport Canada issued Recall # 2020-514, expanding recalls 2020-005 (Exhibit R-43) and 2020-088 (Exhibit R-17) with respect to 126,597 Toyota vehicles, the whole as appears more fully from a copy of the Transport Canada Recall # 2020-514 dated October 28, 2020, produced herein as **Exhibit R-45**;

56.4 On November 4, 2020, Toyota America amended its Part 573 Safety Recall Report (Exhibits R-15 and R-18), relating to a total of 1,517,721 Toyota vehicles, the whole as appears more fully from a copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20V-682 dated November 4, 2020, produced herein as **Exhibit R-46**;

57. Even the large number of vehicles that were the subject of a recall in Canada does not capture all Subject Vehicles. It does not include all of the Toyota, Lexus, Honda, Acura, and Subaru vehicles that were equipped with Denso low-pressure fuel pumps and fuel pump assemblies, the single common part in every model that the Vehicle Manufacturer Defendants have recalled for the admitted fuel delivery system defect;



57.1 The Toyota Subject Vehicles that were recalled in Canada do not even match the Subject Vehicles as can be seen from the below chart (the discrepancies are the coloured boxes):

Make	Model	Subject Vehicle Year(s)	Recalled Subject Vehicles
Toyota	4Runner	2014 - <u>2019</u>	2014 - <u>2019</u>
Toyota	Avalon	2019 - <u>2020</u>	2019 - <u>2020</u>
Toyota	Camry	2018 - <u>2020</u>	2018 - <u>2020</u>
Toyota	Corolla	2018 - <u>2020</u>	2018 - <u>2020</u>
<u>Toyota</u>	<u>Corolla Hatchback</u>	<u>2019</u>	<u>2019</u>
Toyota	FJ Cruiser	2014	2014
Toyota	Highlander	<u>2017 - 2019</u>	<u>2017 - 2019</u>
<u>Toyota</u>	<u>RAV4</u>	<u>2019 - 2020</u>	<u>2019 - 2020</u>
Toyota	Land Cruiser	2014 - 2015, <u>2018 - 2019</u>	None
Toyota	Sequoia	2018 - <u>2020</u>	2018 - 2019
Toyota	Sienna	2017 - <u>2020</u>	2017 - <u>2020</u>
Toyota	Tacoma	<u>2017 - 2020</u>	<u>2017 - 2020</u>
Toyota	Tundra	2018 - <u>2020</u>	2018 - 2019
Lexus	ES350	2018 - <u>2020</u>	2018 - 2019
<u>Lexus</u>	<u>GS200t</u>	<u>2017</u>	<u>None</u>
Lexus	GS300	2018 - 2019	None
Lexus	GS350	2013 - 2015 & <u>2017 - 2019</u>	2013 - 2015 & <u>2017 - 2019</u>
Lexus	GX460	2014 - <u>2019</u>	2014 - <u>2019</u>
Lexus	IS-F	2014	2014
Lexus	IS200t	2017	2017
Lexus	IS300	<u>2017 - 2019</u>	<u>2017 - 2019</u>
Lexus	IS350	2014-2015 & 2018 - 2019	2014-2015 & 2018 - 2019
Lexus	LC500	2018 - <u>2020</u>	2018 - <u>2020</u>
Lexus	LC500h (Hybrid)	2018 - <u>2020</u>	2018 - 2019
Lexus	LS460	2013 - 2015	2014 - 2015
Lexus	LS500	2018 - 2019	2018 - <u>2019</u>
Lexus	LS500h (Hybrid)	2018 - <u>2020</u>	2018
Lexus	LX570	2014 - <u>2019</u>	2014 - <u>2019</u>
Lexus	NX200t	2015	2015
<u>Lexus</u>	<u>NX300</u>	<u>2018-2019</u>	<u>2018-2019</u>
<u>Lexus</u>	<u>RC300</u>	<u>2018 - 2019</u>	<u>2018 - 2019</u>
Lexus	RC200t	2017	None
Lexus	RC350	2015, 2018 - 2019	2015, 2018 - <u>2019</u>
Lexus	RX350	2017 - <u>2020</u>	2017 - <u>2020</u>
Lexus	RX350L	2018 - <u>2020</u>	None



<u>Lexus</u>	<u>UX200</u>	<u>2019</u>	<u>2019</u>
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57.2 The Honda Subject Vehicles that were recalled in Canada do not match the Subject Vehicles as can be seen from the below chart (the discrepancies are the coloured boxes):

Make	Model	Subject Vehicle Year(s)	Recalled Subject Vehicles
Acura	MDX	2016 - 2018	None
Acura	NSX	2018 - 2019	2018 - 2019
Acura	RDX	2019	2019
Acura	RLS	2019	None
Acura	RLX	2019	2019
<u>Acura</u>	<u>RLX Sport Hybrid</u>	<u>2019</u>	<u>None</u>
Acura	TLX	2015 - 2019	None
Honda	Accord	2015 - 2019	2018 - 2019
Honda	Civic Hatchback	2018 - 2019	2018 - 2019
Honda	Civic Type R	2018 - 2019	2018 - 2019
Honda	Fit	2019	2019
Honda	HR-V	2018 - 2019	2018 - 2019
Honda	Insight	2019 - 2020	2019

57.3 The Subaru Subject Vehicles that were recalled in Canada do not match the Subject Vehicles as can be seen from the below chart (the discrepancies are the coloured boxes):

Make	Model	Subject Vehicle Year(s)	Recalled Subject Vehicles
Subaru	Ascent	2019 - 2020	2019
Subaru	Impreza	2019 - 2020	2019
Subaru	Outback	2019 - 2020	2019
Subaru	Legacy	2019 - 2020	2019

57.4 Given that the defective DENSO fuel pumps can be easily identified by the Vehicle Manufacturer Defendants by their respective part number prefixes (see para. 3.1), there is no logical reason why the various recalls should not have been complete from the beginning; if a vehicle contains a defective DENSO fuel pump, it is potentially dangerous and must be recalled and properly repaired;

58. Further and, despite the recalls, many Class Members have not received notices yet and are left to wonder when there will be a repair or replacement of the defective fuel pump. In the meantime, Class Members have not been advised to stop driving the Subject Vehicles pending repair or replacement of the Design Defect even though the Vehicle Manufacturer Defendants know that it could cause high-speed stalls and other dangerous conditions;



(iv) **The Inadequacy of the Recalls**

- 58.1 Instead of following the industry standard, which would be to replace the entire fuel pump module, Honda directed technicians to replace only the fuel pump motor, which is a very difficult and delicate procedure requiring the technician to disassemble the fuel pump module, remove the motor, replace the old motor with a new one, and then reassemble the fuel pump module. This process involves bending tabs and clips, which in turn invite hairline cracks, breakage and incomplete catching of the tabs and clips that hold the fuel pump module together. These common and likely labour errors create seal failure and resultant fuel leaks and/or fuel pressure loss due to cavitation<sup>1</sup> or recycling of fuel;
- 58.2 This process has a high risk of damaging the entire fuel pump module, which can result in gas leaking out of the fuel tank, creating hazardous conditions, and cause additional damage;
- 58.3 Honda acknowledged the potential for the component damage as a result of the recall. For example, Honda warned technicians against overextending the clamps as it “may damage them,” and to “[t]ake care not to damage the O-ring seat section,” and to “not pinch the O-ring during installation”, the whole as appears more fully from a copy of the Honda Service Bulletin 20-052 dated October 13, 2020, produced herein as **Exhibit R-47**;
- 58.4 Toyota directed technicians to replace only the fuel pump and not the module, similarly requiring a sensitive procedure and the removal of plastic ring retainers to which Toyota also acknowledges the potential for damage, for example, it warns technicians to “cut the 4 internal claws to prevent the Fuel Tube assembly from rotating during removal. This could cause damage to the fuel level sender, fuel tank, or fuel tube assembly”, the whole as appears more fully from a copy of the Toyota Technical Instructions for Safety Recall 20TA02, produced herein as **Exhibit R-48**;
- 58.5 In particular, Toyota acknowledges that Corolla models experience breakage of the fuel tube assembly during disassembly from “adhesion, or “sticking”, of the Retainer Ring and the Fuel Tube Assembly...” (Exhibit R-48);
- 58.6 Subaru’s repair also consists of replacing the fuel pump and not the module and acknowledges the potential for damage from the repair. For example, it warns technicians that “[w]hile tightening the ring nut, make sure the fuel pump does not rotate with the ring nut otherwise, the fuel level sensor and the jet pump fuel tube may become damaged”, the whole as appears more fully from a copy of the Subaru

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<sup>1</sup> Cavitation is a phenomenon in which rapid changes of pressure in a liquid lead to the formation of small vapor-filled cavities in places where the pressure is relatively low. When subjected to higher pressure, these cavities, called “bubbles” or “voids,” collapse and can generate a shock wave that strong enough to damage component parts.



