

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000755-153

(Class Action)
SUPERIOR COURT

E. KNAFO

Petitioner

-vs.-

TOYOTA CANADA INC., legal person duly constituted, having its head office at One Toyota Place, City of Scarborough, Province of Ontario, M1H 1H9

and

TOYOTA MOTOR SALES, U.S.A., INC.,
legal person duly constituted, having its head office at 19001 S. Western Ave., City of Torrance, State of California, 90501, U.S.A.

(...)

and

NISSAN CANADA INC., legal person duly constituted, having its head office at 5290 Orbitor Drive, P.O. Box 1709, City of Mississauga, Province of Ontario, L4W 4Z5

and

NISSAN NORTH AMERICA, INC., legal person duly constituted, having its head office at One Nissan Way, City of Franklin, State of Tennessee, 37067, U.S.A.

and

(...)

and

(...)

and

(...)

and

FORD MOTOR COMPANY OF CANADA, LIMITED, legal person duly constituted, having its head office at 1 The Canadian Road, City of Oakville, Province of Ontario, L6J 5E4

and

FORD MOTOR COMPANY, legal person duly constituted, having its head office at 1 The American Road, City of Dearborn, State of Michigan, 48121, U.S.A.

and

FCA CANADA INC., legal person duly constituted, having its head office at One, Riverside Drive, City of Windsor, Province of Ontario, N9A 5K3

and

FCA US LLC, legal person duly constituted, having its head office at 1000 Chrysler Drive, City of Auburn Hills, State of Michigan, 48326, U.S.A.

and

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And

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and

HYUNDAI AUTO CANADA CORP., legal person duly constituted, having its head office at 75 Frontenac Drive, City of Markham, Province of Ontario, L3R 6H2

and
(...)
and

HYUNDAI MOTOR AMERICA, INC., legal person duly constituted, having its head office at 10550 Talbert Avenue, City of Fountain Valley, State of California, 92728-0850, U.S.A.

and

KIA CANADA INC., legal person duly constituted, having its head office at 180 Foster Crescent, City of Mississauga, Province of Ontario, L5R 4J5

and

KIA MOTORS AMERICA, INC., legal person duly constituted, having its head office at 111 Peters Canyon Road, City of Irvine, State of California, 92606, U.S.A.

Respondents

**AMENDED MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
& TO DESIGNATE THE PETITIONER AS (...) REPRESENTATIVE**
(Art. 574 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioner 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 Canada who purchased and/or leased one or more of the Affected Vehicles containing a remote-control electronic keyless fob system, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all persons, entities or organizations resident in Quebec who purchased and/or leased one or more of the Affected Vehicles containing a remote-control electronic keyless fob system, or any other group to be determined by the Court;

2. “Affected Vehicles” means all vehicles that were designed, manufactured, imported/exported, distributed, tested, inspected, marketed, sold and/or leased by the Respondents in Canada that contain a remote-control electronic keyless fob system (hereinafter “Keyless Fobs”) including, but not necessarily limited to, the following list of vehicles:

<p><u>Ford Vehicles</u> [Called “Intelligent Access with Push-Button Start”]</p> <ul style="list-style-type: none">• Taurus<ul style="list-style-type: none">○ 2010-2013 – optional equipment with SEL and Limited trim levels○ 2010-2013 – standard equipment with SHO trim level• Fiesta<ul style="list-style-type: none">○ 2011-2012 – optional equipment with SEL Sedan / SES Hatchback trim levels○ 2013 – standard equipment with Titanium Sedan & Hatchback trim levels○ 2014-2015 – standard equipment with Titanium Sedan & Hatchback / ST Hatchback trim levels• Explorer<ul style="list-style-type: none">○ 2011-2015 – standard equipment with Limited trim level	<p><u>Lincoln Vehicles</u> [Called “Intelligent Access with Push-Button Start”]</p> <ul style="list-style-type: none">• MKS<ul style="list-style-type: none">○ 2009 – optional equipment○ 2010-2013 – standard equipment• MKT<ul style="list-style-type: none">○ 2010-2013 – standard equipment• MKX<ul style="list-style-type: none">○ 2011-2013 – standard equipment
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<ul style="list-style-type: none"> ○ 2014-2015 – optional equipment with Sport trim level ○ 2016 – standard equipment on XLT / Limited / Sport / Platinum trim levels ● Focus <ul style="list-style-type: none"> ○ 2012 – standard equipment on Titanium trim level only ○ 2013-2014 – standard equipment on Titanium Sedan & Hatchback / ST Hatchback trim levels ● Focus Electric <ul style="list-style-type: none"> ○ 2012-2015 – standard equipment ● C-Max Hybrid <ul style="list-style-type: none"> ○ 2013-2013 – standard equipment on SEL trim level only ● Edge <ul style="list-style-type: none"> ○ 2011-2012 – optional equipment on Limited / Sport trim levels only ● Escape <ul style="list-style-type: none"> ○ 2013 – optional equipment on SEL trim level ○ 2013 – standard equipment on Titanium trim level only ● Flex <ul style="list-style-type: none"> ○ 2013 – standard equipment on Limited trim level only 	
<p><u>Toyota Vehicles</u> [Called “Smart Key System”]</p> <ul style="list-style-type: none"> ● Prius <ul style="list-style-type: none"> ○ 2004-2009 – optional equipment only ○ 2010-2015 – standard equipment ● Prius V (station wagon variant) <ul style="list-style-type: none"> ○ 2012-2015 – standard equipment ● Prius Plug-In <ul style="list-style-type: none"> ○ 2012-2015 – standard equipment ● Prius C (compact car variant) <ul style="list-style-type: none"> ○ 2012-2015 – optional equipment only ● 4Runner <ul style="list-style-type: none"> ○ 2010-2015 – standard equipment ● Avalon 	<p><u>Lexus Vehicles</u> [called “SmartAccess”]</p> <ul style="list-style-type: none"> ● CT200h <ul style="list-style-type: none"> ○ 2011-2015 – standard equipment ● ES350 <ul style="list-style-type: none"> ○ 2007-2015 – standard equipment ● ES300h <ul style="list-style-type: none"> ○ 2013-2015 – standard equipment ● GS300 <ul style="list-style-type: none"> ○ 2006 – standard equipment ● GS350 <ul style="list-style-type: none"> ○ 2007-2015 – standard equipment ● GS430 <ul style="list-style-type: none"> ○ 2007 – standard equipment ● GS450H <ul style="list-style-type: none"> ○ 2007-2015 – standard equipment ● GS460

<ul style="list-style-type: none"> ○ 2005-2012 – standard equipment, available on Limited trim level only ○ 2013-2015 – standard equipment ● Avalon Hybrid <ul style="list-style-type: none"> ○ 2013-2015 – standard equipment ● Camry Hybrid <ul style="list-style-type: none"> ○ 2007-2015 – standard equipment ● Camry <ul style="list-style-type: none"> ○ 2011-2015 – optional equipment only available on the 4cyl SE and 4cyl ● XLE trim levels <ul style="list-style-type: none"> ○ 2011-2015 – standard equipment only on the V6 SE and V6 XLE trim levels ● Corolla <ul style="list-style-type: none"> ○ 2014 – optional equipment only available on the LE CVT Plus / LE CVT Premium / LE ECO CVT Plus / LE ECO CVT Premium / S CVT Plus / S CVT Premium trim levels ○ 2014 – standard equipment on S 6-Speed Manual Transmission trim level ○ 2015 – optional equipment <i>only</i> available on the LE CVT Plus / LE ECO CVT Plus / S CVT Plus trim levels ○ 2015 – standard equipment on S 6MT / LE CVT Premium / LE ECO CVT Premium / S CVT Premium trim levels ● Highlander <ul style="list-style-type: none"> ○ 2008-2009 – standard equipment on the 4x2 V6 Limited 5-Speed Auto / 4x4 V6 Limited 5-Speed Auto trim levels ○ 2010 – standard equipment on 4x4 V6 Limited 5-Speed Auto trim level only ○ 2011-2014 – standard equipment on Limited trim level only ○ 2015 – standard equipment on Limited / XLE trim levels only 	<ul style="list-style-type: none"> ○ 2008-2011 – standard equipment ● GS350 F Sport <ul style="list-style-type: none"> ○ 2013-2015 – standard equipment ● GS450h F Sport <ul style="list-style-type: none"> ○ 2015 – standard equipment ● GX460 <ul style="list-style-type: none"> ○ 2010-2015 – standard equipment ● HS250h <ul style="list-style-type: none"> ○ 2010-2012 – standard equipment ● IS250 <ul style="list-style-type: none"> ○ 2006-2015 – standard equipment ● IS350 <ul style="list-style-type: none"> ○ 2006-2015 – standard equipment ● IS250C <ul style="list-style-type: none"> ○ 2010-2015 – standard equipment ● IS350C <ul style="list-style-type: none"> ○ 2010-2015 – standard equipment ● IS F <ul style="list-style-type: none"> ○ 2011-2013 – standard equipment ● IS F Sport <ul style="list-style-type: none"> ○ 2014 – standard equipment ● IS250 F Sport <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment ● IS350 F Sport <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment ● LS430 <ul style="list-style-type: none"> ○ 2004-2006 – optional equipment ● LS460 <ul style="list-style-type: none"> ○ 2007-2015 – standard equipment ● LS460 L (long wheelbase) <ul style="list-style-type: none"> ○ 2007-2015 – standard equipment ● LS600h L (hybrid long wheelbase) <ul style="list-style-type: none"> ○ 2008-2015 – standard equipment ● LS460 Sport <ul style="list-style-type: none"> ○ 2011-2012 – standard equipment ● LS460 F Sport <ul style="list-style-type: none"> ○ 2013-2015 – standard equipment ● LX570 <ul style="list-style-type: none"> ○ 2008-2015 – standard equipment ● NX200T <ul style="list-style-type: none"> ○ 2015 – standard equipment ● NX200T F Sport <ul style="list-style-type: none"> ○ 2015 – standard equipment ● NX300H <ul style="list-style-type: none"> ○ 2015 – standard equipment
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<ul style="list-style-type: none"> • Highlander Hybrid <ul style="list-style-type: none"> ○ 2008-2015 – standard equipment on Limited trim level only • Land Cruiser <ul style="list-style-type: none"> ○ 2008-2015 – standard equipment on all trim levels • RAV4 <ul style="list-style-type: none"> ○ 2009-2015 – standard equipment on Limited trim level ○ 2015 – optional equipment on the XLE trim level • Sienna <ul style="list-style-type: none"> ○ 2011-2015 – standard equipment on Limited trim level ○ 2011-2014 – optional equipment on the XLE trim level ○ 2015 – standard equipment on SE Premium / XLE / XLE Premium / Limited / Limited Premium trim levels ○ 2015 – optional equipment on SE trim level • Venza <ul style="list-style-type: none"> ○ 2009-2011 – optional equipment on all trim levels ○ 2012-2015 – standard equipment on XLE / Limited trip levels 	<ul style="list-style-type: none"> • RC350 <ul style="list-style-type: none"> ○ 2015 – standard equipment • RC350 F Sport <ul style="list-style-type: none"> ○ 2015 – standard equipment • RC F <ul style="list-style-type: none"> ○ 2015 – standard equipment • RX350 <ul style="list-style-type: none"> ○ 2010-2015 – standard equipment • RX450H <ul style="list-style-type: none"> ○ 2010-2015 – standard equipment • RX350 F Sport <ul style="list-style-type: none"> ○ 2013-2015 – standard equipment
<p><u>Nissan Vehicles</u> [called “Intelligent Key”]</p> <ul style="list-style-type: none"> • Murano <ul style="list-style-type: none"> ○ 2005-2007 – optional equipment with SL / SE trim levels only ○ 2009 – optional equipment with SL trim level only ○ 2009 – standard equipment on LE trim level only ○ 2010-2015 - standard equipment on all trim levels • Altima Sedan <ul style="list-style-type: none"> ○ 2007-2009 – standard equipment for all trim levels ○ 2010-2012 – standard equipment for 2.5 S / 3.5 SR trim levels only 	<p><u>Infiniti Vehicles</u> [Called “Intelligent Key”]</p> <ul style="list-style-type: none"> • FX35 <ul style="list-style-type: none"> ○ 2003-2008 – optional equipment on V6 AWD / V6 RWD trim levels ○ 2009-2012 – standard equipment on all trim levels • FX45 <ul style="list-style-type: none"> ○ 2003-2005 – optional equipment on V8 AWD trim level ○ 2006-2008 – standard equipment on V8 AWD trim level • FX50 <ul style="list-style-type: none"> ○ 2009-2013 – standard equipment on all trim levels • FX37