Product Campaign Bulletin revised April 29, 2020, produced herein as **Exhibit R-49**;

58.7 Despite the Vehicle Manufacturer Respondents' knowledge of the risk of component damage, they failed to replace the fuel pump module and, at the very least, to adequately train technicians on methods to prevent damage, instead providing only basic replacement instructions;

58.8 Outside of the recall, customers who bring their vehicles in for fuel pump repair typically receive a new fuel pump module – recycling of original fuel pump module parts does not occur outside of the recall;

58.9 The inadequacy of the recall repair is demonstrated by the multiple complaints filed with NHTSA after the recall regarding, *inter alia*, not having been informed/aware of the recall, lack of a recall remedy, no brake/steering power, inability to obtain the recall remedy, necessity of being towed, not falling under the recall notice, but experiencing the defect, consistent stalling, loss of acceleration, lack of safety, engine stall, delayed notification of recall, lack of replacement parts, gas leaks, vehicle jerking, loss of power, limp mode, check engine warning light, failure to accelerate, contaminated fuel, parking and check engine warning lights illuminating, the whole as appears more fully from copies of the associated NHTSA complaints, produced herein *en liasse* as **Exhibit R-50**;

**(v) The Defendants' Prior Knowledge of the Design Defect**

59. As early as 2015, DENSO had recognized that the low-pressure fuel pumps that it supplied to the Vehicle Manufacturer Defendants were prone to failure. In a patent application filed in 2016, Denso admitted that the composite (plastic) impellers in their low-pressure fuel pumps “may be swelled due to the fuel and water contained in the fuel, therefore a rotation of the impeller may be stopped when the impeller is swelled and comes in contact with the [fuel pump] housing.” The defect described by the patent application is virtually the same as the Fuel Pump Defect at the heart of this case. DENSO was seeking to improve the durability and absorption qualities of the defective fuel pump impeller, but yet, failed to disclose the defect, the whole as appears more fully from a copy of DENSO's U.S. Patent documents for “IMPELLER FOR FUEL PUMP”, produced herein as **Exhibit R-25**;

60. Honda admitted knowing about the Fuel Pump Defect as early as January 2016, when it first “received the first report of an engine stall” (Exhibit R-14). Thereafter, Honda launched an investigation between August and September 2017 after receiving more engine stall reports and found that “fuel containing greater than one part per million of sodium could result in restricted vehicle acceleration and/or engine stall” (Exhibit R-14);

61. Toyota admitted knowing about the Fuel Pump Defect as early as June 2019, when it “observed an increase in field reports related to the low pressure fuel pumps produced by the supplier” (Exhibit R-16). It launched an investigation and “identified



impeller deformation inside the fuel pump assembly due to more fuel absorption into the impeller material, with signs of binding/interference between the pump impeller and the pump casing/cover. A further analysis of failed impellers was conducted and it was confirmed that the failed impellers had a lower density. Generally, impellers with lower density are more susceptible to fuel absorption”;

62. Subaru admitted knowing about the Fuel Pump Defect as early as July 2019 when it began receiving field reports of “an engine no-start condition”. It launched an investigation “that the impeller was deformed and was likely the cause of the loss of power” (Exhibit R-19);
  63. Despite involvement in investigations and knowledge of the Fuel Pump Design Defect, the Defendants have refused to recall vehicles containing the Fuel Pump Design Defect and have improperly narrowed the scope of the affected vehicles in order to save costs and avoid negative publicity;
  64. Specific dates and incidents are set out in the following NHTSA reports/Defect Information Reports:
    - a) Honda Chronology (Exhibits R-13 and R-14);
    - b) Toyota Chronology (Exhibit R-16);
    - c) Subaru Chronology (Exhibit R-19);
    - d) Denso Chronology (to be obtained);
  65. Despite knowledge of the Fuel Pump Design Defect, DENSO has continued to manufacture and sell the defective fuel pumps, which has placed numerous persons at risk of injury and death. In addition, the Vehicle Manufacturer Defendants have continued to equip the Subject Vehicles with fuel pump systems containing the Design Defect and to sell, lease, and warrant the Subject Vehicles, without disclosing the Design Defect and its corresponding safety risks to Class Members;
    - 65.1 The DENSO Defendants knew or should have known about the Fuel Pump Defect long before the recalls and certainly before filing its patent application in 2016 to improve its impeller material (Exhibit R-25)
    - 65.2 The Vehicle Manufacturer Defendants knew or should have known about the Fuel Pump Defect since the pre-release process of designing, manufacturing, engineering, and testing of the Subject Vehicles and nonetheless failed to act and installed the defective fuel pumps into the Subject Vehicles that were subsequently sold and leased to Class Members;
- (vi) **Consumer Complaints**
66. Subject Vehicle owners in the U.S. have been submitting complaints to NHTSA describing distressing traffic events and dangerous situations going back many years. Below is a small sampling of such complaints:



(a) On August 1, 2013, a 2013 Honda Accord owner reported to NHTSA as follows:

THERE IS A HESITATION/JERK/SHUDDER WHEN ACCELERATING AT VARIOUS SPEEDS. \*TR

(b) On February 4, 2014, a 2013 Honda Accord owner reported to NHTSA as follows:

SINCE I FIRST PURCHASED MY 2013 HONDA ACCORD, THE HONDA HAS INTERMITTENT HESITATIONS AFTER STOPPING AT TRAFFIC LIGHTS, STOP SIGNS, PARKING AND SO FORTH. FOR INSTANCE, FOR THE SECOND TIME IN THE LAST FIVE DAYS, I STOPPED, WENT INTO A STORE, RETURNED, CRANKED HONDA ACCORD, BACKED OUT, AND THE CAR WOULD NOT "GO."

(c) On June 22, 2014, a 2014 Acura MDX owner reported to NHTSA as follows:

WHILE TRYING TO ACCELERATE DURING A LEFT TURN, THE ENGINE COMPLETELY LOST POWER AND THE ACCELERATOR WOULD NOT WORK. ALL ENGINE WARNING LIGHTS CAME ON. WE NEARLY AVOIDED AN ACCIDENT BY COASTING INTO THE CENTER LANE. I HAD TO TURN OFF THE CAR AND RESTART IN ORDER TO GAIN THE ABILITY TO ACCELERATE AGAIN, BUT ALL THE WARNING LIGHTS REMAINED ON. DROVE IT TO THE DEALER, BUT THEY HAVE YET TO BE ABLE TO DETERMINE WHAT THE PROBLEM IS. THIS IS THE 3RD TIME THIS HAS HAPPENED - ALL DURING THE FIRST 5 MINUTES OF DRIVING DURING THE MORNING. THE LAST INCIDENT COULD HAVE RESULTED IN A SERIOUS CRASH. \*TR

(d) On November 28, 2014, a 2014 Honda CR-V owner reported to NHTSA as follows:

CAR HESITATES RANDOMLY FROM DEAD STOP. STARTS OFF AT ABOUT 2 MPH AND DOES NOT ACCELERATE UNTIL 5 TO 10 SECONDS EVEN THOUGH YOU ARE PRESSING ON GAS PEDAL. HONDA HAS NO EXPLANATION FOR THE RANDOM OCCURRENCE. THIS HAS HAPPENED TO ME AT LEAST 20 TIMES. DOES NOT SHOW UP ON COMPUTER DIAGNOSTICS. REPLACED 2014 CR-V AFTER 10 WEEKS WITH 2015 CR-V. 2015 MODEL HAS DIFFERENT ISSUES. NO MORE HONDAS!!! TOOK A BIG FINANCIAL HIT ON REPLACING A 2014 CR-V AFTER 10 WEEKS WITH A 2015 CR-V. CAR TOO DANGEROUS TO DRIVE. \*TR

(e) On December 1, 2014, a 2014 Honda Accord owner reported to NHTSA as follows:



SIMILAR TO NHTSA COMPLAINTS #10619205, #10607907, #10655300, #10630708, AND #10628501. DRIVING MY VEHICLE ON INTERSTATE, GOING APPROXIMATELY 70 MPH. THE VEHICLE CAME TO A LARGE INCLINE AND BEGAN ACCELERATING, AND ALL OF A SUDDEN, THE ENTIRE VEHICLE SHUDDERED VIOLENTLY AND LOST ALL ACCELERATION, AND THE MALFUNCTION INDICATOR LAMP CAME ON AND WAS BLINKING. IT FELT LIKE THE VEHICLE HAD SHIFTED OUT OF GEAR, AND IT COULD NOT GET BACK IN GEAR. AFTER OVER 10 MINUTES, I RESTARTED THE VEHICLE, AND THE LIGHT DID NOT COME BACK ON. ALTHOUGH I COULD FEEL THAT PUSHING ON THE GAS PEDAL DID NOT FEEL THE SAME, AND IT FELT AS IF THE VEHICLE WAS HESITATING AND STRUGGLING TO SWITCH GEARS UP AND ACCELERATE.

(f) On April 10, 2015, a 2015 Acura TLX owner reported to NHTSA as follows:

TL\* THE CONTACT OWNS A 2015 ACURA TLX. THE CONTACT STATED THAT WHILE SLOWING TO SPEEDS BETWEEN 3-5 MPH, THE VEHICLE HESITATED TO ACCELERATE WHEN ENGAGING THE ACCELERATOR PEDAL. THE CONTACT INDICATED THAT THE FAILURE WAS INTERMITTENT AND OCCURRED ON SEVERAL OCCASIONS. THE CAUSE OF THE FAILURE WAS NOT DIAGNOSED. THE MANUFACTURER WAS NOT NOTIFIED OF THE FAILURE. THE FAILURE MILEAGE WAS 200.

(g) On November 7, 2015, a 2014 Honda Accord owner reported to NHTSA as follows:

MY 2014 HONDA ACCORD COUPE HAS 33,900+ MILES AND FOR THE PAST YEAR, I HAVE HAD IT IN TO FOX HONDA IN GRAND RAPIDS FOUR TIMES FOR THE SAME PROBLEM. THE PROBLEM IS, THAT IT STUTTERS OFTEN WHEN ACCELERATING AND TWICE, THE ENGINE HAS STALLED OUT AND HAD TO BE RESTARTED.

(h) On March 9, 2016, a 2015 Honda Accord owner reported to NHTSA as follows:

WHEN YOU PRESSURE ON THE ACCELERATOR PEDAL TO POWER THE VEHICLE (LIKE PULLING OUT INTO TRAFFIC OR CHANGING LANES IN TRAFFIC, THE CAR STALLS AND PUT YOU AT RISK OF GETTING INTO AN ACCIDENT. IT HAPPENS SITTING AT A TRAFFIC LIGHT OR DRIVING 55 MPH AND TRYING TO CHANGE LANES. DOES NOT MATTER IF THE CAR IS WARM OR COLD, BUT OCCURS LESS WHEN COLD.

(i) On July 30, 2016, a 2013 Honda Civic owner reported to NHSTA as follows:



VEHICLE HESITATES UNDER ACCELERATION. SOMETIMES ALMOST STALLING. I FEEL THIS IS NOT SAFE FOR MY SON AT TIMES. MERGING ETC.

- (j) On October 5, 2016, a 2015 Honda CR-V owner reported to NHTSA as follows:

VEHICLE WILL NOT RESPOND WHEN FOOT IS PLACED ON THE ACCELERATOR. WHEN ATTEMPTING TO MOVE THE CAR FORWARD FROM A STOP SIGN OR SIGNAL LIGHT THE VEHICLE WILL NOT RESPOND TO THE GAS PEDAL FOR UP TO 5 SECONDS. BASICALLY THERE IS A DELAY FROM WHEN THE GAS PEDAL IS PRESSED UNTIL THE VEHICLE RESPONDS. THIS HAS HAPPENED 5 TIMES IN PAST 6 TO 7 WEEKS. THIS ACTION HAS HAPPENED WHEN ATTEMPTING TO MOVE FROM A COMPLETE STOP OR WHEN THE VEHICLE IS MOVING AT A VERY SLOW SPEED. I ESCAPED A NEAR REAR END COLLISION WHEN I REMOVED MY FOOT FROM THE BRAKE, PRESSED ON THE GAS PEDAL AND THE CAR DID NOT RESPOND.

- (k) On January 17, 2017, a 2016 Honda CR-V owner reported to NHTSA as follows:

TL\* THE CONTACT OWNS A 2016 HONDA CR-V. WHILE DRIVING VARIOUS SPEEDS, THE ACCELERATOR PEDAL WAS DEPRESSED. THE VEHICLE FAILED TO RESPOND WITHOUT WARNING. THE VEHICLE WAS NOT DIAGNOSED OR REPAIRED. THE CONTACT STATED THAT THE FAILURE RECURRED SEVERAL TIMES. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE. THE APPROXIMATE FAILURE MILEAGE WAS 4,000. ...UPDATED 02/22/17 \*BF

- (l) On February 14, 2017, a 2014 Honda Accord owner reported to NHTSA as follows:

TL\* THE CONTACT OWNS A 2014 HONDA ACCORD. WHILE DRIVING VARIOUS SPEEDS, THE VEHICLE HESITATED AND THEN LUNGED FORWARD WHEN THE ACCELERATOR PEDAL WAS DEPRESSED THE DEALER COULD NOT DETERMINE THE CAUSE OF THE FAILURE. THE FAILURE RECURRED INTERMITTENTLY. THE MANUFACTURER WAS MADE AWARE OF THE FAILURE. THE FAILURE MILEAGE WAS 14,000. THE VIN WAS NOT AVAILABLE. UPDATED 05/17/17\*LJ

- (m) On March 27, 2017, a 2014 Acura MDX owner reported to NHTSA as follows:

VEHICLE HESITATES WITH ACCELERATION AND DOES NOT MAINTAIN CONSTANT SPEED. WITH ACCELERATION, THE VEHICLE HESITATES AND THEN LURCHES SUDDENLY. THE VEHICLE FAILS TO MAINTAIN A CONSTANT VELOCITY,



ESPECIALLY GOING UP A SLIGHT GRADE, MOST NOTICEABLY AT 35MPH AND 45MPH

(n) On October 19, 2017, a 2014 Honda Civic owner reported to NHTSA as follows:

HESITATION WHEN PRESS ON ACCELERATOR. THEY IS VERY DANGEROUS WHEN GETTING OUT INTO TRAFFIC AND WHEN YOU PRESS ON ACCELERATOR THERE IS A LONG HESITATION. I HAVE REPORTED THIS TO HONDA SERVICE NUMEROUS TIMES AND THEY SAY THIS IS NORMAL AND CAN'T DUPLICATE THE ISSUE.

(o) On September 5, 2018, a 2016 Honda CR-V owner reported to NHTSA as follows:

HESITATION WHEN TRYING TO ACCELERATE. HAPPENS ANYTIME- STEP ON THE GAS AND IT TAKES A FEW SECONDS BEFORE THE ACCELERATION STARTS.

(p) On October 15, 2018, a 2017 Honda CR-V owner reported to NHTSA as follows:

I BOUGHT MY CR-V IN FEB 2017. SINCE 6TH OCT 2018 I HAVE BEGUN TO NOTICE HESITANCY PROBLEMS WITH ACCELERATION AFTER COMING TO A COMPLETE STOP AND IN SOME CASES THE ENGINE HAS ALSO STALLED. CAR WAS NOT IN ECON MODE, BEING DRIVEN ON 'D' MODE ON A CITY STREET. FACED SIMILAR ISSUE ON A HIGHWAY WHILE IN TRAFFIC. TODAY (15TH OCT) IT HAPPENED THRICE BACK TO BACK IN A 20 MINUTE DRIVE ON A CITY STREET.

(q) On December 10, 2018, a 2018 Honda CR-V owner reported to NHTSA as follows:

I WAS FIRST IN LINE IN THE LEFT LANE ON A CROSS OVER TO A ONE WAY STREET THAT GOES FROM RIGHT TO LEFT. I WAS AT A STOP WAITING FOR A TIME I COULD TURN AND TRY TO GET OVER 4 LANES OF TRAFFIC. THERE ARE 4 LANES ON THE ONE WAY STREET WHICH IS M-59 ALSO KNOW AS HALL ROAD AND I WAS GOING TO HAVE TO GO FAST AS I WAS GOING TO HAVE TO FIRST GET IN THE FAR LEFT LANE AND THEN CROSS OVER THE OTHER 3 LANES TO THE RIGHT AND EXIT AT A DRIVE TO WHERE I WAS TRYING TO GET TO. I KNEW IT WAS GOING TO TAKE MAXIMUM ACCELERATION AND A DEFT TOUCH TO GET OVER THERE SAFELY. AS I TRIED TO DO THIS AND AS I MADE MY FIRST MOVE INTO THE LEFT LANE, MY CAR HESITATED AND DID NOT GIVE ME THE FULL ACCELERATION I WAS EXPECTING. THIS CAUSED ALL THE TIMING I NEEDED TO MAKE THIS MANEUVER SAFELY GO OUT THE WINDOW AND PUT



ME IN A PRECARIOUS SITUATION. I HAD TOMAKE IN MY OPINION A VERY DANGEROUS MOVEMENT TO THE RIGHT TO AVOID A CAR THAT WAS CLOSING IN FAST FROM BEHIND BECAUSE I COULD NOT GET THE SPEED UP. THIS IS THE FIRST TIME THIS HAS HAPPENED ON THIS CAR. I WAS ABLE TO GET WHERE I WANTED TO GO BUT NOW HAVE NO CONFIDENCE IN THE RELIABILITY OF TRYING TO MAKE THIS MANEUVER AGAIN.

(r) On April 12, 2019, a 2017 Acura MDX owner reported to NHTSA as follows:

DANGEROUS LOSS OF POWER WHILE ACCELERATING ON THE HIGHWAY! THERE HAVE BEEN THREE SEPARATE INCIDENTS OVER THE LAST 2 YEARS. WHILE I WAS TRYING TO ACCELERATE ON THE HIGHWAY, THE CAR SEVERELY LOST POWER AND THE "CHECK ENGINE" LIGHT STARTED FLASHING. THE CAR SEEMED TO OPERATE NORMALLY AFTER TURNING OFF AND ON THE ENGINE. THE DEALERSHIP CLAIMED THAT THERE WAS NO COMPUTER RECORDS OF PROBLEMS AFTER EACH INCIDENCE. ACURA JUST ISSUED A RECALL OF THE FUEL PUMP ON THIS MODEL YEAR MDX. HOWEVER, ACURA AND THE LOCAL ACURA DEALERSHIP REFUSED THE REPAIR DUE TO THE LACK OF COMPUTER RECORD OF FAILURE.