<ul style="list-style-type: none"> ○ 2013-2015 – standard equipment for 2.5 S / 2.5 SV / 2.5 SL / 3.5 S / 3.5 SV / 3.5 SL trim levels only ● Altima Hybrid <ul style="list-style-type: none"> ○ 2007-2011 – standard equipment on all trim levels ● Altima Coupe <ul style="list-style-type: none"> ○ 2008-2013 – standard equipment on all trim levels ● Maxima <ul style="list-style-type: none"> ○ 2007-2016 – standard equipment on all trim levels ● Sentra <ul style="list-style-type: none"> ○ 2007-2012 – optional equipment SE-R trim level ○ 2008-2012 – standard equipment on 2.0 SL trim level ○ 2008-2012 – optional equipment on 2.0 S trim level ○ 2009-2012 – optional equipment on 2.0 SR trim level ○ 2013-2015 - standard equipment on SL trim level ○ 2013-2014 – optional equipment on SV / SR trim levels ○ 2015 – standard equipment on SV / SR trim levels ● Versa <ul style="list-style-type: none"> ○ 2007 – optional equipment on 1.8 SL trim level ○ 2008-2011 – optional equipment on Hatchback SL / Sedan SL trim levels ● Versa Hatchback <ul style="list-style-type: none"> ○ 2012 – standard equipment on 1.8 SL trim level ● Versa Sedan <ul style="list-style-type: none"> ○ 2014 – standard equipment on 1.8 SL trim level ○ 2014-2015 – standard equipment on SL trim level ● Versa Note <ul style="list-style-type: none"> ○ 2014 – standard equipment on SV w/ SL trim level ○ 2015 – standard equipment on SL trim level 	<ul style="list-style-type: none"> ○ 2013 – standard equipment on all trim levels ● G35 Sedan <ul style="list-style-type: none"> ○ 2005-2006 – optional equipment on all trim levels (not optional with AWD or 6MT) ○ 2007-2008 – standard equipment ● G35 Coupe <ul style="list-style-type: none"> ○ 2006-2007 – optional equipment on all trim levels (not optional with 6MT) ● G37 Sedan <ul style="list-style-type: none"> ○ 2009-2013 – standard equipment ● G37 Coupe <ul style="list-style-type: none"> ○ 2009-2013 – standard equipment ● G37 Convertible <ul style="list-style-type: none"> ○ 2009-2013 – standard equipment ● M35 <ul style="list-style-type: none"> ○ 2006-2010 – standard equipment ● M45 <ul style="list-style-type: none"> ○ 2006-2010 – standard equipment ● M37 <ul style="list-style-type: none"> ○ 2011-2013 – standard equipment ● M56 <ul style="list-style-type: none"> ○ 2011-2013 – standard equipment ● M Hybrid <ul style="list-style-type: none"> ○ 2012-2013 – standard equipment ● EX35 <ul style="list-style-type: none"> ○ 2008-2012 – standard equipment ● EX37 <ul style="list-style-type: none"> ○ 2013 – standard equipment ● QX56 <ul style="list-style-type: none"> ○ 2008-2013 – standard equipment ● JX <ul style="list-style-type: none"> ○ 2013 – optional equipment only ● Q50 <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment ● Q50 Hybrid <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment ● Q60 <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment ● Q70 <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment ● Q70 Hybrid <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment
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<ul style="list-style-type: none"> • Armada <ul style="list-style-type: none"> ○ 2008-2009 – optional equipment on SE trim level ○ 2008-2009 – standard equipment on LE trim level ○ 2010 – standard equipment on Titanium / Platinum trim levels ○ 2011-2015 – standard equipment on SL / Platinum trim levels • Pathfinder <ul style="list-style-type: none"> ○ 2008 – optional equipment on LE trim level ○ 2009-2010 – optional equipment on SE trim level ○ 2009-2010 – standard equipment on LE trim level ○ 2011-2012 – standard equipment on Silver Edition / LE trim levels ○ 2013-2015 – standard equipment on SV / SL / Platinum trim levels • Rogue <ul style="list-style-type: none"> ○ 2008-2010 – optional equipment on SL trim level ○ 2011-2015 – standard equipment on SV trim level ○ 2014-2015 – standard equipment on SL trim level • 370Z Coupe <ul style="list-style-type: none"> ○ 2009-2015 – standard equipment on all trim levels • 370Z Roadster <ul style="list-style-type: none"> ○ 2010-2015 – standard equipment on all trim levels • Cube <ul style="list-style-type: none"> ○ 2009-2011 – optional equipment on 1.8 SL trim level ○ 2011-2012 – optional equipment on 1.8 S trim level ○ 2012 – standard equipment on 1.8 SL trim level ○ 2013-2014 – standard equipment on SL trim level • GT-R <ul style="list-style-type: none"> ○ 2009-2016 – standard equipment on all trim levels • Juke 	<ul style="list-style-type: none"> • QX50 <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment • QX60 <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment • QX60 Hybrid <ul style="list-style-type: none"> ○ 2015 – standard equipment • QX70 <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment • QX80 <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment
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<ul style="list-style-type: none"> ○ 2011-2014 – standard equipment on SV / SL trim levels ○ 2014 – standard equipment on NISMO trim level ○ 2015 – standard equipment on all trim levels ● Quest <ul style="list-style-type: none"> ○ 2011-2015 – standard equipment on all trim levels 	
<p>(...)</p>	<p>(...)</p>
<p><u>Chrysler Vehicles</u> [Called “Keyless Enter-N-Go”]</p> <ul style="list-style-type: none"> ● 300 <ul style="list-style-type: none"> ○ 2010 – standard equipment on 300C, SRT trim levels ○ 2011-2015 – standard equipment on all trim levels ● Town & Country <ul style="list-style-type: none"> ○ 2011-2015 – standard equipment on Limited trim level ○ 2011-2012 – optional equipment on Touring / Touring-L trim levels ○ 2013 – optional equipment on Touring-L trim level ○ 2014 – optional equipment on Touring L / 30th Anniversary trim levels ○ 2015 – standard equipment on Limited Platinum trim level ● 200 <ul style="list-style-type: none"> ○ 2015 – standard equipment on LX / Limited / 200S / 200C trim levels 	<p><u>Jeep Vehicles</u> [Called “Keyless Enter-N-Go”]</p> <ul style="list-style-type: none"> ● Grand Cherokee <ul style="list-style-type: none"> ○ 2011 – standard equipment on Laredo E / Laredo X / Limited / Overland trim levels ○ 2012 – standard equipment on Laredo E / Laredo X / Limited / Overland / Summit / SRT8 trim levels ○ 2013-2014 – standard equipment on Laredo E / Laredo X / Limited / Overland / Summit / SRT9 trim levels ○ 2015 – standard equipment on Laredo E / Laredo X / Limited / Overland / Summit / SRT10 trim levels ● Cherokee <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment on Limited trim level ● Renegade <ul style="list-style-type: none"> ○ 2015 – optional equipment on Latitude / Trailhawk / Limited trim levels
<p><u>Dodge Vehicles</u> [Called “Keyless Enter-N-Go”]</p> <ul style="list-style-type: none"> ● Challenger <ul style="list-style-type: none"> ○ 2009-2010 – standard equipment on SRT8 trim level (only those manufactured post-June 10, 2009) 	<p><u>RAM Vehicles</u> [Called “Keyless Enter-N-Go”]</p> <ul style="list-style-type: none"> ● 1500 <ul style="list-style-type: none"> ○ 2015 – standard equipment on SLT / Big Horn/Lone Star / Outdoorsman / Sport / Laramie /

<ul style="list-style-type: none"> ○ 2009-2010 – optional equipment on R/T trim level ● Charger <ul style="list-style-type: none"> ○ 2011-2015 – standard equipment on all trim levels ● Durango <ul style="list-style-type: none"> ○ 2011 – standard equipment on Crew / Crew/ Lux / Citadel / R/T trim levels ○ 2012-2013 – standard equipment on Crew / Citadel / R/T trim levels ○ 2014-2015 – standard equipment on all trim levels ● Journey <ul style="list-style-type: none"> ○ 2011-2015 - standard equipment on all trim levels ● Dart <ul style="list-style-type: none"> ○ 2013 – optional equipment on Limited / R/T trim levels ○ 2014-2015 – standard equipment on GT / Limited trim levels 	<p>Laramie Longhorn / Laramie Limited trim levels</p> <ul style="list-style-type: none"> ○ 2015 – optional equipment on Tradesman / Express trim levels
<p><u>Hyundai Vehicles</u> [Called “Proximity Key”]</p> <ul style="list-style-type: none"> ● Veracruz <ul style="list-style-type: none"> ○ 2007 – optional equipment on Limited trim level only ○ 2008-2012 – standard equipment on Limited trim level only ● Genesis <ul style="list-style-type: none"> ○ 2009-2015 – standard equipment on all trim levels ● Genesis Coupe <ul style="list-style-type: none"> ○ 2010-2013 – standard equipment on 2.0T Premium / 2.0T Track / 3.8 ● Grand Touring / 3.8 Track trim levels only <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment on all trim levels ● Elantra <ul style="list-style-type: none"> ○ 2011-2012 – optional equipment on Limited trim level only ● Elantra Sedan 	<p><u>Kia Vehicles</u> [Called “Push Button Start w/Smart Key”]</p> <ul style="list-style-type: none"> ● Borrego <ul style="list-style-type: none"> ○ 2009 – standard equipment on Limited trim level ● Optima <ul style="list-style-type: none"> ○ 2010 – standard equipment on SX trim level only ○ 2011-2013 – standard equipment on EX / SX trim levels ○ 2014-2015 – standard equipment on EX / SX / Limited trim levels ● Optima Hybrid <ul style="list-style-type: none"> ○ 2011-2015 – standard equipment on all trim levels ● Sportage <ul style="list-style-type: none"> ○ 2011 – optional equipment on EX trim level ○ 2012 – optional equipment on EX / SX trim levels ○ 2013 – optional equipment on EX trim level

<ul style="list-style-type: none"> ○ 2013-2015 – optional equipment on Limited trim level only ○ 2013-2015 – standard equipment on Sport trim level only ● Elantra Coupe <ul style="list-style-type: none"> ○ 2013 – optional equipment on SE trim level only ○ 2014 – optional equipment on all trim levels ● Elantra GT <ul style="list-style-type: none"> ○ 2013-2015 – optional equipment on all trim levels ● Equus <ul style="list-style-type: none"> ○ 2011-2015 – standard equipment on all trim levels ● Sonata 2.0T <ul style="list-style-type: none"> ○ 2011 – standard equipment on all trim levels ● Sonata <ul style="list-style-type: none"> ○ 2011-2014 – standard equipment on SE / Limited trim levels only ○ 2015 – optional equipment on Eco / Sport trim levels ○ 2015 – standard equipment on Limited / Sport 2.0T / Limited 2.0T trim levels ● Sonata Hybrid <ul style="list-style-type: none"> ○ 2012-2015 – standard equipment on all trim levels ● Azera <ul style="list-style-type: none"> ○ 2012-2015 – standard equipment on all trim levels ● Veloster <ul style="list-style-type: none"> ○ 2012-2015 – optional equipment on all trim levels ● Veloster Turbo <ul style="list-style-type: none"> ○ 2013-2015 – standard equipment on all trim levels ● Santa Fe <ul style="list-style-type: none"> ○ 2013-2015 – standard equipment on Limited trim level ○ 2014-2015 – optional equipment on GLS trim level ● Santa Fe Sport <ul style="list-style-type: none"> ○ 2013-2015 – optional equipment on base trim level 	<ul style="list-style-type: none"> ○ 2013 – standard equipment on SX trim level ○ 2014 – optional equipment on EX / SX trim levels ○ 2015 – optional equipment on EX trim level ○ 2015 – standard equipment on SX trim level ● Sorento <ul style="list-style-type: none"> ○ 2011 – standard equipment on EX trim level only ○ 2012-2013 – standard equipment on EX / SX trim levels ○ 2014 – optional equipment on LX (but not on LX V6) trim level ○ 2014-2015 – standard equipment on EX / SX / Limited trim levels ● Forte <ul style="list-style-type: none"> ○ 2011-2013 – optional equipment on EX / SX trim levels ○ 2014-2015 – optional equipment on EX trim level ○ 2015 – standard equipment on SX trim level ● Soul <ul style="list-style-type: none"> ○ 2011 – optional equipment on Sport trim levels ○ 2012-2013 – optional equipment on trim level ○ 2014-2015 – optional equipment on trim levels ● Cadenza <ul style="list-style-type: none"> ○ 2014-2015 – standard equipment on all trim levels ● Sedona <ul style="list-style-type: none"> ○ 2015 – standard equipment on EX / SX / SX Limited trim levels ● K900 <ul style="list-style-type: none"> ○ 2015 – standard equipment on all trim levels
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<ul style="list-style-type: none"> ○ 2013-2015 – standard equipment on 2.0T trim level ● Tucson <ul style="list-style-type: none"> ○ 2013-2015 – standard equipment on Limited trim level 	
(...)	(...)
(...)	(...)
(...)	(...)
(...)	(...)
(...)	(...)

3. Petitioner reserves the right to amend the definition and list of “Affected Vehicles” should further discovery and or investigation reveal that additional models, model-years, and model variations and trim levels are (...) affected;
4. The Respondents (defined below) designed, manufactured, imported/exported, distributed, tested, inspected, marketed, sold and/or leased the Affected Vehicles with Keyless Fobs which were associated with a serious, pervasive, and dangerous design and manufacturing defect, which place persons at risk of serious injury and/or death;
5. In addition, the Petitioner contends that the Respondents failed to disclose, despite longstanding knowledge, that the Keyless Fobs are defective and unsafe as they failed to include a basic safety mechanism whereby the Affected Vehicles, if left unattended with the engine still running, would automatically turn off after a certain period of time (hereinafter the “Defect”). The Respondents actively concealed the Defect and the fact that its existence would diminish both the intrinsic and the resale value of the Vehicles;
6. The Affected Vehicles have a dangerous propensity to cause carbon monoxide poisoning due to the lack of an “Auto-Off” feature compounded with the fact that these vehicles are made to be virtually silent, leaving a lack of any engine noise when exiting with the Keyless Fobs. The serious risk of injury is caused by the existence of the Defect in conjunction with the Respondents’ failure to recall, buy back, provide warnings about, and/or repair the Affected Vehicles;
7. Since at least 2007, if not earlier, the Respondents have known about the deadly consequences that can result when a driver exits a vehicle with the Keyless Fob (...) without having depressed the Start/Stop button. (...) Even though an Auto-Off feature can be implemented without significant effort or cost, the Respondents (...) have nevertheless refused to act;
8. In addition to the Respondents’ failure to implement an Auto-Off feature in the Affected Vehicles, they have also failed to take any other adequate precautions to prevent incidents. There are no effective warnings in the Affected Vehicles’ auto

manuals or sales brochures that carbon monoxide poisoning is a risk in the event that the driver removes the Keyless Fob without turning off the engine. Also, there are no adequate external audible alerts (i.e. such as honking, etc.) to warn drivers that the engine continues to operate even though the Keyless Fob has been removed;

9. "Auto-Off" is feasible for each of the Respondents to implement through a simple recall campaign. The Affected Vehicles could be modified to cure the Defect with a simple software update costing less than \$5.00 per vehicle and taking just 30 minutes of dealership time. Nevertheless, the Respondents have neglected or failed to remedy this dangerous Defect;
10. Class Members have no way to mitigate or change the Affected Vehicle's Keyless Ignition functionality to render the vehicles safe. Only the Respondents have the ability to institute a readily-available fix to remedy the Defect. Due to the technological nature of the Affected Vehicles, Class Members have no ability to rectify the Defect by any means through independent auto repair shops. The programming of the Affected Vehicles and the Keyless Fobs are based on the specific automakers' proprietary software. In short, the Petitioner and Class Members are unable on their own to cure the Defect. Only the Respondents can institute Auto-Off in the Affected Vehicles;
11. Shockingly, and as described herein, while some Respondents have instituted Auto-Off in new vehicles, they have not recalled or rectified older model vehicles with a basic software update that would provide a permanent Auto-Off remedy for this Defect. Nor have the Respondents warned owners and drivers of the Affected Vehicles of the deadly safety risk of the Defect;
12. By reason of this unlawful conduct, the Petitioner and members of the Class:
 - (a) Overpaid for the purchased price or leased payments of the Affected Vehicles
 - (b) Have suffered a diminished resale value of their Affected Vehicles
 - (c) Have suffered pain, suffering, trouble and inconvenience
 - (d) Have suffered personal injury (if applicable);