(s) On August 6, 2019, a 2016 Acura TLX owner reported to NHTSA as follows:

TL\* THE CONTACT OWNS A 2016 ACURA TLX. THE CONTACT STATED THAT THE VEHICLE SUDDENLY STALLED AND VARIOUS UNKNOWN INDICATORS ILLUMINATED. THE VEHICLE WAS TAKEN TO FRESNO ACURA (7250 N PALM AVE, FRESNO, CA 93711, (559) 431-3400) WHERE IT WAS DIAGNOSED THAT THE FUEL PUMP FAILED. THE VEHICLE WAS NOT REPAIRED AND THE MANUFACTURER WAS NOT CONTACTED. THE FAILURE MILEAGE WAS 86,000.

(t) On November 7, 2019, a 2016 Acura TLX owner reported to NHTSA as follows:

FROM A STOPPED POSITION, MOVING FORWARD MY VEHICLE HESITATED AND DECREASED IN POWER AND THE GAS PEDAL DID NOT HELP MOVING THE VEHICLE FORWARD. THIS HAPPENED IN THE MIDDLE OF THE INTERSECTION FOR SEVERAL SECONDS 10-15 BEFORE THE VEHICLE STARTED MOVING FORWARD AGAIN.

(u) On February 9, 2019, the owner of a 2018 Toyota Camry filed the following complaint with NHTSA:

I HAVE HAD CONSTANT PROBLEMS WITH MY 2018 CAMRY SINCE PURCHASING MAY 2018. MY CAR IS ALWAYS JERKING AS



I ACCELERATE AND WHEN I'M DRIVING IN TOWN, FEELS LIKE I'M GETTING REAR-ENDED AND HESITATING ON HIGHWAY WHEN I HAVE TO ACCELERATE INTO TRAFFIC WHICH IS VERY DANGEROUS WHEN THE CAR WON'T GET UP AND GO. I HAVE HAD IT TO THE DEALER SEVERAL TIMES. THEY RESET THE COMPUTER BECAUSE IT CAN SAVE SETTINGS FROM PREVIOUS DRIVERS. THAT DIDN'T HELP. THEY TOLD ME THAT IT'S A DIFFERENT TRANSMISSION AND IT TAKES FEW SECONDS FOR THE COMPUTER TO COMMUNICATE BACK TO TRANSMISSION. THIS IS A VERY UNSAFE FEATURE...

- (v) On March 11, 2019, the owner of a 2018 Toyota Camry filed the following complaint with NHTSA:

LAG AND HESITATION WHEN GOING TO FULL THROTTLE ON THE GAS PEDAL. IT HESITATES FOR A SECOND AND THEN FINALLY GRABS ON TO ACCELERATE. IT HAS DONE THIS SINCE I PURCHASED IT BUT WAS HOPING IT WOULD WORK ITSELF OUT EVENTUALLY, BUT THIS HASN'T HAPPENED. TOYOTA DID A TSB SOFTWARE UPDATE FOR THE 4 CYLINDER BUT NOT THE V6.

- (w) On July 3, 2019, the owner of a 2018 Toyota Camry filed the following complaint with NHTSA:

2018 CAMRY SE, SLOW TO TAKE OFF WHEN STEPPING ON GAS AFTER A STOP OR SLOW DOWN MOSTLY NOTICEABLE ON CITY STREETS. VERY HESITANT & GAS MUST BE PUMPED IN ORDER FOR TRANSMISSION TO CATCH UP. ALMOST INVOLVED IN ACCIDENT WHEN COMING OFF EXIT RAMP & ONTO HIGHWAY. CAR WOULDN'T ACCELERATE & OTHER DRIVERS WERE AT SPEED LIMIT BEHIND ME. GEARS SHIFT ALMOST LIKE A MANUAL TRANSMISSION. GAS PEDAL CAN BE DIFFICULT TO PUSH AT TIMES AS WELL.

- (x) On July 19, 2019 the owner of a 2019 Toyota Highlander filed the following complaint with NHTSA:

ACCELERATOR HAS BEEN TOUCHY AND JUMPY AT TIMES, INTERMITTENTLY AT SLOW SPEEDS. FIRST TIME IT STALLED IT STARTED TO LOSE POWER PUT -PUT AND CHUG LIKE JERKING AND ALL DASH AND ELECTRICAL ON DASH WENT OUT, UNABLE TO ACCELERATE, THEN STALLED OUT IN ROAD, UNABLE TO STEER OR CONTROL VEHICLE. THIS OCCURRENCE WAS AFTER A LONGER PERIOD OF DRIVING. SECOND TIME IT STALLED OUT BEGAN TO LOSE POWER, PUTTER AND CHUG, UNABLE TO ACCELERATE APPLYING GAS PEDAL, GETTING NO



GAS, VEHICLE DIES OUT, UNABLE TO STEER OR CONTROL VEHICLE. THIS OCCURRENCE WAS AFTER A LONGER PERIOD OF DRIVING. THIRD TIME WAS YESTERDAY 8-8-19. LEFT WORK AND ABOUT 5-7 MINUTES INTO MY DRIVE, STARTED HESITATING, LOSING ALL DASH AND ELECTRICAL POWER AND WILL NOT ACCELERATE WHEN GAS PEDAL APPLIED, THEN STALLS OUT, UNABLE TO CONTROL THE STEERING WHEEL AGAIN! ALMOST GOT HIT THIS TIME, MAN BEHIND ME COMING FAST AND HAD TO SWERVE INTO LANE OVER TO MISS ME. THIS CAR IS GOING TO KILL ME OR SOMEONE BY CAUSING AN ACCIDENT IF THEY DO NOT GET IT FIXED RIGHT. AFTER THE SECOND STALL IT WAS TOWED INTO DEALERSHIP AND THEY WERE NOT SURE BUT SAID FUEL PRESSURE WAS READING 22 AND WAS SUPPOSED TO BE IN THE MID TO HIGH 50'S. THEY REPLACED THE FUEL PUMP AND IT DROVE OK FOR A LITTLE WHILE BUT I NOTICED THE AVERAGE FUEL MILEAGE GOING DOWN FROM AN APPROX IN CITY 19.1--20 TO 17.1-17.3. HAS NEVER BEEN SO LOW SO OBVIOUSLY THE STALLING AND THE REPLACING OF THE FUEL PUMP ARE NOT THE REAL ISSUE. FUEL ECONOMY GOING DOWN SINCE REPLACEMENT OF THE FUEL PUMP AND NOW ANOTHER DANGEROUS STALLING ISSUE. CAR IS AT TOYOTA DEALER NOW. THEY NEED TO DIVE MUCH DEEPER & RESOLVE THIS VERY DANGEROUS SAFETY ISSUE! I BOUGHT THIS CAR TO FEEL SAFE AND HAVE RELIABLE TRANSPORTATION AND HAVE NEITHER. IT REALLY SCARES ME. \*DT\*JB

- (y) On June 1, 2019, the owner of a 2019 Toyota RAV4 filed the following complaint with NHTSA:

THE ENGINE IS NON-RESPONSIVE WHEN MAKING RIGHT HAND & UP HILL TURNS. I CAN DEPRESS THE GAS PEDAL THREE TIMES BEFORE THE CAR STARTS TO ACCELERATE. THIS IS DANGEROUS! WHAT IS GOING ON?

- (z) On September 22, 2019, the owner of a 2017 Toyota Sienna filed the following complaint with NHTSA:

HISTORY: PERIODICALLY OVER THE LIFE OF THE VEHICLE, WHEN I PUSH DOWN ON THE GAS PEDDLE THE CAR IS UNRESPONSIVE OR RESPONDS IN FITS AND STARTS. THIS IS USUALLY UPON STARTUP AFTER STOPPING AT A STOP SIGN OR LIGHT. BUT IT DID HAPPEN IN MAY OF 2019 AT 65MPH ON THE FREEWAY (GOING STRAIGHT), RESULTING IN SUDDEN DECELERATION. AS I MOVED OVER LANES TO GET TO THE SIDE OF THE ROAD, THERE WAS A SUDDEN JOLT AND THE CAR BEGAN FUNCTIONING NORMALLY.



ON SUNDAY 9/22/19 AT 10AM I LEFT MY HOME WITH MY DAUGHTER TO GO TO THE MOVIES. LESS THAN 5 MINUTES FROM OUR HOME, IN OUR FLAT NEIGHBORHOOD GOING 25MPH, I STOPPED AT THE STOP SIGN THEN ATTEMPTED TO ACCELERATE THROUGH THE INTERSECTION. THE CAR WENT A FEW FEET INTO THE INTERSECTION AND THEN WOULDN'T MOVE, THE ENGINE MAKING A WHIRRING SOUND. IT WAS IN DRIVE. I TURNED ON THE HAZARD LIGHTS AND GENTLY ATTEMPTED TO PUSH THE GAS PEDDLE, FINALLY ABLE TO MOVE THROUGH THE INTERSECTION IN FITS AND STARTS (JOLTING) TO GET TO THE SIDE OF THE ROAD. I PUT THE CAR IN PARK, THEN NEUTRAL. PUSHED DOWN THE GAS IN NEUTRAL AND HEARD THE WHIRRING NOISE. IN DRIVE AND REVERSE, THE JOLTING CONTINUED. I WAS ABLE TO JOLT MY WAY HOME UNDER 10MPH. THE CAR WAS FINE WHEN IT WAS COASTING WITHOUT NEEDING POWER, JOLTING WHEN IT NEEDED POWER.