B) The Respondents

- The Toyota Group Respondents

13. Respondent Toyota Canada Inc. (hereinafter "Toyota Canada") is a Canadian corporation with its head office in Scarborough, Ontario. It is a wholly-owned subsidiary of non-party Toyota Motor Corporation (the world's largest automaker) 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 an extract from Industry Canada, produced herein *en liasse* as **Exhibit R-1**;

14. Respondent (...) Toyota Motor Sales, U.S.A., Inc. (hereinafter “Toyota U.S.A.”) is an American corporation with its head office in California. It is a subsidiary of non-party Toyota Motor Corporation;

15. During the Class Period, Respondents Toyota Canada and Toyota U.S.A. (collectively, “Toyota”), either directly or through a wholly-owned subsidiary, agent or affiliate, designed, manufactured, imported/exported, distributed, tested, inspected, marketed, sold and/or leased the Toyota and Lexus brands of Affected Vehicles throughout Canada, including within the province of Quebec;

16. Given the close ties between the Toyota Respondents and considering the preceding, they are solidarily liable for the acts and omissions of the other;

- The Nissan Group Respondents

17. Respondent Nissan Canada Inc. (hereinafter “Nissan Canada”) is a Canadian corporation with its head office in Mississauga, Ontario. It is a subsidiary of Respondent Nissan North America, Inc. and non-party Nissan Motor Co., Ltd. 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 an extract from Industry Canada, produced herein *en liasse* as, produced herein as **Exhibit R-3**;

18. Respondent Nissan North America, Inc. (hereinafter “Nissan North America”) is an American corporation with its head office in Tennessee. It is a parent company of Respondent Nissan Canada, (...) and is a subsidiary of non-party Nissan Motor Co., Ltd. Nissan North America’s operations consist of automotive styling, engineering, consumer and corporate financing, sales and marketing and distribution and manufacturing;

19. (...);

20. During the Class Period, Respondents Nissan Canada and Nissan North America (collectively, “Nissan”), either directly or through a wholly-owned subsidiary, agent or affiliate, designed, manufactured, imported/exported, distributed, tested, inspected, marketed, sold and/or leased the Nissan and Infiniti brands of Affected Vehicles throughout Canada, including within the province of Quebec;

21. Given the close ties between the Nissan Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- (...)

22.(...)

23.(...)

24.(...)

25.(...)

- The Ford Group Respondents

26. Respondent Ford Motor Company of Canada Limited (hereinafter “Ford Canada”) is a Canadian corporation with its head office in Oakville, Ontario. It is a wholly-owned subsidiary of Respondent Ford Motor Company 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-5**;

27. Respondent Ford Motor Company (hereinafter “Ford Motor”) is an American corporation with its head office in Michigan. It is the parent company of Respondent Ford Canada and it is one of the “Big Three” in the United States Automotive Industry¹. Ford Motor designs, manufactures, markets, distributes and sells Ford and Lincoln automobiles worldwide, including in Canada and in Quebec;

28. During the Class Period, Respondents Ford Canada, and Ford Motor (collectively, “Ford”), either directly or through a wholly-owned subsidiary, agent or affiliate, designed, manufactured, imported/exported, distributed, tested, inspected, marketed, sold and/or leased the Ford and Lincoln brands of Affected Vehicles throughout Canada, including within the province of Quebec;

29. Given the close ties between the Ford Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- The FCA Group Respondents (Formerly Chrysler)

30. Respondent FCA Canada Inc. (hereinafter “FCA Canada”)² is a Canadian corporation with its head office in Windsor, Ontario. It 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 an extract from Industry Canada, produced herein *en liasse* as **Exhibit R-6**;

¹ When used in relation to the United States automotive industry, most generally refers to the three major American automotive companies: Respondents Ford Motor Company, General Motors Corporation, and FCA US LLC (previously, Chrysler Group LLC).

² Prior to February 2, 2015, FCS Canada Inc. was named Chrysler Canada Inc.

31. Respondent FCA US LLC (hereinafter “Fiat Chrysler”)³ is an American corporation with its head office in Michigan and it is one of the “Big Three” in the United States Automotive Industry. Fiat Chrysler markets and distributes Chrysler vehicles, parts and accessories throughout the United States and Canada;

32. During the Class Period, Respondents FCA Canada and Fiat Chrysler (collectively, “Chrysler”), either directly or through a wholly-owned subsidiary, agent or affiliate, designed, manufactured, imported/exported, distributed, tested, inspected, marketed, sold and/or leased the Chrysler, Jeep, Dodge, and RAM brands of Affected Vehicles throughout Canada, including within the province of Quebec;

33. Given the close ties between the Chrysler Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

- (...)

34. (...)

35. (...)

36. (...)

37. (...)

38. (...)

- (...)

39. (...)

40. (...)

41. (...)

42. (...)

43. (...)

- (...)

44. (...)

45. (...)

46. (...)

³ Prior to December 16, 2014, Fiat Chrysler was named Chrysler Group LLC.

47.(...)

48.(...)

49.(...)

50.(...)

- (...)

51.(...)

52.(...)

53.(...)

54.(...)

- The Hyundai/ Kia Group Respondents

55. Respondent Hyundai Auto Canada Corp. (hereinafter “Hyundai Auto Canada”) is a Canadian corporation with its head office in Markham, Ontario. It is a wholly-owned subsidiary of Respondent Hyundai Motor America, Inc. 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-12**;

56.(...)

57. Respondent Hyundai Motor America, Inc. (hereinafter “Hyundai America”) is an American corporation with its head office in California. It is the parent company and/or sister company of Respondent Kia Motors America, Inc. It designs, manufactures, distributes, sells and/or leases Hyundai vehicles throughout the United States and 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-14**;

58. Respondent Kia Canada Inc. (hereinafter “Kia Canada”) is a Canadian corporation with its head office in Mississauga, Ontario. It is a subsidiary of Respondent Kia Motors America, Inc.;

59. Respondent Kia Motors America, Inc. (hereinafter “Kia America”) is an American corporation with its head office in California. It is a wholly-owned subsidiary and/or sister company of Respondent Hyundai America;

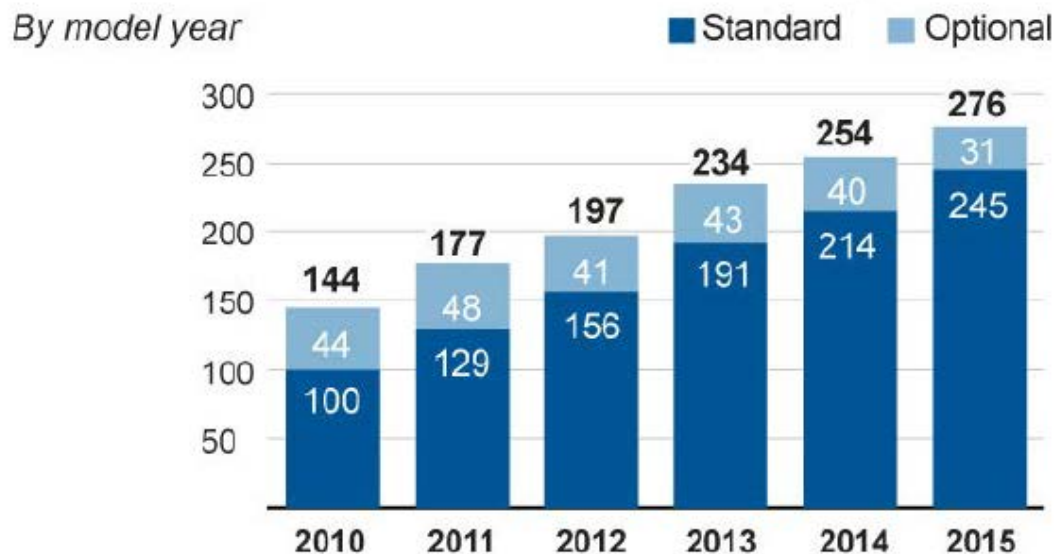
60. During the Class Period, Respondents Hyundai Auto Canada, (...) Hyundai America, Kia Canada, and Kia America (collectively, "Hyundai/ Kia"), either directly or through a wholly-owned subsidiary, agent or affiliate, designed, manufactured, imported/exported, distributed, tested, inspected, marketed, sold and/or leased Hyundai and Kia brands of Affected Vehicles throughout Canada, including within the province of Quebec;
61. Given the close ties between the Hyundai/ Kia Respondents and considering the preceding, they are all solidarily liable for the acts and omissions of the other;

C) The Situation

(i) Keyless Fobs - Background

62. Traditionally, as described hereinafter, vehicle keys were simple (hereinafter "Physical Key(s)"). Drivers inserted a Physical Key into the ignition cylinder to turn on the vehicle engine. Drivers took the overt physical action of turning the key back counter-clockwise in order to remove the Physical Key, thereby turning the engine off. When a Physical Key was removed from the vehicle, the engine could no longer operate. Drivers took comfort in knowing that if they removed the Physical Key from the vehicle, the engine was turned off;
63. Over the course of decades, drivers have associated the presence of the Physical Key with the operation of the vehicle's engine – each of the Respondents' Keyless Fobs operate contrary to this deep-seated driver expectation and behaviour;
64. The Keyless Fob operates very differently than traditional Physical Keys. A Keyless Fob allows the driver to start the vehicle's ignition by sending an electronic signal to the vehicle's computer. Once the electronic signal is transmitted and the vehicle senses the presence of the Keyless Fob, the driver can simply press a button to start the engine (the "Start/Stop Button");
65. Critically, although the presence of the Keyless Fob is necessary in order to start the engine, its absence has nothing to do with turning off the engine. In the Affected Vehicles, the engines do not turn off simply because the Keyless Fob is removed from the vehicle, no matter the distance that the Keyless Fob is from the vehicle. Therefore, a driver can stop the vehicle, put the transmission (...) into park, exit with the Keyless Fob, and the Affected Vehicles' engine will still be running no matter how far away the driver goes from the car and regardless of how long the engine is running;
66. Keyless Fobs were first introduced into the market (...) in or about 2003 and are becoming an increasingly common feature in modern cars. Over the years, an increasing number of vehicles in the United States and Canada are being sold with Keyless Fobs;

Number of models with keyless start



Sources: Edmunds.com

66.1 In many vehicles, a Keyless Fob is offered as part of an optional “convenience” or technology-upgrade package, costing the consumer additional money on their purchase and/or lease. In other vehicles, the Keyless Fob is standard equipment with the cost of the hardware and technology built into the vehicle’s price. In either case, consumers pay extra for the Keyless Fob feature, which adds additional costs to vehicles for hardware equipment and software development as compared to traditional cars with Physical Keys;

67. Vehicles with Keyless Fobs have several features that differentiate them from vehicles that use Physical Keys;

68. Firstly, vehicles with Keyless Fobs have a “Start/Stop” button on the dashboard, centre console, or shifter mechanism, rather than an ignition slot that accepts a Physical Key that is used to start the engine;



69. Secondly, the Affected Vehicles have a transponder (the Keyless Fob) that contains the circuitry that sends an electronic signal, rather than a conventional Physical Key with teeth;





70. In short, the Keyless Fob never needs to come into physical contact with the vehicle in order to start the engine. Instead, a Keyless Fob can remain in the driver's pocket, purse, jacket, or even on the passenger seat or elsewhere in the car and still be used in conjunction with the Start/Stop Button to start the engine;
71. However, while the presence of the Keyless Fob is necessary in order to turn the vehicle on, it is irrelevant to whether the engine is turned off. To turn off the engine, a driver still must press the Start/Stop Button, regardless of whether the Keyless Fob is still in the vehicle;
- 71.1 Keyless Fobs are marketed as the ultimate driving convenience – drivers can keep their “key” in their pockets or bags and start the vehicle without the hassle of having to find a Physical Key, which is especially convenient in cold or rainy weather conditions;
72. In the name of this co-called convenience, and often at an increased purchase price, the Respondents (...) (a) created Keyless Fobs without instituting adequate safeguards, pre and/or post-sale warnings, or other safety features; i.e. with an automatic engine shutoff to ensure that the vehicle's engine does not continue to run unabated, emitting deadly carbon monoxide; (b) failed to properly consider the ramifications of eliminating the physical and psychological connection between the vehicle and Physical Keys; (c) failed to undertake proper human factors analyses to understand the hazards associated with replacing the Physical Key with a Keyless Fob;
73. Drivers who had grown accustomed to using a Physical Key to turn off a vehicle – which traditionally was a simple and predictable task – may reasonably fail to appreciate and/or misunderstand that the Keyless Fob plays no role in turning off a Keyless Fob-equipped vehicle's engine. The Keyless Fob could be miles away from

the Keyless Fob-equipped vehicle, and the engine still would not automatically turn off;

74. The problem is further exacerbated when it is combined with modern-day engine technologies. First, the Affected Vehicles lack the tell-tale signs that the vehicle engine is turned on (i.e. noise and vibration). The Respondents (...) designed the Affected Vehicles to operate quietly with advanced engine vibration mounts, noise and harness reduction engineering, and exhaust baffling. Second, hybrid (and plug-in hybrid) vehicles also lack any tell-tale sign that the “engine” is running. In either case, drivers are left without any clear sign that an Affected Vehicle’s engine remains running even after parking the vehicle and removing the Keyless Fob from the vicinity (hereinafter “Undetected Engine Activity”);

(ii) Risk of Carbon Monoxide Poisoning Without Automatic Shut-Off

75. The Affected Vehicles are defective and unsafe because the Respondents have failed to include a basic safety mechanism whereby the Affected Vehicles, if left unattended with the engine still running, would automatically turn off after a certain period of time (hereinafter “Auto-Off”);