BECAUSE THE CAR IS DANGEROUS, I HAD IT TOWED TO MAGNUSSEN'S TOYOTA, WHERE IT IS AS OF THIS WRITING. THIS IS A VERY DANGEROUS DEFECT AND NEEDS TO BE ADDRESSED AS IT SUDDEN DECELERATION IN AN INTERSECTION OR ON THE FREEWAY MAY RESULT IN DEATH.

UPON INITIAL DRIVING, I WAS TOLD THE VEHICLE WAS OPERATING NORMAL. I AM WORRIED THEY WON'T FIX IT AND I WILL END UP WITH A VERY DANGEROUS ALMOST NEW CAR. PLEASE HELP, AND HELP FOR THE SAFETY OF OTHERS WITH THIS SAME DEFECT.

- (aa) On January 14, 2020, the owner of a 2019 Toyota Sienna filed the following complaint with NHTSA:

PULLED OUT INTO ONCOMING TRAFFIC AND VEHICLE HESITATED AND WOULD NOT ACCELERATE. DASH LIGHTS CAME ON AND CAR STALLED. ATTEMPTED TO CRANK VAN AND IT RESTARTED BUT WOULD BARELY MOVE WITH THE ACCELERATOR PRESSED FULLY. HAD TO CALL A TOW TRUCK TO HAVE IT DELIVERED TO THE DEALER. I CALLED TOYOTA ROAD SIDE ASSISTANCE NUMBER AND 2.5 LATER NO ONE SHOWED UP. CALLED AGAIN AND DEMANDED A DIFFERENT TOW COMPANY RESPOND AND 30 MINUTES LATER SOMEONE WAS AT THE SCENE. THIS EPISODE STATED 230 PM AND VAN WAS PICKED UP 637PM.

- (bb) On January 19, 2019, the owner of a 2019 Subaru Outback filed the following complaint with NHTSA:



I WOULD LIKE TO REPORT AN ISSUE WITH WHAT I BELIEVE TO BE THE BRAKING SYSTEM IN THE 2019 SUBARU OUTBACK. WHILE DRIVING NORTHBOUND ON THE DALLAS NORTH TOLL WAY, AT A SPEED OF APPROXIMATELY 65 TO 70 MPH, I TAPPED ON THE BRAKES TO SLOW DOWN FOR THE UPCOMING DECLINE. WHEN I ATTEMPTED TO PUT MY FOOT ON THE ACCELERATOR, THE CAR SUDDENLY AND ABRUPTLY STOPPED. IT WAS AS IF THE BRAKES "LOCKED", I WAS UNABLE TO ACCELERATE. WE CAME TO A COMPLETE STOP ON THE TOLLWAY AND WERE UNABLE TO ACCELERATE THE CAR. WE WERE HIT FROM BEHIND. THE STOPPAGE WAS SO SUDDEN THAT IT RESULTED IN A THREE-CAR COLLISION.

THE ENGINE WAS STILL RUNNING AFTER THE COLLISION. THE POLICE OFFICER INSTRUCTED ME TO TRY TO DRIVE THE VEHICLE OFF OF THE ROAD, BUT DESPITE MY PRESSING THE ACCELERATOR, THE CAR WAS STILL UNABLE TO MOVE EVEN A SMALL DISTANCE. \*DT \*AS

- (cc) On January 2, 2020, the owner of a 2019 Subaru Ascent filed the following complaint with NHTSA:

IN LOW SPEED WHEN WANTING INCREASE SPEED, THE ENGINE LOSES POWER AND BRIEFLY SPUTTERS AND THEN RECOVERS AND ACCELERATES. USUALLY HAPPENS WHEN TRYING TO ACCELERATE WHEN GOING UP HILL AND FROM SLOW, RIGHT TURNS. USUALLY AT HIGHWAY SPEED, IT CAN QUICKLY ACCELERATE.

- (dd) On January 2, 2020, the owner of a 2019 Subaru Ascent filed the following complaint with NHTSA:

WHEN TRYING TO ACCELERATE AROUND A TRUCK ON A HIGHWAY, THE CAR REFUSED, FELT LIKE IT WAS GOING TO STALL AND EVERY LIGHT ON THE DASHBOARD LIT UP. MY SPEED WAS PROBABLY AROUND 60MPH, WHEN I TRIED TO QUICKLY GET AROUND THIS TRUCK. IT WAS FULL OF FURNITURE THAT I FELT WAS LOADED IN AN UNSAFE MANNER. THIS IS THE SECOND TIME THE CAR HAS DONE THIS AND THE CVT CHAIN SLIP WAS SUPPOSEDLY FIXED IN A RECALL IN DECEMBER. THIS TIME SUBARU SAID IT WAS A LEAKY GASKET IN THE INTER COOLER??

The whole as appears more fully from a copy of the NHTSA complaints relating to Honda, produced herein as **Exhibit R-26**, the NHTSA complaints relating to Toyota, produced herein as **Exhibit R-27**, and the NHTSA complaints relating to Subaru, produced herein as **Exhibit R-28**;



67. The above complaints are merely a small subset of the complaints submitted to NHTSA reporting sudden stalls and pump failures in the Subject Vehicles;
68. It cannot reasonably be questioned whether the Defendants were aware of the Design Defect in the Subject Vehicles, even prior to their marketing and sale or lease;
69. The DENSO and the Vehicle Manufacturer Defendants acquired knowledge of the Design Defect through at least: (i) NHTSA complaints; (ii) warranty claims; (iii) non-warranty repair records; (iv) testing undertaken in the development of new models; and (v) customer complaints to dealers;

**(vii) The Subject Vehicles Containing Defective Denso-Manufactured Fuel Pumps Were Sold as “Safe” and “Reliable”**

69.1 The DENSO Defendants represented that their “high-quality” fuel pumps “are chosen as standard equipment by the world’s most demanding OEMs, especially for their premium vehicles” and that they are the “most reliable fuel pump[s] available” (Exhibit R-41);

70. The Vehicle Manufacturer Defendants sell vehicles in part via communications that they authorized their dealerships to make about their vehicles, including the Subject Vehicles described herein. This includes authorizing their dealers to distribute brochures and other marketing and promotional materials. The Vehicle Manufacturer Defendants, through *inter alia* their authorized dealers, have and had the opportunity to disclose all material facts relating to the Subject Vehicles;
71. In advertisements and promotional materials, the Vehicle Manufacturer Defendants maintained that their vehicles were safe and reliable;
72. Toyota touts its safety and reliability in its advertising and marketing, knowing that customers will buy or lease their vehicles because they believe them to be safe and reliable;
73. By way of example, on the website [www.toyota.ca](http://www.toyota.ca), there is a section entitled “Safety Technology”, where the lead title on the landing page states “Our Commitment to Safety” and “Our Goal: A World Without Accidents”. Further on the webpage, Toyota writes, *inter alia*:

“Promoting a safer mobile world is – and always will be – one of Toyota’s top priorities. Through the development of innovative technologies, Toyota remains committed to ongoing safety improvements – a commitment that is recognized with accolades like multiple IIHS Awards.

...

We’re continually investing in research and development to find new ways to raise our quality, working to help keep you safe. That means leading the way when it comes to packaging safety features on our vehicles – so when



you get behind the wheel, you can focus on the journey ahead and the simple joy of driving.

...

Toyota believes that no matter the destination, everyone deserves to arrive safely.

...

Toyota vehicles are built with legendary quality, durability, and reliability. Not only does this mean years of driving enjoyment, it also extends to your safety behind the wheel.

...

Toyota crashes more than 600 vehicles a year – for safety purposes. We've developed a set of comprehensive crash tests with a number of sensors at the prototype phase, and with each collision, we examine the effects and make improvements to the design. Repeating the process over and over, we are constantly creating and then analyzing possible collision scenarios.

The whole as appears more fully from a copy of an extract from the Toyota website at [www.toyota.ca](http://www.toyota.ca), produced herein as **Exhibit R-29**;

74. Toyota also touts the safety and reliability of its Lexus vehicles in its advertising and marketing, knowing that customers will buy or lease their vehicles because they believe them to be safe and reliable;
75. For example, on the website [www.lexus.ca](http://www.lexus.ca), there is a section entitled “Lexus Safety Systems+”, where the lead title on the landing page states “Lexus Safety System+ and Lexus Safety System+ 2.0” and “Crafted For Your Peace of Mind”. Further on the webpage, Lexus writes, *inter alia*:

“Our commitment to your safety extends to helping prevent accidents before they even happen. That is why we introduced Lexus Safety System+ and the next generation Lexus Safety System+ 2.0 -- now available on select 2019 Lexus vehicles.

#### The Passionate Pursuit of Safety

LSS+ and LSS+ 2.0 comprise some of our most advanced active safety systems, designed to support your awareness and decision-making across a range of speeds and driving situations. And ultimately, to protect you, your passengers, other drivers and the cyclists and pedestrians who share the roads.

#### Peace of Mind in Action

LSS+ and the next generation LSS+ 2.0 both address the three most common accident types: frontal collisions, unintended lane departures and



nighttime accidents; as well as providing additional protections for cyclists and pedestrians.”