75.1 Despite the significant behaviour modification required to start and stop the vehicle engine when using Keyless Fobs, many drivers continue to mentally equate Keyless Fobs with Physical Keys. This confusion may result (and has resulted) in serious and deadly consequences as described in detail below;

76. In a number of incidents, drivers have parked their Affected Vehicles inside their garages and removed the Keyless Fobs, only to later discover that the engines never actually turned off. As a result, deadly carbon monoxide - often referred to as the “silent killer” because it is a colourless, odourless gas - can fill enclosed spaces and spread to the attached homes. The results have been at least 14 documented deaths and many more serious injuries requiring hospitalization - all from carbon monoxide poisoning and all of which would have been prevented if the vehicles were equipped with Auto-Off. Those injured by carbon monoxide poisoning caused by the Defect include drivers, their families, other occupants of the residence where the vehicle is left running in a garage, neighbours, and first responders;

77. Symptoms of carbon monoxide poisoning include headaches, weakness, dizziness, nausea, vomiting, shortness of breath, confusion, blurred vision, and loss of consciousness. Additionally, a victim may suffer irreversible brain damage or death. Vehicles in an enclosed environment, such as garages, can easily exceed 200 parts per million (“ppm”) of carbon monoxide and rise rapidly. Once levels rise to 1,600 ppm, persons suffer increased heart rates, dizziness, and nausea within 20 minutes and death in less than 2 hours. In 2011, it was reported that approximately 4.26 million Canadian homes had attached garages, the whole as appears more fully

from a copy of the Natural Resources Canada Survey of Household Energy Use dated 2011 (at Table 4.4 on page 58), produced herein as **Exhibit R-14A**;

78. Unfortunately, (...) inexplicably, and despite knowledge of the Defect and its serious and oftentimes deadly consequences, the Respondents have failed to implement an updated safety feature to prevent the Defect in the Affected Vehicles. In these vehicles, a driver may place the car into park, but due to Undetected Engine Activity, may not turn off the Affected Vehicle's engine. Thus, the Defect exists because the Affected Vehicle can emit dangerous (if not deadly) levels of carbon monoxide, especially if left running in an enclosed environment, such as an attached garage;

78.1 In some instances, the engine may continue to run even if the driver pushes the Start/Stop button. For example, in a recent recall in Canada, the Ford Group recalled 52,180 Affected Vehicles equipped with Keyless Fobs because, according to the official recall report:

Certain vehicles may fail to conform to Canada Motor Vehicle Safety Standard (CMVSS) 114 - Theft Protection and Rollaway Prevention. It may be possible for the engine to continue to run after turning the ignition key to the "off" position and removing the key (vehicles with standard ignition keys), or after pressing the Engine Start/Stop button (vehicles with push-button start and intelligent access keys), which is contrary to the requirements of the standard. As a result, a vehicle could be operated without the key, increasing the risk of theft or unintended vehicle movement, which could increase the risk of a crash causing injury and/or property damage and/or injury to bystanders. Correction: Dealers will update the body control module (BCM) software.

The whole as appears more fully from a copy of Transport Canada Recall # 2015298, dated July 2, 2015, produced herein as **Exhibit R-14B**;

78.2 In the United States, the Ford Group recalled 374, 781 vehicles, including the 2015 model year Escape, Focus, and CMax models equipped with Keyless Fobs because, according to the official recall report:

Description of the Noncompliance: On your vehicle, it may be possible for the engine to continue to run after turning the ignition key to the "off" position and removing the key (vehicles with standard ignition keys), or after pressing the Engine Start/ Stop button (vehicles with push-button start and intelligent access keys).

The whole as appears more fully from a copy of the NHTSA Part 573 Safety Recall Report 15V-436 dated July 1, 2015, produced herein as **Exhibit R-14C**;

78.3 In other words, because of software glitches, actually depressing the "Start/Stop" button failed to turn off the engine as intended;

79. Although all of the Affected Vehicles have Keyless Fobs, upon information and belief, none have an Auto-Off function. As a result, in just the past five years, at least 14 people have died and many more have been injured, requiring hospitalization due to carbon monoxide poisoning;

80. At least 35 complaints have been lodged with the U.S. National Highway Traffic Safety Administration ("NHTSA") by consumers about Defect, with reported incidents associated with Keyless Fobs. Despite (...) the growing number of deaths and injuries, the Respondents continue to ignore the serious and deadly risk of failing to include Auto-Off in its Affected Vehicles and instead have taken no action in response to these complaints. For example:

- a) On April 6, 2009, a person with a Toyota Group vehicle, a 2008 Lexus LS460, filed NHTSA complaint number 10264229, stating:

COMPLAINT REGARDING DANGER OF DEATH DUE TO CARBON MONOXIDE. THIS CAR IS KEYLESS WHICH OFTEN RESULTS IN THE FAILURE OF THEIR DRIVER SHUTTING OFF THE ENGINE WHICH IS AT TIMES PARKED INSIDE AN ENCLOSED GARAGE OF A HOME. THIS OCCURRED ON THREE DIFFERENT OCCASIONS AT MY HOME. THANK GOD I HAD A CARBON MONOXIDE ALARM IN MY HOME WHICH ALERTED ME OF THIS PROBLEM. LEXUS SHOULD HAVE INSTALLED SOME SORT OF SWITCH WHICH WOULD AUTOMATICALLY SHUT OFF THE ENGINE WHEN THE DRIVER SEAT HAS BEEN UNOCCUPIED FOR FIFTEEN MINUTES. **LEXUS STATES THEY HAVE RECEIVED MANY COMPLAINTS THROUGHOUT THE COUNTRY, HOWEVER THERE IS NOTHING THEY CAN DO ABOUT THIS PROBLEM AND DANGER. EXISTING CARS SHOULD BE RECALLED AND REPAIRED AND THIS SHOULD BE MANDATORY FOR ALL FUTURE CARS WITH A KEYLESS SYSTEM.**

- b) On May 4, 2009, a person with a Nissan Group vehicle, a 2009 Nissan Murano S, filed NHTSA complaint number 10267647, stating:

[MY CAR] COMES WITH PUSH BUTTON "START/STOP" ENGINE [...] THE DANGER IS WHEN YOU PARK THE CAR IN YOUR GARAGE...AND FORGET TO PUSH THE START/STOP BUTTON TO TURN THE ENGINE OFF... BECAUSE THIS TECHNOLOGY IS NEW, THE INSTINCT IS TO PULL THE KEY FOB OUT AND GET OUT OF THE CAR... THE ENGINE REMAINS ON AND IT IS QUIET ENOUGH THAT YOU DO NOT NOTICE THE ENGINE RUNNING... THE DANGER IS THAT CARBON MONOXIDE CAN FILL UP YOUR GARAGE AND HOUSE AND KILL THE INHABITANTS... I CONTACTED NISSAN VIA EMAIL. THEY HAD A TECH. REVIEW MY COMPLAINT AND RESPONDED AS FOLLOWS "DON'T

FORGET TO PUSH THE BUTTON TO TURN THE ENGINE OFF"...
OBVIOUSLY [NISSAN] DO[ES] NOT GET THE DANGER.

- c) On February 3, 2010, a person with a Nissan Group vehicle, a Nissan Altima, filed NHTSA complaint number 10304356, stating:

[I] WOULD LIKE TO BRING TO YOUR ATTENTION A DEFECT THAT I BELIEVE NEEDS TO BE CORRECTED IN AT LEAST SOME, IF NOT ALL, OF NISSAN, LATEST ALTIMA VEHICLES. THE PROBLEM OCCURS WHEN THE CAR IS LEFT RUNNING AND THE VEHICLE DOORS ARE CLOSED WITH THE REMOTE "KEYLESS". THIS PROBLEM COULD CREATE A SERIOUS SAFETY & HEALTH ISSUE IF A DRIVER FORGETS TO SHUT OFF THE ENGINE BEFORE USING THE REMOTE KEY TO CLOSE THE VEHICLE DOORS.

- d) On February 9, 2010, a person with a Toyota Group vehicle, a 2009 Toyota Camry Hybrid, filed NHTSA complaint number 10308004, stating:

SAFETY HAZARD!. 2009 TOYOTA CAMRY (LIKELY ALL HYBRID AUTOMOBILES) WILL CONTINUOUSLY RESTART THE GAS ENGINE TO RECHARGE THE BATTERY IF THE IGNITION SYSTEM IS NOT TURNED OFF WHEN DEPARTING THE VEHICLE. IF THE AUTO IS IN AN ATTACHED GARAGE THIS COULD RESULT IN ACCIDENTAL CO POISONING TO OCCUPANTS WITHIN THE DWELLING. I HAVE OBSERVED A HYBRID CONTINUOUSLY RESTARTING WHILE PARKED IN THE DRIVEWAY. THIS CAR IS USUALLY KEPT IN AN ATTACHED GARAGE. THE OWNER FORGOT TO TURN OFF THE IGNITION UPON LEAVING THE CAR. THIS IS LIKELY A COMMON EVENT. THIS WILL EVENTUALLY RESULT IN SERIOUSLY INJURY OR DEATH, AND MAY HAVE ALREADY HAPPENED AND NOT BEEN PROPERLY IDENTIFIED AND REPORTED.

- e) On April 28, 2010, a person with a Toyota Group vehicle, a 2007 Lexus LS460, filed NHTSA complaint number 10326861, stating:

I ARRIVED HOME AFTER DINNER [...] CLOSED THE GARAGE DOOR AND, LEAVING THE KEY FOB INSIDE THE VEHICLE, I ENTERED MY HOME AND EVENTUALLY WENT TO SLEEP. I WAS AWOKEN AT APPROX. 2:15AM BY A CARBON MONOXIDE ALARM LOCATED IN THE FOYER INSIDE MY HOME ADJACENT TO THE ENTRANCE TO THE GARAGE. I ENTERED THE GARAGE TO DISCOVER THAT THE CAR'S ENGINE WAS STILL RUNNING, THE GARAGE FILLED WITH NOXIOUS FUMES, AND THE ENTIRE VEHICLE EXTREMELY HOT TO TOUCH, INSIDE AND OUT. I OPENED THE GARAGE DOOR AND WAS EVENTUALLY ABLE TO SHUT DOWN THE ENGINE AND CLEAR OUT THE FUMES. AS I SEE IT, THE FAILURE HERE WAS TWO-FOLD: (1)

WHEN I OPENED MY DOOR TO EXIT THE CAR, NO ALARM OR OTHER SOUND ALERTED ME THAT THE ENGINE WAS STILL RUNNING, AS IS THE CASE WITH IGNITIONS REQUIRING KEYS. THIS IS PARTICULARLY PROBLEMATIC BECAUSE THE **CAR'S ENGINE RUNS IN VIRTUAL SILENCE**; AND (2) EVEN AFTER THE CAR WAS UNWITTINGLY LEFT IDLING WHILE IN PARK, **THE ENGINE DID NOT CUT OFF AFTER SOME PREDETERMINED PERIOD OF TIME**. I SPOKE TO MY LOCAL LEXUS DEALER, WHO SUGGESTED THAT I CONTACT LEXUS USA DIRECTLY. [...] **AFTER BEING TOLD BY LEXUS THAT THEY SEE NO PROBLEMS WITH THEIR KEYLESS IGNITION SYSTEM, I ELECTED TO TAKE ANOTHER APPROACH AND CONTACT NHTSA.** [...] **LEXUS HAS TAKEN NO RESPONSIBILITY FOR THIS INCIDENT WHICH NEARLY KILLED ME AND WHICH COULD KILL OTHERS, AND OFFERS NO SOLUTIONS OR FIXES TO THIS PROBLEM.**

- f) On May 28, 2010, a person with a Toyota Group vehicle, a 2009 Toyota Highlander Hybrid, filed NHTSA complaint number 10332639, stating:

OUR GARAGE IS ATTACHED TO OUR HOUSE WITH OUR BEDROOM ABOVE THE GARAGE. WITH 3 KIDS, BOTH MY WIFE AND I HAVE BEEN DISTRACTED LEAVING THE CAR IN THE GARAGE TO UNLOAD GROCERIES OR HELP THE CHILDREN. WHEN ON ELECTRIC POWER WE HAVE NEGLECTED TO TURN OFF THE IGNITION **SINCE THE [HYBRID] CAR IS SILENT [WHILE PARKED]**. ONLY WHEN THE CARBON-MONOXIDE DETECTOR SOUNDED IN OUR GARAGE DID WE REALIZE THE ENGINE HAD STARTED WHILE WE WERE IN THE HOUSE. WE THINK THIS COULD BE DEADLY TO OTHER FAMILIES WITHOUT CARBON MONOXIDE ALARMS WHO MAY ALSO FORGET TO TURN OFF THE ENGINE WHEN PARKED IN AN ATTACHED GARAGE WHILE ON ELECTRIC POWER.

- g) One death was associated with a Toyota Group vehicle, described in NHTSA complaint number 10375730, filed on January 5, 2011:

ON THE EVENING OF DECEMBER 13, 2010, VICTIM LEFT HIS CAR RUNNING IN HIS GARAGE. THE CAR HAS A "SMART KEY" WHICH IS A REMOTE KEY-FOB. THIS MEANS THAT HE DOES NOT HAVE TO TURN A KEY TO TURN THE IGNITION ON AND OFF. INSTEAD, THE CAR TURNS ON AND OFF BY PRESSING THE SAME BUTTON ON THE DASH BOARD. HE MUST HAVE FORGOTTEN TO TURN THE CAR OFF. HE THEN WENT TO SLEEP AND SUFFERED CARBON MONOXIDE POISONING DURING THE NIGHT. HE WAS FOUND UNCONSCIOUS ON THE FLOOR THE NEXT MORNING. THE CAR WAS STILL RUNNING. THE VICTIM WAS TAKEN TO THE HOSPITAL, WHERE HE IS IN THE ICU AND SEDATED.