The whole as appears more fully from a copy of an extract from the Toyota website at [www.lexus.ca](http://www.lexus.ca), produced herein as **Exhibit R-30**;

76. Honda touts its safety and reliability in its advertising and marketing, knowing that customers will buy or lease its Honda and Acura vehicles because they believe them to be safe, dependable, and reliable;
77. For example, on the websites [www.hondacanada.ca](http://www.hondacanada.ca) and [www.acura.ca](http://www.acura.ca), there is a shared section entitled “Safety”, where the lead title on the landing page states “Playing it Safe” and “We believe a collision-free society is closer than it appears”. Further on the webpage, Honda (and Acura) write, *inter alia*:

“We want Safety for Everyone, no matter the size or price of your vehicle. See how we’re helping Canadians stay safe, while enjoying the freedom of mobility.

...

Honda vehicles are frequently recognized as Top Safety Picks by the U.S. Insurance Institute for Highway Safety.

...

At Honda, we believe in Safety for Everyone – not just for drivers and motorcyclists, but also passengers, pedestrians and anyone else who shares the road. See what we’re doing to create a safer world.”

The whole as appears more fully from a copy of an extract from the Honda website at [www.hondacanada.ca](http://www.hondacanada.ca), produced herein as **Exhibit R-31**;

- 77.1 Subaru touts its safety and reliability in its advertising and marketing, knowing that customers will buy or lease their vehicles because they believe them to be safe and reliable;
- 77.2 For example, on the website [www.subaru.ca](http://www.subaru.ca), there is a section entitled “Why Buy Subaru → Safety”, where the lead title on the landing page states “All-Around Safety and Peace of Mind” and “360 Degrees of Protection”. Further on the webpage, Subaru writes, *inter alia*:

“A longstanding and steadfast commitment to safety has given Subaru vehicles an impenetrable reputation for superior protection. This powerful commitment is reflected in vehicles with four key attributes. From the start, holistic design gives drivers confidence in the form and function of the vehicles themselves. The vehicles are then engineered to deliver the highest levels of control and stability in all possible conditions. They are also infused with the latest technology to help drivers avoid accidents before they happen. And the vehicles feature ultra-strong construction and



advanced safety systems that help minimize the chance of injury in the event of an accident. This all-encompassing approach to safety gives Subaru drivers the freedom to pursue adventure in their lives—going where they want, when they want, even in the face of unexpected obstacles or surprises from Mother Nature.

...

A vehicle that performs at a higher level dynamically is, by definition, also a higher-performing vehicle when it comes to safety.... All vehicles in the current fleet feature a world-class AWD system and boast class-leading active safety systems...

...

Long at the forefront of safety, Subaru has never rested on its laurels and continues to advance technology to best protect occupants... In the belief that accident avoidance is the best way to preserve safety, Subaru continues to drive towards a future wherein complete peace of mind is engineered into every vehicle.”

The whole as appears more fully from a copy of an extract from the Subaru website at [www.subaru.ca](http://www.subaru.ca), produced herein as **Exhibit R-32**;

78. Purchasers and/or lessees of the Subject Vehicles were led to believe their vehicles were safe and reliable vehicles;
79. However, as detailed above, hundreds of thousands of vehicles that contained defective Denso-manufactured fuel pumps were sold by the Vehicle Manufacturer Defendants and other automakers;
80. Vehicles with defective fuel pump systems are not “safe” and “reliable” as the Subject Vehicles were advertised and promoted to be;
81. The Vehicle Manufacturer Defendants sold and leased the Subject Vehicles with written express warranties.
  - For Toyota Subject Vehicles, Toyota offer a written express basic warranty of three years or 60,000 kms. Toyota also offers a five-year or 100,000 kms power train warranty, which covers the fuel pump;
  - For Lexus Subject Vehicles, Toyota offer a written express basic warranty of four years or 80,000 kms. Toyota also offers a six-year or 110,000 kms powertrain warranty, which covers the fuel pump;
  - For Honda Subject Vehicles, Honda offers a written express basic warranty of three years or 60,000 kms. Honda also offers a five-year or 100,000 kms power train warranty, which covers the fuel pump,



- For Acura Subject Vehicles, Honda offers a written basic express warranty of four years or 80,000 kms. Honda also offers a five-year or 100,000 kms Emissions system warranty, which covers the fuel pump.
- For Subaru Subject Vehicles, Subaru offers a written basic express warranty of a written express basic warranty of three years or 60,000 kms. Toyota also offers a five-year or 100,000 kms power train warranty, which covers the fuel pump.

Produced herein as **Exhibit R-33** is a copy of the Toyota Owner's Manual Supplement for 2018 models, **Exhibit R-51** is a copy of the Lexus Warranty and Services Guide for 2014 models, **Exhibit R-34** is a copy of the 2015 Honda Warranty Guide, **Exhibit R-52** is a copy of the Acura Warranty Booklet for 2016 models, and **Exhibit R-35** is a copy of the Subaru Warranty Booklet;

**(viii) The Faulty Fuel pumps and Related Quality Concerns Have Caused and Will Continue to Cause Values of the Subject Vehicles to Plummet**

82. A vehicle purchased or leased under the reasonable assumption that it is "safe" and "reliable" as advertised is worth more than a vehicle known to be subject to the risk of a possibly life-threatening failure of a fuel injection system. A vehicle purchased or leased under the assumption that it was produced in conformity with high safety standards is worth more than a vehicle produced in a system that promotes expedience over quality and safety and hides known defects. Moreover, vehicle owners and/or lessees have a reasonable expectation that automakers will abide by federal, statutory, and civil law obligations to affirmatively disclose known defects in a timely manner;
83. Unfortunately, this did not happen and, as a result, all purchasers and/or lessees of the Subject Vehicles overpaid for their vehicles at the time of purchase. As news of the dangerous and defective fuel pumps surfaced, the value of the Subject Vehicles has diminished and will continue to do so;
84. As detailed above, there has been reporting about the defective fuel pumps in recent months, raising public awareness of their defect and the safety implications;
85. These news reports detailing the utter lack of regard for customers' safety exhibited by DENSO and the Vehicle Manufacturer Defendants have materially negatively impacted the value of the Subject Vehicles, including the Applicant's and Class Members' Subject Vehicles;
86. DENSO and the Vehicle Manufacturer Defendants knew or should have known that the DENSO fuel pumps installed in the Subject Vehicles were defective. Both DENSO and the Vehicle Manufacturer Defendants, who concealed their knowledge of the nature and extent of the defects from the public, have shown a blatant disregard for public welfare and safety;



**(ix) The Defendants' Liability**

86.1 The Defendants knew that plastic absorbs liquids and that this causes it to change dimensions – the degree of both being dependant on the type of plastic and on environmental conditions. The Defendants equally knew that the environmental conditions for a fuel pump involve it being submerged in fuel and subjected to high temperatures and repeated temperature cycling. Despite this knowledge, the Defendants used fuel pump impellers that were made from unsuitable and inferior plastic materials with inadequate heat resistance and an overly high porous level;

86.2 The Defendants were negligent in the design, engineering, manufacture, testing, validation, marketing, distribution, supply, sale, and/or warranty of the fuel pumps and the Subject Vehicles, which caused an unreasonable risk of injury or death to the Applicant, Class Members, and the public;

86.3 The Design Defect could have been eliminated by ensuring that, under foreseeable and intended conditions:

- (a) The impeller was not fuel permeable;
- (b) The impeller would not deform;
- (c) The impeller would not prematurely age;
- (d) The impeller would not lose its dimensional stability;
- (e) The impeller would not contact the fuel pump body;
- (f) The Fuel Pump would not overheat;

**(x) The U.S. Litigation**

87. On May 28, 2020, a class action complaint was filed in the United States District Court for the Middle District of California against various Toyota entities alleging the same defective DENSO fuel pumps, the whole as appears more fully from a copy of the Class Action Complaint in *Shoemaker v. Toyota Motor North America, Inc.* in Case No. 3:20-cv-00869-JEJ dated May 28, 2020, produced herein as **Exhibit R-36**;

88. On June 10, 2020, a class action complaint was filed in the United States District Court for the Central District of California against Honda America alleging the same defective DENSO fuel pumps, the whole as appears more fully from a copy of the Class Action Complaint in *Booker v. American Honda Motor Co., Inc.* in Case No. 2:20-cv-05166 dated June 10, 2020, produced herein as **Exhibit R-37**;

88.1 On June 26, 2020, a class action complaint was filed in the United States District Court for the District of Hawaii against various Subaru entities alleging the same defective DENSO fuel pumps and another class action complaint was filed in the



United States District Court for the District of New Jersey, the whole as appears more fully from a copy of the Class Action Complaint in *Anderson v. Subaru of America, Inc., et al.*, in Case No. 1:20-cv-00290 dated June 26, 2020 and from a copy of the Class Action Complaint and Demand for Jury Trial in *Adnan v. Subaru Corporation, et al.*, in Case No. 1:20-cv-09082 dated July 17, 2020, produced herein *en liasse* as **Exhibit R-53**;

88.2 On October 29, 2020, the Honda U.S. class action complaint was amended, the whole as appears more fully from a copy of the Second Amended Class Action Complaint in *Oliver v. Honda Motor Company Limited, et al.*, in Case No. 5:20-cv-00666 dated October 29, 2020, produced herein as **Exhibit R-54**;

**(xi) Summative Remarks**

89. As a result of the defective fuel pumps, owners and lessees of the Subject Vehicles have suffered *inter alia* loss of value of their vehicles due to the stigma associated with such dangerous vehicles;
90. As a result of DENSO's and the Vehicle Manufacturer Defendants' misconduct, the Applicant and the Class Members were harmed and suffered actual damages in that the Subject Vehicles have potentially deadly fuel pumps that pose an ongoing threat to drivers and passengers and have diminished the value of the vehicles in which they are installed;
91. The Applicant and the Class Members did not receive the benefit of their bargain as purchasers and/or lessees received vehicles that were of a lesser standard, grade, and quality than represented, and did not receive vehicles that met ordinary and reasonable consumer expectations. Class Members did not receive vehicles that would reliably operate with reasonable safety, and that would not place drivers and occupants in danger of encountering an ongoing and undisclosed risk of harm, which could have been avoided through the exercise of reasonable precaution and forthrightness;
92. A vehicle purchased or leased under the reasonable assumption that it is "safe" as advertised is worth more than a vehicle – such as the Subject Vehicles – that is known to contain a defective DENSO fuel pump. Therefore, all purchasers and/or lessees of the Subject Vehicles overpaid for their vehicles. Furthermore, the public disclosure of the defective DENSO fuel pumps has caused the value of the Subject Vehicles to materially diminish. Purchasers or lessees of the Subject Vehicles paid more, either through a higher purchase price or higher lease payments, than they would have had the defects been disclosed;
93. The Applicant and the Class Members that he seeks to represent suffered economic damages by purchasing and/or leasing the Subject Vehicles; they did not receive the benefit of the bargain, and are therefore entitled to damages;



## **VII. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT**

94. On November 30, 2018, the Applicant leased a 2019 Acura TLX 4-door sedan 2.4L (VIN no. 19UUB1F32KA800607) containing a DENSO fuel pump from Precision Acura at 4621 boul. Bourque, in Sherbrooke, Quebec for 48-month lease of \$517.89 per month taxes included. The total value of the lease is \$24,858.72 (i.e. \$21,621.12 plus GST/QST), the whole as appears more fully from a copy of the Lease Contract dated November 30, 2018, produced herein as **Exhibit R-38**;
95. At the time of lease, the Applicant was under the impression that he was leasing a vehicle that was free of any design or manufacturing defects; unbeknownst to him, he overpaid for the lease payments as the vehicle was in fact suffering from a Design Defect;
96. The Applicant has suffered ascertainable loss as a result of the Defendants' omissions and/or misrepresentations associated with the Design Defect, including, but not limited to, overpayment for the Vehicle itself, substantially lower resale values associated with the vehicle because the problems with the fuel pump have become notoriously defective in the industry, pain and suffering, and trouble and inconvenience;
97. Had Applicant known about the Design Defect, he either would not have leased the vehicle or would not have paid such a high price;
98. The Applicant's damages are a direct and proximate result of the Defendants' conduct;
99. In consequence of the foregoing, the Applicant is justified in claiming damages;

## **VIII. FACTS GIVING RISE TO INDIVIDUAL ACTIONS BY EACH MEMBER OF THE CLASS**

100. Every member of the Class has purchased and/or leased a Subject Vehicle containing a defective Denso fuel pump;
101. Each member of the Class is justified in claiming at least one or more of the following as damages:
  - a. Overpayment of the purchase price and/or lease payments of the Subject Vehicles,
  - b. Lower resale value/ diminished value of the Subject Vehicles,
  - c. Loss of use of the Subject Vehicles and expenditures for rental vehicles,



- d. Out-of-pocket loss including, costs of towing, cost of attempted repairs,
  - e. Pain and suffering,
  - f. Trouble and inconvenience, and
  - g. Punitive and/or exemplary damages;
102. All of these damages to the Class Members are a direct and proximate result of the Defendants' conduct;

### **IX. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

A) The composition of the class makes it difficult or impractical to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

103. Applicant is unaware of the specific number of persons who purchased and/or leased the Subject Vehicles; however, it is safe to estimate that it is in the hundreds of thousands based on the recalls;

104. Class Members are numerous and are scattered across the entire province;

105. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendants. Even if Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system;

106. Also, a multitude of actions instituted in different jurisdictions, both territorial and judicial districts, risks having contradictory judgments on issues of fact and law that are similar or related to all members of the Class;

107. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain mandates and to join them in one action;

108. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice;

B) The claims of the members of the Class raise identical, similar or related issues of law or fact

109. Individual issues, if any, pale by comparison to the numerous common issues that will advance the litigation significantly;

110. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Defendants' misconduct;
111. The claims of the Class Members raise identical, similar or related issues of fact or law, namely:
- a) Is the DENSO fuel pump system in the Subject Vehicles defective?
  - b) Did the Defendants know or should they have known about the fuel pump Design Defect, and, if yes, how long have the Defendants known?
  - c) Did the Vehicle Manufacturer Defendants misrepresent the Subject Vehicles as safe or fail to adequately disclose to consumers the true defective nature of the Subject Vehicles?
  - d) Are the Defendants responsible for all related damages (including, but not limited to: the diminished value of the Subject Vehicles in terms of an overpayment for the purchase price or lease payments, the lower resale value of the Subject Vehicles, the loss of use of the Vehicles and expenditures for rental vehicles, costs of towing, pain and suffering, and trouble and inconvenience to Class Members as a result of the problems associated with the Subject Vehicles and in what amount?
  - e) Should an injunctive remedy be ordered to force the Vehicle Manufacturer Defendants to notify, recall, repair and/or replace the defective fuel pump systems in Class Members' Subject Vehicles, which have not yet been recalled, free of charge?
  - f) Are the Defendants responsible to pay punitive damages to Class Members and in what amount?
112. The interests of justice favour that this application be granted in accordance with its conclusions;

**X. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

113. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages, injunctive relief, and declaratory judgment;
114. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:

GRANT the class action of the Plaintiff and each of the members of the Class;

ORDER the Defendants to recall all Subject Vehicles equipped with Denso-manufactured fuel pumps and to repair and/or replace said defect free of charge;



DECLARE the DENSO Defendants solidarily liable for the damages suffered by the Plaintiff and each of the members of the class;

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

A) Applicant requests that he be attributed the status of representative of the Class

115. The Applicant is a member of the Class;

116. The Applicant is ready and available to manage and direct the present action in the interest of the members of the Class that he wishes to represent and is determined to lead the present file to a final resolution of the matter, the whole for the benefit of the Class, as well as, to dedicate the time necessary for the present action before the Courts and the *Fonds d'aide aux actions collectives*, as the case may be, and to collaborate with his attorneys;

117. The Applicant has the capacity and interest to fairly and properly protect and represent the interest of the members of the Class;

118. The Applicant has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

119. The Applicant, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;



120. The Applicant has given instructions to his attorneys to put information about this class action on its website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing, the whole as appears more fully from a copy of a redacted chart of potential Class Members who have inputted their information through the CLG webpage, produced herein as **Exhibit R-55**;
121. The Applicant is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendants' conduct;
122. The Applicant understands the nature of the action;
123. The Applicant's interests are not antagonistic to those of other members of the Class;
124. The Applicant is prepared to be examined out-of-court on his allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;
125. The Applicant has spent time researching this issue on the internet and meeting with his attorneys to prepare this file. In so doing, he is convinced that the problem is widespread;
126. The Applicant, with the assistance of his attorneys, has created a webpage at [www.clg.org](http://www.clg.org) wherein other Class Members can enter their coordinates to join the class action and be kept up to date on its development;
- B) Applicant suggests that this class action be exercised before the Superior Court of justice in the district of Montreal
127. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;
128. The Applicant's attorneys practice their profession in the judicial district of Montreal;
129. The present application is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an application to institute proceedings in damages, injunctive relief, and declaratory relief;

**APPOINT** the Applicant as representative of the persons included in the class herein described as:

- all persons, entities, or organizations resident in Quebec who purchased and/or leased a Subject Vehicle equipped with a fuel pump designed and manufactured by DENSO, or any other group to be determined by the Court;

**IDENTIFY** the principal issues of fact and law to be treated collectively as the following:

- a) Is the DENSO fuel pump system in the Subject Vehicles defective?
- b) Did the Defendants know or should they have known about the fuel pump Design Defect, and, if yes, how long have the Defendants known?
- c) Did the Vehicle Manufacturer Defendants misrepresent the Subject Vehicles as safe or fail to adequately disclose to consumers the true defective nature of the Subject Vehicles?
- d) Are the Defendants responsible for all related damages (including, but not limited to: the diminished value of the Subject Vehicles in terms of an overpayment for the purchase price or lease payments, the lower resale value of the Subject Vehicles, the loss of use of the Vehicles and expenditures for rental vehicles, costs of towing, pain and suffering, and trouble and inconvenience to Class Members as a result of the problems associated with the Subject Vehicles and in what amount?
- e) Should an injunctive remedy be ordered to force the Vehicle Manufacturer Defendants to notify, recall, repair and/or replace the defective fuel pump systems in Class Members' Subject Vehicles, which have not yet been recalled, free of charge?
- f) Are the Defendants responsible to pay punitive damages to Class Members and in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Plaintiff and each of the members of the Class;

ORDER the Defendants to recall all Subject Vehicles equipped with DENSO-manufactured fuel pumps and to repair and/or replace said defect free of charge;

DECLARE the DENSO Defendants solidarily liable for the damages suffered by the Plaintiff and each of the members of the class;

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

**DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in The Montreal Gazette and La Presse;

**ORDER** that said notice be available on the Defendants' websites, Facebook pages, and Twitter accounts with a link stating "Notice to Vehicle Owners/Lesseees";

**ORDER** that said notice be sent by individual letters emailed and/or mailed to Class Members by using the Defendants' customer lists;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

**THE WHOLE** with costs, including all publication and dissemination fees.



Montreal, March 5, 2021

(s) Andrea Grass

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CONSUMER LAW GROUP INC.