- h) One injury and one death was associated with a Toyota Group vehicle, a 2006 Lexus IS 250, described in NHTSA complaint number 10380153, filed on February 3, 2011:

A YOUNG LADY PARKED HER 2006 IS 250 LEXUS, EQUIPPED WITH A "SMART KEY" SYSTEM, IN HER ATTACHED GARAGE WHICH WAS ON THE GROUND FLOOR OF HER THREE STORY TOWNHOUSE. SHE EXITED THE VEHICLE WITH THE "KEY FOB" ON HER PERSON, BUT EITHER INADVERTENTLY FORGOT TO SHUT DOWN THE ENGINE OR PUSHED THE START BUTTON IN AN EFFORT TO DO SO BUT WAS UNSUCCESSFUL. THE YOUNG LADY DID NOT REALIZE THE VEHICLE WAS RUNNING AND AFTER ENTERING HER TOWNHOUSE FROM THE GARAGE PLACED THE "KEY FOB" ON A TABLE ON THE SECOND FLOOR. THE YOUNG LADY REMAINED IN HER TOWNHOUSE WITH THE VEHICLE RUNNING IN THE GARAGE UNTIL IT RAN OUT OF GASOLINE AND STOPPED. THE YOUNG LADY WAS SUBSEQUENTLY FOUND DEAD IN HER BATHROOM ON THE THIRD FLOOR. THE DEATH WAS DETERMINED TO HAVE BEEN CAUSED BY CARBON MONOXIDE POISONING AS A RESULT OF THE VEHICLE HAVING BEEN LEFT RUNNING IN THE GARAGE. THE VEHICLE LACKED A "SHUT-DOWN" SWITCH TO SHUT THE ENGINE OFF WHEN UNOCCUPIED AND INERT FOR AN INTERVAL OF TIME AND/OR LACKED AN ADEQUATE AURAL WARNING THAT THE "KEY FOB" WAS BEING REMOVED FROM THE VEHICLE WHILE IT WAS RUNNING OR THE OPERATOR HAD EXITED THE VEHICLE WHILE THE ENGINE WAS RUNNING.

- i) Two injuries were associated with a person with a Toyota Group vehicle, a 2011 Toyota Camry XLE, described in NHTSA complaint number 10394590, filed on March 20, 2011:

MY WIFE AND I ARE RETIRED IN FLORIDA. WE PARKED OUR 2011 TOYOTA CAMRY XLE WITH KEYLESS IGNITION IN OUR GARAGE AND BROUGHT THE KEY FOB WITH US INTO OUR HOME. MY WIFE EITHER DID NOT PUSH THE ENGINE OFF BUTTON HARD ENOUGH OR FORGOT TO PUSH THE ENGINE OFF BUTTON TO TURN OFF THE ENGINE. WE DID NOT HEAR THE 3 SHORT BEEPS TELLING US THE ENGINE WAS RUNNING AND THE KEY FOB WAS REMOVED FROM THE VEHICLE. THE GARAGE IS ATTACHED TO OUR HOME. THE VEHICLE WAS LEFT RUNNING IN OUR CLOSED GARAGE. CARBON MONOXIDE FUMES ENTERED OUR HOME CAUSING HEADACHES, NAUSEA, AND LETHARGY. OUR HOME CARBON MONOXIDE DETECTOR SOUNDED AN ALARM. WE INVESTIGATED AND FOUND THAT WE LEFT THE VEHICLE RUNNING IN THE GARAGE FOR 90 MINUTES. THE GARAGE TEMPERATURE WAS OVER 100(F) DEGREES. [...] WE WERE SICKENED BY THE CARBON MONOXIDE FUMES AND CAME CLOSE TO LOSING OUR LIVES. THE KEYLESS IGNITION OPTION IS TOO

DANGEROUS. THERE NEEDS TO BE A CHANGE IN DESIGN THAT TURNS OFF THE ENGINE WHEN THE KEY FOB LEAVES THE VEHICLE AND THE ENGINE OFF BUTTON IS NOT DEPRESSED.

- j) On June 10, 2011, a person with a General Motors (...) vehicle, a 2011 Cadillac SRX, filed NHTSA complaint number 10405921, stating:

ON THE 2011 CADILLAC SRX THERE IS NO WARNING SOUNDED IF YOU LEAVE YOUR KEYLESS IGNITION RUNNING AND LEAVE THE VEHICLE. YESTERDAY, I INADVERTENTLY LEFT THE VEHICLE RUNNING AND **THE CAR DID NOT BEEP OR GIVE ME ANY INDICATION THAT I HAD DONE SO.** THESE KEYLESS IGNITION SYSTEMS ARE VERY DANGEROUS BECAUSE IF YOU ACCIDENTALLY LEAVE THE CAR RUNNING IN THE GARAGE YOU COULD INADVERTENTLY CAUSE A CARBON MONOXIDE POISONING SITUATION. IT IS A VERY UNSAFE FEATURE THAT COULD BE CORRECTED WITH A SIMPLE WARNING SIGNAL. THERE NEEDS TO BE SOME TYPE OF WARNING, A CAR HORN BEEP OR SOMETHING TO LET THE DRIVER KNOW THAT THE VEHICLE IS RUNNING WHEN THE DRIVER LEAVES THE VEHICLE.

- k) On November 29, 2011, a person with a Toyota Group vehicle, a 2010 LEXUS RX450h, filed NHTSA complaint number 10437757, stating:

HYBRID VEHICLE + KELSEY [sic, KEYLESS] IGNITION = DEADLY COMBINATION. WE ACCIDENTALLY LEFT OUR 2010 LEXUS RX450H IN THE GARAGE WITH THE IGNITION "ON" AND TURNED IN FOR THE NIGHT. **SINCE IT IS A HYBRID, IT MAKES NO SOUND - EVEN WHEN "RUNNING"**. SO WE WERE UNAWARE THE IGNITION WAS STILL ON. MUCH LATER IN THE EVENING, AFTER THE BATTERY HAD DEPLETED, THE GAS ENGINE CAME ON, FILLING OUR GARAGE WITH CARBON MONOXIDE. HAD I NOT GONE BACK OUT TO RETRIEVE SOMETHING FROM THE GARAGE AND NOTICED THAT BY THIS TIME THE CAR'S GAS ENGINE WAS RUNNING, I LIKELY WOULDN'T BE WRITING THIS E-MAIL. THIS IS A VERY DANGEROUS FLAW IN AN OTHERWISE GREAT CAR. THE TINY RED VS. GREEN LED ON THE IGNITION BUTTON IS NOT ENOUGH INDICATION THAT THE CAR IS RUNNING. AN AUDIBLE ALARM OR SOME TYPE OF POSITIVE INTERLOCK IS NEEDED.

- l) On August 17, 2012, a person with a General Motors (...) vehicle, a Chevrolet Volt, filed NHTSA complaint number 10471278, stating:

THERE IS AN APPARENT DESIGN FLAW IN THE CHEVY VOLT RELATED TO AN INDIVIDUAL EXITING THE VEHICLE WITHOUT POWERING DOWN THE SYSTEMS WHICH COULD RESULT IN CO POISONING OR DEATH AND POSSIBLE FIRE HAZARDS IN THE RIGHT SITUATION. THE VOLT USES A KEY FOB SYSTEM AND PUSH BUTTON START. KEY

FOBS ARE ALREADY PROVING TO BE A SAFETY ISSUE. WITH THE VOLT, THE SITUATION IS EXACERBATED. SINCE THE CAR IS VIRTUALLY SILENT, IT IS VERY EASY FOR A PERSON TO FORGET TO TURN OFF THE CAR, AND WHEN THEY EXIT, **THE LACK OF ANY ENGINE NOISE** WILL OFTEN NOT GIVE THEM THE CUES NECESSARY TO REALIZE THEIR MISTAKE. WHEN THE INDIVIDUAL LEAVES THE CAR POWERED ON, THE BATTERY WILL DRAIN. WHEN THE BATTERY IS SUFFICIENTLY DRAINED, AN ENGINE WILL TURN ON AND CHARGE THE BATTERIES. THIS IS SIGNIFICANT, BECAUSE THIS WILL LIKELY HAPPEN SOMETIME AFTER A PERSON HAS PARKED THEIR CAR. THE RESULT WILL BE A GARAGE FILLING WITH CO FUMES. THE VOLT WILL CONTINUE TO RUN THE ENGINE, IN CYCLES, UNTIL THERE IS NO MORE GAS IN THE TANK. WHILE THERE HAVE ALREADY BEEN DEATHS ASSOCIATED WITH NON-ELECTRIC VEHICLES EQUIPPED WITH KEY FOBS AND CO POISONING AS THE RESULT OF THE DRIVER FORGETTING TO TURN THE CAR, THIS IS GOING TO BE MUCH MORE COMMON IN ELECTRIC HYBRID VEHICLES. IN AN UNSCIENTIFIC POLL CONDUCTED ON GM-VOLT.COM, OF 100 RESPONDENTS, 30% ADMITTED TO FORGETTING TO TURN THEIR VEHICLE OFF. ONE USER ON THE SITE FORGOT TO TURN THE VEHICLE OFF, AND ENTERED THE GARAGE SOMETIME LATER TO FIND IT FILLED WITH FUMES. THERE NEEDS TO BE PASSIVE (HORN SIGNALS UPON EXIT) OR ACTIVE (WELL ENGINEERED AUTO SHUTOFF) SYSTEMS PUT IN PLACE TO PREVENT A TRAGEDY.

- m) One injury was reported associated with a person with a Toyota Group vehicle, a 2011 Lexus ES350, described in NHTSA complaint number 10458009, filed on May 10, 2012:

CONTACT OWNS A ...2011 LEXUS ES350. THE CONTACT STATED THAT THE DRIVER EXITED THE VEHICLE AND FORGOT TO SHUT THE IGNITION OFF. THE VEHICLE WAS EQUIPPED WITH A PUSH TO START AND STOP FEATURE. THE ENGINE CONTINUED TO RUN UNTIL A CARBON MONOXIDE DETECTOR SOUNDED. THE DRIVER SUFFERED CARBON MONOXIDE POISONING AND AS A RESULT, WAS TAKEN TO A HOSPITAL TO TREAT THE CONDITION.

- n) One death was reported associated with a person with a Toyota Group vehicle, a 2006 Toyota Avalon, described in NHTSA complaint number 10497402, filed on February 11, 2013:

CONSUMER STATED HER PARENTS PURCHASED A NEW VEHICLE BACK IN 2006. THE VEHICLE CAME EQUIPPED WITH A KEYLESS REMOTE STARTING SYSTEM. ALL IT TOOK, WAS TO HAVE THE DEVICE IN ONES POCKET AND HER FATHER COULD GET IN THE VEHICLE, PRESS A BUTTON AND THE VEHICLE WOULD START UP.

WHEN HER FATHER ARRIVED AT HIS DESTINATION, ALL HE HAD TO DO WAS, PUT THE VEHICLE IN PARK, PRESS THE REMOTE BUTTON AND THE ENGINE WOULD SHUT OFF. ON JUNE 28, 2012, WHEN THE CONSUMERS FATHER RETURNED HOME, HE PARKED THE VEHICLE IN THE GARAGE AND WENT IN THE HOUSE. HOURS LATER, THE CONSUMERS FATHER WAS FOUND DECEASED IN THE HOUSE FROM CARBON MONOXIDE POISONING. [...] AFTER HER DAD TOOK HIS PACKAGES OUT OF THE CAR AND INTO THE HOUSE, HE CLOSED THE GARAGE, AND NEVER SHUT OFF THE REMOTE STARTER BUTTON. FROM MORNING ALL THROUGH THE DAY, CARBON MONOXIDE SLOWLY SEEPED IN THE KITCHEN WHERE THE GARAGE WAS ATTACHED, THROUGH THE KITCHEN AND INTO THE DEN WHERE HER DAD WAS SITTING. **THE CONSUMER STATED HAD THERE BEEN AN AUTOMATIC SHUT OFF SYSTEM THAT ACTIVATED AFTER A PRESET TIME, WHEN THERE WAS NO WEIGHT IN THE DRIVER'S SEAT, MUCH LIKE THE AIR BAGS ON THE PASSENGER SIDE, THIS SENSELESS TRAGEDY WOULD HAVE NEVER OCCURRED.**

- o) On April 5, 2013, a person with a Nissan Group vehicle, a Nissan Altima, filed NHTSA complaint number 10507204, stating:

I WAS DRIVING A BRAND-NEW, NISSAN ALTIMA RENTAL CAR ON A BUSINESS TRIP. AFTER I RETURNED TO MY HOTEL ONE AFTERNOON, I FORGOT TO TURN THE ENGINE OFF. THIS VEHICLE HAS A KEY FOB AND A "START/STOP" BUTTON ONLY. THERE IS NO METAL KEY. AFTER I EXITED THE VEHICLE, I NOTICED THAT THE HORN DID NOT HONK WHEN I LOCKED THE VEHICLE WITH THE KEY FOB. THE TRUNK RELEASE DID NOT AUTOMATICALLY OPEN WHEN I USED THE KEY FOB. I MANUALLY PRESSED A BUTTON UNDER THE TRUNK LID TO RETRIEVE MY BAG. THE NEXT MORNING, I NOTICED STEAM AND WATER COMING OUT OF THE EXHAUST TAILPIPES. (IT WAS APP. 34 DEGREES THAT MORNING.) I DISCOVERED THAT THE ENGINE WAS STILL RUNNING, AND THE CAR USED APP[ROXIMATELY] 3/8S OF A TANK OF GASOLINE OVERNIGHT. MY CONCERN IS THAT A CAR LIKE THIS COULD BE DRIVEN INTO A GARAGE WITH THE ENGINE LEFT ON, AND THEN THE OCCUPANTS OF THE RESIDENCE COULD GET CARBON MONOXIDE POISONING FROM THE EXHAUST FUMES. THIS VEHICLE NEEDS SOME TIME [sic, KIND] OF WARNING BELL, CHIME, ETC. TO REMIND THE DRIVER THAT THE ENGINE IS STILL RUNNING IF THEY OPEN THE DRIVER'S SIDE DOOR AND/OR EXIT THE VEHICLE.

- p) On July 19, 2013, a person with a Toyota Group vehicle, a 2012 Toyota Camry, filed NHTSA complaint number 10525838, stating:

AT LEAST FOUR OCCASIONS THE MOTOR HAS REMAINED RUNNING AFTER I LEFT THE CAR....THIS CAR HAS PUSH BUTTON IGNITION....DID I NOT TURN IF OFF PROPERLY OR IS THERE A SYSTEM MALFUNCTION....I PARK MY CAR IN AN ATTACHED GARAGE TO OUR HOUSE AND THE DOOR TO OUR HOUSE FROM THE GARAGE IS LEFT OPEN IN THE SUMMER FOR VENTILATION.....IF THE CAR REMAINED RUNNING UNKNOWN TO US DURING THE NIGHT WE WOULD PERISH FROM THE CARBON MONOXIDE FUMES....I FEEL THIS IS A SAFETY ISSUE THAT NEEDS TO BE ADDRESSED BY TOYOTA, IF NOT ONLY FOR US BUT OTHER TOYOTA CAMRY OWNERS....SO FAR TOYOTA HAS NOT ADDRESSED THIS ISSUE TO OUR SATISFACTION....**IN FACT THE OWNER OF THE DEALERSHIP WHERE WE PURCHASED THE CAR LAUGHED AT OUR SAFETY CONCERN**.....THE ALARM SYSTEM +ON THE CAR IS USELESS AS THE ALARM IS THE SAME WHEN I START THE CAR AS WHEN I STOP THE CAR AND HAVE THE DOOR OPEN OR IF DO NOT TURN OFF THE ENGINE AND GET OUT OF THE CAR AND CLOSE THE DOOR....ALL THESE ALARMS SOUND THE SAME AND MAKE THEM INEFFECTIVE....I HAVE A HEARING PROBLEM RELATED TO EAR SURGERY REPLACING MY BONES OF HEARING BY AN IMPLANT IN MY RIGHT EAR WHICH ALSO MAKES IT HARD FOR ME TO HEAR IF THE ENGINE IS RUNNING OR TURNED OFF.....THE ALARM SYSTEM ON THIS CAR NEEDS TO BE MODIFIED TO ENSURE NOTIFICATION TO THE DRIVER IF THE ENGINE IS RUNNING. ...

- q) On July 31, 2014, a person with a Nissan Group vehicle filed NHTSA complaint number 10617949, stating:

THIS VEHICLE HAS A PUSH BUTTON ENGINE SHUT OFF BUTTON. I WENT TO A SHOPPING MALL AND FORGOT TO SHUT OFF THE ENGINE. WHEN I RETURNED APPROX. 1 HOUR LATER, THE ENGINE WAS STILL RUNNING. I AM CONCERNED SHOULD THIS HAPPEN WHEN I PARK THE AUTO IN MY CLOSED GARAGE WHICH IS LOCATED DIRECTLY BELOW A BEDROOM. THE ENGINE WILL BE RUNNING ALL NIGHT AND THE BEDROOM WILL BE FILLED WITH CARBON MONOXIDE RESULTING IN DEATH TO THE OCCUPANTS. **THE VEHICLE NEEDS A TIME DELAY SHUT OFF SHOULD THE DRIVER FORGET TO SHUT OFF THE ENGINE. THE TIME DELAY COULD BE SET BY THE MANUFACTURER AND SHOULD BE APPROXIMATELY 15 TO 20 MINUTES OTHERWISE THE ENGINE WILL RUN FOREVER.**

- r) On August 12, 2014, a person with a FCA Group vehicle filed NHTSA complaint number 10694821, stating:

THIS IS A SAFETY CONCERN REGARDING THE ENGINE STARTING/STOP BUTTON WHEN OPERATING THE VEHICLE USING

THE START/STOP BUTTON YOU CAN EXIT THE VEHICLE WITH THE ENGINE RUNNING WITHOUT ANY TYPE OF WARNING SIGNAL THAT THE ENGINE IS STILL RUNNING SUCH AS A WARNING [sic, WARNING] CHIME HORN BEEP OR A VIBRATION ON THE KEY FOB. IT IS EASY TO FORGET TO PRESS THE STOP BUTTON WHEN LEAVING THE VEHICLE. AS WE HAVE EXPERIENCED SEVERAL TIMES. THE DANGEROUS CONCERN WITH THIS LACK OF A SAFETY NOTIFICATION IS THE CAR CAN BE LEFT RUNNING IN AN ENCLOSED GARAGE SPREADING DEADLY CARBON MONOXIDE THROUGH A HOME.

- s) Two injuries were reported associated with a person with a General Motors (...) vehicle, a Chevrolet Volt, described in NHTSA complaint number 10658921, filed on November 18, 2014:

THE INCIDENT OCCURRED ON 8/27/14, AND RESULTED IN MY WIFE [AND] ME [BEING] TAKEN TO THE HOSPITAL AND TREATED FOR CARBON MONOXIDE POISONING. THE INCIDENT OCCURRED AT OUR HOME. THE VOLT WAS PARKED IN THE ENCLOSED GARAGE ON 8/26 AROUND 7PM. THE 240 VOLT CHARGER WAS PLUGGED IN AS USUAL. I DID NOT NOTICE ANYTHING UNUSUAL AFTER PLUGGING IN THE CHARGER, AND THE VOLT WAS LEFT UNATTENDED UNTIL THE EMS ARRIVED AROUND 11AM THE FOLLOWING DAY. THE EMS PERSONNEL FOUND THE ENGINE RUNNING, VERY HIGH LEVELS OF CO UPON ENTERING THE GARAGE AND EVEN HIGHER LEVELS INSIDE THE CAR. THE INSIDE OF THE PASSAGE COMPARTMENT WAS DESCRIBED AS HOT. THE FRONT EXTERIOR OF THE CAR WAS TOO HOT TO TOUCH AND THE CAR REAR WARM. THE TEMPERATURE UNDER THE CAR HOOD WAS DESCRIBED AS "RED HOT". THE ENGINE HAD CONSUMED AROUND 5 GALLONS OF GAS DURING THIS TIME PERIOD. DISTRIBUTION OF THE CO THROUGHOUT THE HOUSE WAS PROBABLY CAUSED BY THE A/C AIR HANDLER WHICH IS LOCATED INSIDE THE GARAGE. ...

- t) Two injuries were reported associated with a person with a Toyota Group vehicle, a 2009 Toyota Camry, described in NHTSA complaint number 10654360, filed on December 2, 2014:

CONSUMER STATED ENGINE DID NOT TURN OFF EVEN AFTER PUSHING THE POWER OFF BUTTON. THE CAR WAS PARKED IN THE GARAGE OVER A PERIOD OF TIME. CONSEQUENTLY, CARBON MONOXIDE ENTERED THE CONSUMER'S HOME. SHE AND HER HUSBAND WENT TO THE HOSPITAL FOR CARBON MONOXIDE POISONING. CONSUMER STATED ENGINE DID NOT TURN OFF EVEN AFTER PUSHING THE POWER OFF BUTTON. THE CAR WAS PARKED IN THE GARAGE OVER A PERIOD OF TIME. CONSEQUENTLY, CARBON

MONOXIDE ENTERED THE CONSUMER'S HOME. SHE AND HER HUSBAND WENT TO THE HOSPITAL FOR CARBON MONOXIDE POISONING. ...

- u) Three injuries were reported associated with a person with a General Motors (...) vehicle, a Chevrolet Volt, as described in NHTSA complaint number 10694821, filed on March 17, 2015:

ON MARCH 2, 2015, THREE PEOPLE WENT TO AN EMERGENCY DEPARTMENT (ED) FOR CO POISONING. A 40 YEAR OLD MALE PARKED HIS 2012 CHEVROLET VOLT IN THE GARAGE TO CHARGE (PLUGGED INTO THE OUTLET) AND ACCIDENTALLY LEFT THE CAR RUNNING OVERNIGHT. IN THE MORNING, HE NOTICED THE CAR WAS RUNNING AND HAD SWITCHED TO GASOLINE USE. HE AND HIS TWO CHILDREN COMPLAINED OF HEADACHE, WEAKNESS, CHEST PAIN, PALPITATION, AND DIZZINESS. CARBOXYHEMOGLOBIN (COHB) LEVELS WERE >15% FOR ALL THREE INDIVIDUALS. ON MARCH 12, 2015, SEVERAL NEWS MEDIA OUTLETS REPORTED THAT GM IS RECALLING ALL 2011-2013 CHEVROLET VOLTS (ABOUT 64,000) TO INSTALL UPDATES TO PREVENT CO POISONING WHEN THE DRIVER FORGETS TO SHUT OFF THE VEHICLE.

- v) On March 19, 2015, a person with a Nissan Group vehicle filed NHTSA complaint number 10695250, stating:

SINCE I LEASED MY CAR IN MAY[]2014[.] I FORGOT TO TURN THE ENGINE OFF 4 TIMES. TWICE IT RAN ALL NIGHT IN MY GARAGE BUT FORTUNATELY THE GAS FUMES DID NOT ENTER MY HOUSE WHILE I WAS SLEEPING. [...] **I AM ELDERLY AND HARD OF HEARING AND CAN HARDLY HEAR THE ENGINE RUNNING, I WEAR A HEARING AID. IT RUNS VERY QUIETLY.** ONCE I LOANED MY DAUGHTER THE CAR AND SHE ENCOUNTERED THE SAME PROBLEM OF NOT TURNING OFF THE ENGINE, I LEARN FROM INTERNET POST THAT COUNTLESS REPORTS HAVE BEEN MADE AND SEVERAL DEATHS BY CARBON MONOXIDE ENTERING HOMES HAVE OCCURRED DUE TO THIS PROBLEM, I UNDERSTAND THE KEYLESS IGNITION SYSTEM HAS BEEN AROUND FOR MANY YEARS AND IS INSTALLED IN MANY DIFFERENT VEHICLES, I WAS NOT AWARE OF IT UNTIL I GOT MY CAR. I FEEL A SAFETY RECALL SHOULD BE ISSUED TO CORRECT THE PROBLEM BEFORE MORE PEOPLE GET KILLED, THE PUBLIC SHOULD BE MADE AWARE OF IT WITHOUT FURTHER DELAY SINCE COUNTLESS REPORTS HAVE ALREADY BEEN MADE.

- w) On April 28, 2015, a person with a FCA Group vehicle filed NHTSA complaint number 10713276, stating:

ON THE KEYLESS START SYSTEM THERE IS NO WARNING THAT THE ENGINE IS RUNNING WHEN YOU OPEN THE DOOR. THE DOOR CAN BE LOCKED AND YOU WALK AWAY WITH THE VERY QUIET ENGINE RUNNING. HAD THIS HAPPENED WITH THE VEHICLE PARKED IN MY GARAGE THE HOUSE WOULD FILL WITH CARBON MONOXIDE AND SOMEONE COULD DIE

- x) On June 9, 2015, a person with a Nissan Group vehicle filed NHTSA complaint number 10724386, stating:

I NEGLECTED TO PUSH THE START/STOP BUTTON UPON EXITING THE CAR. CONSEQUENTLY, THE CAR CONTINUED TO RUN. AT 10:30 PM, NEEDING A TOOL, I WENT BACK AND OPENED THE GARAGE DOOR. A RUSH OF HOT AIR HIT ME IN THE FACE. TO MY HORROR, I REALIZED THAT I DID NOT SHUT THE CAR OFF. GARAGE TEMPERATURE HAD TO BE ABOUT 120 DEGREES. WHO KNOWS WHAT COULD HAVE HAPPENED, HAD THE CAR RUN ALL NIGHT. **I THINK THERE'S A SIMPLE EASY INEXPENSIVE FIX TO THIS. SOLUTION: REQUIRE ALL AUTO MANUFACTURERS, UTILIZING THE KEYLESS IGNITION OPTION, TO, MANDATORILY, EQUIP ALL VEHICLES WITH AN AUTOMATIC SHUT OFF IF A CAR IDLES IN PARK (TRANSMISSION SELECTION) FOR MORE THAN 20 MINUTES.** THIS SAFETY OPTION SHOULD NOT BE ABLE TO BE OVER RIDDEN BY CUSTOMER. I'M JUST THANKFUL THAT MY GARAGE WAS DETACHED. CARBON MONOXIDE DEATHS VIA KEYLESS IGNITION ARE EASILY AVOIDABLE.

the whole as appears more fully from copies of these NHTSA complaints, produced herein as **Exhibit R-15**;

81. These consumer complaints and reports to NHTSA are consistent. They all outline the Defect, and many of the filings put the Respondents (...) on notice of the exact, simple, and basic remedy sought here: Auto-Off;
82. Further, there are scattered news stories over the past few years describing deaths and injuries from the Defect;
83. In 2015 alone, several people have died or have been seriously injured from carbon monoxide poisoning caused by the Defect:
 - a) Just (...) months ago, a Highland Park, Illinois couple died of carbon monoxide poisoning when their Affected Vehicle continued to run in the garage;
 - b) An elderly man was found unconscious in his townhome from carbon monoxide poisoning caused by an Affected Vehicle. Fortunately, his

neighbor discovered and rescued him and was able to prevent his untimely death;

- c) A Berkley Heights, New Jersey man died and his wife was left unconscious after their Affected Vehicle continued to run; and
- d) In Mooresville, North Carolina, several household members woke up vomiting and had to be hospitalized for carbon monoxide poisoning after a Keyless Fob-equipped Nissan Murano continued to run for over 10 hours in the garage;
- e) On October 31, 2015, a mother, Constance Petot returned from a long day at work to her parents' home in Jacksonville, Florida and she parked her vehicle in the attached garage. She believed that she had pressed the Start/Stop button in her vehicle to turn off the engine, she closed the garage door, and she entered the house. In the middle of the night, her 13-month-old son woke up screaming. Constance knew something was wrong when she started feeling dizzy and her son went limp in her arms. After walking downstairs, Constance discovered that the vehicle engine was still running. She and her son both received emergency medical treatment, and she subsequently learned that the level of carbon monoxide in the house was high enough to have killed both her and her son if they had remained in the house for only twenty additional minutes, and
- f) On November 7, 2015, in Issaquah, Washington, firefighters were summoned by a neighbour to a household of six, which included two grandparents, two parents, and two children —one child under the age of 10 and the other a 17-month-old baby. The father had come home from work and believed that he had pressed the Start/Stop button in his Toyota Sienna vehicle to turn off the engine. Despite the fact that the family's house had carbon monoxide detectors on every floor, none of the alarms alerted the family to the danger. As a result, all six family members plus three of the first-responder firefighters suffered from carbon monoxide poisoning and required hospitalization. The neighbour's call could have been too late, though – the Toyota Sienna minivan fortunately ran out of gas before it could emit enough carbon monoxide to kill everyone in the household. The 17-month-old baby was hospitalized and treated in a hyperbaric chamber with oxygen therapy for three days.

the whole as appears more fully from a copy of several newspaper articles, produced herein *en liasse* as **Exhibit R-16**;

84. More deaths and injuries were also reported between 2010 and 2014:

- a) A woman was found dead in her townhome and her boyfriend was found “clinging to life” when the woman’s Lexus with a Keyless Fob continued to run in the garage of the woman’s home;
- b) An elderly couple were found dead as a result of Anoxic brain injuries (carbon monoxide poisoning) when their Toyota Avalon continued to run in their garage;
- c) A Weymouth, Massachusetts couple and their two grandchildren all became ill and had to be hospitalized after their Keyless Fob-equipped Lexus ES350 caused carbon monoxide poisoning;
- d) A couple from Manchester, Missouri died after their Keyless Fob-equipped vehicle continued to run in their garage;
- e) A Lancaster Township, Pennsylvania couple died from carbon monoxide poisoning after their Affected Vehicle continued to run in their garage;
- f) In Boca Raton, Florida, a 29-year-old woman died of carbon monoxide poisoning caused by her Keyless Fob-equipped 2006 Lexus; and
- g) In Boca Raton, Florida, a couple died when their Keyless Fob-equipped Mercedes-Benz continued to run;

the whole as appears more fully from a copy of several newspaper articles, produced herein *en liasse* as **Exhibit R-17**;

85. It is likely that the number of deaths and injuries are (...) greater than reported because only some deaths are reported in the media, and even when deaths are reported, a cause of death is often not given or known;

(iii) Respondents’ had Prior Knowledge of Carbon Monoxide Poisoning in Vehicles with Keyless Fobs with no Automatic Shut-Off

86. Both (...) GM (...) and the Ford Group have patented or have sought to patent the very Auto-Off systems that would prevent the Defect.