Per: Me Andrea Grass

Attorneys for the Applicant

**CONSUMER LAW GROUP INC.**

1030 rue Berri, Suite 102  
Montréal, Québec, H2L 4C3  
Telephone: (514) 266-7863  
Telecopier: (514) 868-9690  
Email: agrass@clg.org

CANADA  
 PROVINCE OF QUEBEC  
 DISTRICT OF MONTREAL

(Class Action)  
 SUPERIOR COURT

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NO: 500-06-001088-208

**LESLIE HAND**

*Applicant*

-vs.-

**DENSO INTERNATIONAL AMERICA, INC.**  
 and  
**DENSO SALES CANADA, INC.**  
 and  
**DENSO MANUFACTURING CANADA INC.**  
 and  
**TOYOTA CANADA INC.**  
 and  
**HONDA CANADA INC.**  
 and  
**SUBARU CANADA, INC.**

*Defendants*

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### NOTICE OF DISCLOSURE OF EXHIBITS

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TAKE NOTICE that the Applicant intends on producing the following exhibits at the hearing:

- R-1: Copy of an extract from the *Registraire des entreprises*;  
 Copy of an extract from the DENSO website at [www.denso.com](http://www.denso.com), *en liasse*;
- R-2: Copy of an extract from the *Registraire des entreprises*  
 Copies of extracts from the DENSO website at [www.denso.com](http://www.denso.com), *en liasse*;
- R-3: (...)
- R-4: Copy of the trade-mark "DENSO" (TMA152331) from the CIPO website;
- R-5: Copy of the 2019 DENSO annual report;



- R-6: Copy of an extract from the *Registraire des entreprises*;
- R-7: Copy of an extract from the manufacturing.net website entitled “The World’s Largest Car Manufacturers”;  
Copy of the 2019 Toyota annual report, *en liasse*;
- R-8: Copy of an extract from the *Registraire des entreprises*;
- R-9: Copy of the 2019 Honda annual report;
- R-10: Copy of an extract from the *Registraire des entreprises*  
Copy of the 2019 Subaru annual report, *en liasse*;
- R-11: Copy of the article entitled “A Brief History of Aircraft Carburetors and Fuel Systems” dated August 2013 which was prepared for the Aircraft Engine Historical Society;
- R-12: Copy of an extract from the Electricaldundablog.com website;
- R-13: (...)
- R-14: Copy of the Part 573 Safety Recall Report for NHTSA Recall No. 19V-060 dated January 29, 2019  
Copy of the Service Bulletin dated January 30, 2019, *en liasse*;
- R-15: Copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20V-012 dated January 13, 2020;
- R-16: Copy of the Defect Information Report for NHTSA Recall No. 20V-012 dated January 13, 2020;
- R-17: Copy of Transport Canada issued Recall # 2020-088 dated March 4, 2020;
- R-18: Copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20V-012, dated March 4, 2020, March 19, 2020, and April 9, 2020, *en liasse*;
- R-19: Copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20V-218 dated April 16, 2020;
- R-20: Copy of the Transport Canada Recall # 2020-162 dated April 16, 2020;



- R-21: Copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20E-026 dated April 27, 2020  
Copy of the List of Parts Numbers submitted, *en liasse*;
- R-22: Copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20V-314 dated May 28, 2020;
- R-23: Copy of the Transport Canada Recall # 2020-236 dated May 28, 2020;
- R-24: Copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20E-026, dated June 11, 2020  
Copy of the Amended List of Part Numbers  
Copy of the Amended Defect Information Report (20E-026) dated June 9, 2020, *en liasse*;
- R-25: Copy of DENSO's U.S. Patent documents for "IMPELLER FOR FUEL PUMP";
- R-26: Copy of the NHTSA complaints relating to Honda;
- R-27: Copy of the NHTSA complaints relating to Toyota;
- R-28: Copy of the NHTSA complaints relating to Subaru;
- R-29: Copy of an extract from the Toyota website at [www.toyota.ca](http://www.toyota.ca);
- R-30: Copy of an extract from the Toyota website at [www.lexus.ca](http://www.lexus.ca);
- R-31: Copy of an extract from the Honda website at [www.hondacanada.ca](http://www.hondacanada.ca);
- R-32: Copy of an extract from the Subaru website at [www.subaru.ca](http://www.subaru.ca);
- R-33: Copy of Toyota Owner's Manual Supplement for 2018 models;
- R-34: Copy of the 2015 Honda Warranty Guide;
- R-35: Copy of the Subaru Warranty Booklet;
- R-36: Copy of the Class Action Complaint in *Shoemaker v. Toyota Motor North America, Inc.* in Case No. 3:20-cv-00869-JEJ dated May 28, 2020;
- R-37: Copy of the Class Action Complaint in *Booker v. American Honda Motor Co., Inc.* in Case No. 2:20-cv-05166 dated June 10, 2020;



- R-38: Copy of the Lease Contract dated November 30, 2018;
- R-39: Copy of an extract from the DENSO Defendants' website at [aftermarket.denso.com.sg](http://aftermarket.denso.com.sg);
- R-40: Copy of a DENSO product catalogue dated 2018/2019;
- R-41: Copy of the Autoblog article entitled "How Long Does a Fuel Pump Usually Last?" dated November 24, 2015  
Copy of an extract from the DENSO Defendants' website at [densoautoparts.com](http://densoautoparts.com), *en liasse*;
- R-42: Copy of an extract from the Ensinger website at [www.ensingerplastics.com](http://www.ensingerplastics.com);
- R-43: Copy of Transport Canada issued Recall # 2020-005 dated March 4, 2020;
- R-44: Copies of the Part 573 Safety Recall Reports for NHTSA Recall No. 20V-314 dated June 23, 2020, June 24, 2020, July 13, 2020, August 14, 2020, and September 30, 2020, *en liasse*;
- R-45: Copy of the Transport Canada Recall # 2020-514 dated October 28, 2020;
- R-46: Copy of the Part 573 Safety Recall Report for NHTSA Recall No. 20V-682 dated November 4, 2020;
- R-47: Copy of the Honda Service Bulletin 20-052 dated October 13, 2020;
- R-48: Copy of the Toyota Technical Instructions for Safety Recall 20TA02;
- R-49: Copy of the Subaru Product Campaign Bulletin revised April 29, 2020;
- R-50: Copies of the associated NHTSA complaints;
- R-51: Copy of the Lexus Warranty and Services Guide for 2014 models;
- R-52: Copy of the Acura Warranty Booklet for 2016 models;
- R-53: Copy of the Class Action Complaint in *Anderson v. Subaru of America, Inc., et al.*, in Case No. 1:20-cv-00290 dated June 26, 2020



Copy of the Class Action Complaint and Demand for Jury Trial in *Adnan v. Subaru Corporation, et al.*, in Case No. 1:20-cv-09082 dated July 17, 2020, en liasse;

R-54: Copy of the Second Amended Class Action Complaint in *Oliver v. Honda Motor Company Limited, et al.*, in Case No. 5:20-cv-00666 dated October 29, 2020;

R-55: Copy of a redacted chart of potential Class Members who have inputted their information through the CLG webpage;

Montreal, March 5, 2021

(s) Andrea Grass

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CONSUMER LAW GROUP INC.

Per: Me Andrea Grass

Attorneys for the Applicant

**CONSUMER LAW GROUP INC.**

1030 rue Berri, Suite 102  
Montréal, Québec, H2L 4C3  
Telephone: (514) 266-7863  
Telecopier: (514) 868-9690  
Email: agrass@clg.org

N°: 500-06-001088-208

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(Class Action)  
SUPERIOR COURT  
DISTRICT OF MONTREAL

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**LESLIE HAND**

*Applicant*

-vs.-

**DENSO INTERNATIONAL AMERICA, INC. et al.**

*Defendants*

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**AMENDED APPLICATION TO AUTHORIZE THE  
BRINGING OF A CLASS ACTION & TO APPOINT  
THE APPLICANT AS REPRESENTATIVE  
(Art. 574 C.C.P. and following)**

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**ORIGINAL**

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Me Jeff Orenstein, Ext. 2  
Me Andrea Grass, Ext. 3  
**CONSUMER LAW GROUP INC.**  
1030 rue Berri, Suite 102  
Montréal, Québec, H2L 4C3  
Telephone: (514) 266-7863  
Telecopier: (514) 868-9690  
Email: [jorenstein@clg.org](mailto:jorenstein@clg.org)  
[agrass@clg.org](mailto:agrass@clg.org)

**BC 4013**

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Consumer Law Group