- a) On May 20, 2013, (...) General Motors (...) filed for a patent (issued on March 17, 2015 under patent number 8,983,720), to address the Defect. GM’s granted patent explicitly addressed the concerns (and relief requested) that the Petitioner (...) and the Class seek here. Specifically, the patent seeks to avoid the situation wherein the “engine may have been errantly left running, in which case the vehicle sends a notice to the user [, and i]f no response [from the user] is received [then] the vehicle can activate the engine kill device and stop the engine.” The patent acknowledges that a “vehicle operator may unintentionally leave a motor vehicle engine running ... [which can] even contribute to an

accumulation of exhaust gas if not properly ventilated, such as in some garages.” Moreover, the patent includes “one or more carbon monoxide (CO) sensors” so that the vehicle can “indicate [if] exhaust fumes are present at dangerous levels.”, the whole as appears more fully from a copy of said U.S. Patent, produced herein as **Exhibit R-18**. Thus, (...) GM (...) had actual knowledge of the inherent dangers of not including Auto-Off (and the Defect that would otherwise result) well in advance of its May 20, 2013 patent application filing. It is safe to assume that if General Motors knew this, so too did the Respondents;

- b) (...) On November 1, 2011, the Ford Group filed for a patent, application number 2013/0110374, to address the Defect. The patent application explicitly addresses the concerns (and relief requested) that the Petitioner (...) and the Class seek here. Specifically, the patent application seeks to avoid the situation wherein “a vehicle operator may unintentionally leave the vehicle with the engine idling,” which is common because “engine technology that have made vehicle engines quieter further increase the likelihood that a vehicle operator may leave the vehicle with the engine running.” Thus, the patent application proposes a method whereby the “vehicle control systems may be configured to automatically shut down an idling engine, for example, upon the elapse of a specified duration of idling time.” Moreover, the patent application anticipates a situation in which the vehicle is left “in a substantially enclosed space, such as an indoor garage, [then] the vehicle control system may automatically shut down the idling engine in anticipation of the operator not returning to the vehicle imminently.”, the whole as appears more fully from a copy of said U.S. Patent Application, produced herein as **Exhibit R-19**. Thus, the Ford Group had actual knowledge of the inherent dangers of not including Auto-Off (and the Defect that would otherwise result) well in advance of its November 1, 2011 patent application filing. It is safe to assume that if Ford knew this, so too did the other Respondents;

87. It is very common in the industry that automakers regularly review patents by competitor automakers and thus, they too had actual knowledge (or constructive knowledge, at the very least) of the Defect that exists in the absence of Auto-Off;

88. The Respondents (...) know the dangers of the Affected Vehicles and the Defect. In the U.S. on Friday, March 13, 2015, Chevrolet, a General Motors vehicle brand (...) issued an official recall of all 2011, 2012 and 2013 model year Chevrolet Volt range-extended electric cars to address an issue with the car’s on-board software that allowed its gasoline engine to operate for extended periods of time while parked, but unintentionally left powered on. According to official NHTSA recall documents, (...) General Motors itself estimated that “100%” of the 50,236 Chevrolet Volts were plagued by this defect, noting that when the vehicle’s gas engine continues to run after the battery is depleted:

“Description of the Safety Risk: If the gas engine runs for long periods of time within an enclosed space, such as a garage, carbon monoxide could build up in the enclosed space and potentially cause injury.

Description of the Cause: The 2011-2013 MY Volt vehicles were not equipped with software that automatically shuts off a vehicle after a predetermined amount of time. This software was deployed starting with the 2014 MY Volt vehicles and beyond.”

the whole as appears more fully from a copy of said U.S. Safety Recall Report, produced herein as **Exhibit R-20**;

89. In Canada, on March 12, 2015, a recall by Transport Canada #2015104 was also issued for the Chevrolet Volt 2013 and 2013 models due to the same issue:

“Recall Details

On certain vehicles, if a driver exits the vehicle and were to inadvertently leave the vehicle "ON", after a period of time the vehicle's battery would drain and the vehicle's gasoline engine would begin to run. If the gasoline engine were to run for long periods of time when the vehicle is parked in an enclosed area, such as a garage, there is a risk of carbon monoxide build-up, which could result in asphyxiation or carbon monoxide poisoning. Correction: Dealers will update vehicle software to limit the time that an idle vehicle can be left in the "ON" position.”

the whole as appears more fully from a copy of said Transport Canada Recall Report, produced herein as **Exhibit R-21**;

90. The recall itself was not a prolonged, difficult process. To the contrary, vehicle dealers simply had to reprogram the cars via a software update taking approximately 30 minutes per vehicle. U.S. dealers were reimbursed by (...) General Motors \$4.78 per vehicle for the reprogramming, the whole as appears more fully from a copy of the said Recall Bulletin, produced herein as **Exhibit R-22**;

91. In other words, the (...) General Motors (...) recall of the 2011-2013 Chevrolet Volts illustrates that: 1) Keyless Fobs pose a safety risk because “carbon monoxide could build up in [an] enclosed space” and 2) the vehicles could be modified to cure the Defect with a simple software update costing less than \$5.00 per vehicle and taking just 30 minutes of dealership time;

92. Despite the fact that nonparty General Motors implemented this remedy to the Defect for the 2011-2013 Chevrolet Volts, (...) the Respondents have failed to do so for any of their (...) Affected Vehicles that suffer from the exact same Defect;

93. Many of the Respondents have faced personal injury and wrongful death lawsuits as a result of the Defect, but instead of instituting Auto-Off across the board, they have quietly settled the suits behind confidentiality agreements, thereby concealing the risks of the Defect. Thus, the Defect has yet to see the full light of day. For example:

- a) On November 1, 2010, Myrna and Donato Pastore filed a wrongful death lawsuit against Toyota for the death of Ernest Codelia, Jr. The amended complaint states that Ernest Codelia, Jr. died of carbon monoxide poisoning as a result of his 2008 Lexus EX 350, which was equipped with a Keyless Fob. The case was settled under seal. Toyota insisted that the settlement be under seal, and thus there are no public documents or information as a result of this suit, the whole as appears more fully from a copy of the Complaint, Amended Complaint, a Letter by Plaintiff's Counsel dated September 30, 2014 and the Proof of a Sealed Agreement, produced herein *en liasse* as **Exhibit R-23**;
- b) In a related suit, filed by Mary Rivera on October 29, 2010 against Toyota, she alleges that she collapsed and was found barely breathing as a result of carbon monoxide poisoning caused by her 2008 Lexus EX 350, which was equipped with a Keyless Fob and continued to run after the driver left the vehicle. Ms. Rivera is a former college professor who now suffers from permanent brain damage as a result of the carbon monoxide poisoning. Though Ms. Rivera survived the incident, her partner Ernest Cordelia, Jr., died - as noted in the paragraph immediately above - with 65 percent carbon monoxide poisoning in his blood, according to an autopsy report. This case was settled and closed on October 1, 2014; the settlement was also done under seal, the whole as appears more fully from a copy of the Amended Complaint and the Stipulation of Dismissal with Prejudice, produced herein as **Exhibit R-24**;
- c) On April 1, 2011, Linda Bloom and Rachelle Brown filed a wrongful death action against Toyota for the death of their father, Meyer Michael Yaffe, who died on December 30, 2010, as a result of carbon monoxide poisoning from his 2009 Lexus EX 350, which was equipped with a Keyless Fob. The file is Case No. BC458715 (Cal. Sup. Ct., County of Los Angeles);
- d) On June 14, 2011, Kimberlin Nickles filed a wrongful death action against Toyota for the death of her daughter, Chastity Glisson, who died on August 26, 2010 at the age of 29 as a result of carbon monoxide poisoning from her 2006 Lexus IS 250, which was equipped with a Keyless Fob. Chastity Glisson parked her Lexus in the garage to make room for her boyfriend, Timothy Maddock's, vehicle. Chastity collapsed in the third-floor bathroom later that night. Later, Timothy found her body, but then he too succumbed to carbon monoxide and lost consciousness. Neither Ms. Glisson nor Mr. Maddock were found until the next day. By then, 29-year-old Chastity

Glisson had died, and Timothy Maddock was critically injured and required hospitalization for ten days. An investigation revealed that the carbon monoxide that killed Ms. Glisson and severely injured Mr. Maddock came from the Lexus in the garage, which was equipped with a Keyless Fob, and unbeknownst to the occupants of the home, continued to run after the driver exited the vehicle. The file is Case No. 11-13565 (Circuit Court of the Seventeenth Judicial Circuit, Broward County, Florida);

- e) On December 30, 2014, William Thomason, Jr. filed a wrongful death action against Toyota for the death of his (...) parents, William Poole Thomason and Eugenia McCuen Thomason, who died on June 15, 2013 and on June 17, 2013, respectively, as a result of carbon monoxide poisoning from their 2005 Toyota Avalon, which was equipped with a Keyless Fob. The married couple parked their car in their garage. Both were killed by carbon monoxide poisoning, the whole as appears more fully from a copy of the Complaint, produced herein as **Exhibit R-25**;

- f) In the evening of June 14, 2015, two people died as a result of the Defect. Rina and Pasquale Fontanini returned to their home in their 2013 Lincoln MKS. The couple parked their car in the attached garage and either inadvertently forgot to shut down the engine or pushed the Start/Stop button in an effort to do so. The couple then entered their home, but unbeknownst to them, the car engine continued to run. Their house filled with deadly carbon monoxide and both Rina and Pasquale were later found dead the next day by their son, a lieutenant in the Highland Park Fire Department. On August 20, 2015, the executrix of the Fontanini's estate filed a wrongful death lawsuit against Ford Motor Company, Lincoln Motor Company, and Libertyville Lincoln Sales, Inc., alleging strict liability arising out of the keyless ignition defect, the whole as appears more fully from a copy of the WNIU article entitled "Carbon Monoxide Death Prompts Questions About Keyless Auto Ignitions" dated June 22, 2015 and from a copy of the Chicago Tribune article entitled "Suit filed over keyless car for Highland Park couple who were poisoned" dated October 16, 2015, produced herein *en liasse* as **Exhibit R-25A**;

(iv) Respondents Should Have Known of the Danger of Carbon Monoxide Poisoning in Vehicles with Keyless Fobs and no Automatic Shut-Off

- 94. Even if some of the Respondents were not parties to lawsuits concerning the Defects, all of the Respondents should have known of the dangers that the Defect poses for the Affected Vehicles through other industry recalls and industry modifications;

- 95. The Respondents readily have access to all NHTSA complaints pertaining to both their own manufactured vehicles as well as any other manufacturers' automobiles; the same is true for information made available by Transport Canada. Automakers

do (or should) regularly review NHTSA complaints to ensure internal quality and safety compliance. As noted earlier, there have been, at least, 27 formally-filed NHTSA complaints about the Defect;

96. It is also commonplace that automakers regularly review patents pertaining to the automotive industry and safety. There are, at minimum, four (4) issued or pending patents for “Auto-Off” systems or mechanisms dating back to November 16, 2007, not including the applications submitted by the Ford Group and (...) General Motors (...). For example:

- a) Patent number 7,650,864, applied for on November 16, 2007 by Magna Electronics Inc. and issued on January 26, 2010 concerns remote starting systems on cars and a built-in Auto-Off system to prevent the Defect. Magna Electronics instituted such a technology in its patent “[s]ince vehicles typically exhaust carbon monoxide and carbon dioxide emissions during operation of the engine, and since such emission buildup in an enclosed environment can be dangerous, the remote starter control module preferably provides one or more safety measures or features to reduce or mitigate any potential CO/CO₂ buildup in situations where the vehicle may be parked in an enclosed environment.”, the whole as appears more fully from a copy of the said U.S. Patent, produced herein as **Exhibit R-26**;
- b) Patent application number 2012/0130604, filed on November 21, 2011 by Michael W. Kirshon, *et al.*, is for “a series of sensors installed within a vehicle to monitor functions to determine if a vehicle engine is running and there is a potential for toxic exhaust gases to accumulate, creating a toxic environment.” In other words, this patent describes an Auto-Off system to prevent the Defect. Patent application number 2012/0130604 describes the Defect associated with the Affected Vehicles as follows:

Combustion engines discharge an exhaust that includes toxic gases, such as carbon monoxide. It is well known that elevated levels of carbon monoxide gases contained within a closed space can have harmful and even fatal effects on individuals exposed to higher concentrations thereof.

Numerous occurrences have been noted where residential occupants have succumbed to toxic exhaust gases discharged by a running vehicle engine, where the vehicle was parked within an attached garage. Several advancements in vehicle technology are aggravating the potential issue. For example, keyless engine control systems allow an operator to leave the vehicle while the engine remains running. Until recently, all vehicle engines would initiate operation by inserting a key into an ignition switch, whereby removing the key causes the engine to cease operating. The vehicle key would commonly be stored on a key ring used to hold a series of keys. The operator commonly uses other keys to access buildings, offices, desks, residence, etc. An operator who forgets to remove the keys

from the vehicle would be reminded the next time a key stored on the same key ring would be needed. Furthermore, vehicle engines are now much quieter, making people less aware that the engine is running. In addition, vehicles now commonly include remote starters, where an individual can start a vehicle's engine remotely. This can occur by accidentally depressing the remote start button, thereby starting the vehicle engine unbeknownst to the individual.

the whole as appears fully from a copy of the said Patent Application, produced herein as **Exhibit R-27**. Patent application 2012/0130604 thus proposes to patent a system whereby sensors "automatically disables or turns off the ignition of the vehicle engine to cease the generation of the toxic exhaust gases."

- c) Patent number 8,825,224, applied for on March 26, 2012 by Directed, LLC and issued on September 2, 2014, concerns "[a]n automated vehicle shutdown and user notification method and device for shutting down an engine in a vehicle having a passive keyless entry and start ignition system where the engine has unintentionally been left running by the user is disclosed." In the relevant part, patent number 8,825,224 describes the Defect associated with the Affected Vehicles as follows: to prevent "[l]ong term idling of the engine within a confined space, such as within a garage attached to a dwelling, can lead to a rise in carbon monoxide levels that might potentially cause asphyxiation, brain damage or death to individuals exposed to high concentrations of carbon monoxide inside the dwelling.", the whole as appears fully from a copy of the said Patent, produced herein as **Exhibit R-28**;
- d) Patent number 8,977,476, applied for on August 14, 2012 by Safety Shutdown, LLC and issued on March 10, 2015 concerns "[a] system for automatically shutting down an engine of a motor vehicle" taking into account multiple variables, including an Auto-Off timer, carbon monoxide sensing ability, and dependent on driver override request. In the background section of Safety Shutdown, LLC's patent, it duplicated, in full, Michael W. Kirshon, *et al.*'s patent application number 2012/0130604 regarding why such a safety mechanism is paramount. Safety Shutdown, LLC's patent simply attempted to address the same problem through different technological means. In short, Safety Shutdown, LLC's patent covers the exact Defect as described herein, the whole as appears more fully from a copy of said Patent, produced herein as **Exhibit R-29**;

(v) An "Auto-Off" Mechanism or System is Feasible

97. "Auto-Off" is feasible for each of the Respondents (...) to implement – immediately – through a simple recall campaign. Auto-Off is not only feasible; it *has already*

been implemented by several auto manufacturers to prevent the very Defect described herein;

98. For example, and previously noted, General Motors (...) has not only instituted an Auto-Off in its 2014-2015 model year Chevrolet Volts, due to safety concerns, it recalled all of its prior model year (2011-2013) Chevrolet Volts due to the lack of such a system because “carbon monoxide could build up in [an] enclosed space”;
99. Additionally, the 2014 and 2015 Lincoln MKS vehicles, manufactured and designed by the Ford Group, are equipped with a Keyless Fob but are not Affected Vehicles because they have instituted a clear Auto-Off system that: 1) shuts down the vehicle after 30-minutes of running if there is no user intervention, and 2) there is no “defeat” mechanism to override this important Auto-Off safety function;
100. Other 2013, 2014, and 2015 Model year Ford Group vehicles have similarly instituted Auto-Off and are therefore not listed as Affected Vehicles. Yet, despite the fact that the Ford Group has instituted Auto-Off in some of its most recent cars, it has left older model year vehicles with the Defect and without any software update or recall to institute a similar (or identical) Auto-Off system, and it has not issued a warning for its Affected Vehicles;
101. Given the prevalence of the Defect, the Respondents’ failure to immediately implement (and to have previously implemented prior to sale) Auto-Off is a material and unreasonable safety defect. As a result, the Respondents’ nondisclosure of the Defect in Class Members’ automotive manuals and sales brochures was (and remains) unreasonable;
102. The Respondents concealed material information regarding the truth about the existence and nature of the Defect from the Petitioner and Class Members at all times, even though they knew about the Defect and knew that information about the Defect would be important to a reasonable consumer;
103. At all relevant times, including specifically at the time Class Members purchased their Affected Vehicles, the Respondents knew, or were reckless in not knowing, of the Defect when combined with the lack of Auto-Off. The Respondents were under a duty to disclose the Defect based upon their exclusive knowledge of the Defect. The Respondents never disclosed the Defect to the public at any time or place or in any manner;
104. The Respondents have known of the Defect in the Affected Vehicles since at least 2007,⁴ if not earlier, and have concealed from or failed to notify the Petitioner, Class Members, and the public of the full and complete nature of the Defect. Any applicable statute of limitation has therefore been suspended by the Respondents’ knowledge, active concealment, and denial of the facts alleged herein, which behaviour is ongoing to this day;

⁴ This is the date of the first patent application for technology to implement Auto-Off. See Exhibit R-26.

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

105. On or about May 24, 2013, Petitioner leased a new 2013 Lexus GS350 vehicle containing a Keyless Fob (called "SmartAccess") from Spinelli Lexus Pointe-Claire at 335 boul. Brunswick, in Montreal, Quebec for a total cost of approximately \$61,445 plus taxes payable in monthly installments of \$1,002.77 including taxes, the whole as appears more fully from a copy of the Lease Agreement dated May 24, 2013, produced herein as **Exhibit R-30**;
106. Within the last year, Petitioner had an incident whereby he parked his car on the street and entered a house, where he remained for several hours. Upon his return to the car, he realized that it had been running the entire time. Petitioner was quite surprised as he had not noticed that the car was still on (due to the engine's silence) and he had left with the keyless fob in his pocket when entering the house, so he was quite some distance from the car;
107. This incident made the Petitioner realize that he had to be very careful when exiting his car, especially when parking inside his home garage (which leads directly into his house). The driver's manual makes no reference of the possibility of the Defect or of the risk of carbon monoxide poisoning; Petitioner was never informed of such when he leased his vehicle either by the salesman or in any sale brochure that he looked at the time;
108. Petitioner recently came across a U.S. class action lawsuit based on the exact issue that he had experienced. More specifically, he learned that a class action Complaint was filed in the United States due to the Defect, the Respondents' failure to disclose and their failure to recall and repair, despite longstanding knowledge of the problem, the whole as appears more fully from a copy of the Class Action Complaint, produced herein **Exhibit R-31**. Petitioner is also aware that said Class Action Complaint has been divided up by each Respondent group of companies and is now the subject of five (5) separate Class Action Complaints, the whole as appears more fully from a copy of the Class Action Complaints, produced herein **Exhibit R-31A**;
109. At the time of the lease, Petitioner 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 the Defect, to which he had no knowledge thereof;
110. Petitioner has suffered ascertainable loss as a result of the Respondents' omissions and/or misrepresentations associated with the Defect, including, but not limited to, overpayment for the lease payments, trouble and inconvenience;
111. Had Petitioner known about the Defect, he would not have leased the vehicle, and most certainly would have paid less for the lease had he known about the Defect prior to the lease;

112. Petitioner's damages are a direct and proximate result of the Respondents' conduct;

113. In consequence of the foregoing, Petitioner is justified in claiming damages;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

114. Every member of the Class has purchased and/or leased an Affected Vehicle containing the Defect;

115. Each member of the Class is justified in claiming at least one or more of the following as damages:

- a. Diminished value of the Affected Vehicles in terms of an overpayment for the purchase price or lease payments
- b. Lower resale value of the Affected Vehicles
- c. Personal injury, pain and suffering
- d. Trouble and inconvenience
- e. Punitive and/or exemplary damages;

116. All of these damages to the Class Members are a direct and proximate result of the Respondents' conduct;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

A) The composition of the Class (...) makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

117. Petitioner is unaware of the specific number of persons who purchased and/or leased the Affected Vehicles, however, it is safe to estimate that it is in the hundreds of thousands. In the U.S., it is estimated that there are over 5 million Affected Vehicles; at 10% of this number (based on the population in Canada as compared to in the U.S.), it is fair to estimate approximately 500,000 Affected Vehicles in Canada; again using population figures, 23.6% of this number (based on the 2011 census Canada of Quebec population compared to the rest of Canada), it is fair to estimate approximately 118,000 Affected Vehicles in Quebec;

118. In addition, the Respondents can readily ascertain and identify all Affected Vehicles by Vehicle Identification Number ("VIN") and/or specification sheets to discern which Affected Vehicles were optioned with or had the Keyless Fob as

standard equipment. Department of Motor Vehicle registries readily identify those with Affected Vehicles;

119. Class members are numerous and are scattered across the entire province and country;

120. Absent a class action, most Class members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class members' claims, it is unlikely that Class members could afford to seek legal redress for the Respondents' misconduct. Absent a class action, Class members will continue to incur damages, and the Respondents' misconduct will continue without remedy;

121. 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 Respondents. Even if the 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 Respondents would increase delay and expense to all parties and to the court system;

122. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on issues of fact and law that are similar or related to all members of the class;

123. 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;

124. 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 issues of fact and law which are identical, similar, or related with respect to each of the Class Members with regard to the Respondents and that which the Petitioner wishes to have adjudicated upon by this class action

125. Individual issues, if any, pale by comparison to the numerous common issues that are significant to the outcome of the litigation;

126. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;

127. The recourses of the members raise identical, similar or related issues of fact or law, namely:

- a) Do the Affected Vehicles suffer from the Defect?
- b) Does the Defect constitute an unreasonable safety risk?
- c) Did the Respondents know or should they have known about the Defect, and, if yes, how long each of the Respondents has known of the Defect?
- d) Did the defective nature of the Affected Vehicles constitute a material fact reasonable consumers would have considered in deciding whether to purchase an Affected Vehicle?
- e) Do the Respondents have a duty to disclose the defective nature of the Affected Vehicles to Class Members?
- f) Did the Respondents omit and fail to disclose material facts about the Affected Vehicles?
- g) Did the Respondents concealment of the true defective nature of the Affected Vehicles induced Class Members to act to their detriment by purchasing Affected Vehicles?
- h) Did the Respondents negligently perform their duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, lease and/or sell non-defective vehicles?
- i) Did the Respondents misrepresent the Affected Vehicles as safe or fail to adequately disclose to consumers the true defective nature of the Vehicles?
- j) Are the Respondents responsible for all related damages including, but not limited to: the diminished value of the Affected Vehicles in terms of an overpayment for the purchase price or lease payments, the lower resale value of the Affected Vehicles, personal injury, pain and suffering, and trouble and inconvenience to Class Members as a result of the problems associated with the Vehicles and in what amount?
- k) Are Class Members entitled to a declaratory judgment stating that the Affected Vehicles are defective and/or not merchantable?
- l) Should an injunctive remedy be ordered to force the Respondents to notify, recall, and repair the Defect in Class Members Vehicles free of charge?
- m) Are the Respondents responsible to pay punitive damages to class members and in what amount?

128. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

129. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages, injunctive relief, and declaratory judgment;

130. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

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

DECLARE that the Affected Vehicles are defective and/or not merchantable;

ORDER the Defendants to notify, recall, and repair the Defect in all Affected Vehicles free of charge;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner 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) The Petitioner requests that he be attributed the status of representative of the Class

131. Petitioner is a member of the Class;
132. Petitioner has retained counsel with substantial experience in prosecuting consumer class actions, including actions involving defective vehicles;
133. Petitioner 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 dossier until 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 of Quebec and the *Fonds d'aide aux actions collectives*, as the case may be, and to collaborate with his attorneys;
134. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the Class;
135. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intend to keep informed of all developments;
136. Petitioner, 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;
137. Petitioner is acting 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 Respondents' conduct;
138. Petitioner understand the nature of the action;
139. Petitioner's interests are not antagonistic to those of other members of the Class;
- 139.1 The Petitioner 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;
- 139.2 The Petitioner 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;
- 139.3 The Petitioner has spent time researching this issue on the internet and meeting with his attorneys to prepare his file. In so doing, he is convinced that the problem is widespread;

B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal

140. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;

141. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

142. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

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

ASCRIBE the Petitioner the status of representative of the persons included in the class herein described as:

- all persons, entities or organizations resident in Canada who purchased and/or leased one or more of the Affected Vehicles containing a remote-control electronic keyless fob system, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all persons, entities or organizations resident in Quebec who purchased and/or leased one or more of the Affected Vehicles containing a remote-control electronic keyless fob system, or any other group to be determined by the Court;

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

- a) Do the Affected Vehicles suffer from the Defect?
- b) Does the Defect constitute an unreasonable safety risk?
- c) Did the Respondents know or should they have known about the Defect, and, if yes, how long each of the Respondents has known of the Defect?
- d) Did the defective nature of the Affected Vehicles constitute a material fact reasonable consumers would have considered in deciding whether to purchase an Affected Vehicle?

- e) Do the Respondents have a duty to disclose the defective nature of the Affected Vehicles to Class Members?
- f) Did the Respondents omit and fail to disclose material facts about the Affected Vehicles?
- g) Did the Respondents concealment of the true defective nature of the Affected Vehicles induced Class Members to act to their detriment by purchasing Affected Vehicles?
- h) Did the Respondents negligently perform their duties to properly design, manufacture, test, distribute, deliver, supply, inspect, market, lease and/or sell non-defective vehicles?
- i) Did the Respondents misrepresent the Affected Vehicles as safe or fail to adequately disclose to consumers the true defective nature of the Vehicles?
- j) Are the Respondents responsible for all related damages including, but not limited to: the diminished value of the Affected Vehicles in terms of an overpayment for the purchase price or lease payments, the lower resale value of the Affected Vehicles, personal injury, pain and suffering, and trouble and inconvenience to Class Members as a result of the problems associated with the Vehicles and in what amount?
- k) Are Class Members entitled to a declaratory judgment stating that the Affected Vehicles are defective and/or not merchantable?
- l) Should an injunctive remedy be ordered to force the Respondents to notify, recall, and repair the Defect in Class Members Vehicles free of charge?
- m) Are the Respondents 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 Petitioner and each of the members of the Class;

DECLARE that the Affected Vehicles are defective and/or not merchantable;

ORDER the Defendants to notify, recall, and repair the Defect in all Affected Vehicles free of charge;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner 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 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE and THE GLOBE AND MAIL;

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

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 publications fees.

Montreal, July 15, 2016

(S) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

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