

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

David Bain, Harvey Erlich, Akiva Medjuk, Daniel Berkovits

Plaintiffs

-and-

**GENERAL MOTORS CORPORATION, GENERAL MOTORS OF CANADA,  
AMERICAN HONDA MOTOR COMPANY, INC, HONDA CANADA, INC,  
HONDA FINANCIAL SERVICES CANADA, INC., CHRYSLER LLC, NISSAN NORTH AMERICA  
INC, NISSAN CANADA INC., CANADIAN AUTOMOBILE DEALERS  
ASSOCIATION, NATIONAL AUTOMOBILE DEALERS ASSOCIATION**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: September 25, 2007

Issued by:   
Local Registrar

**M. Sagaria**  
Registrar

Address of court office:

393 University Avenue  
10<sup>th</sup> Floor  
Toronto, Ontario  
M5G 1E6

**TO: GENERAL MOTORS CORPORATION**  
100 Renaissance Center  
Detroit, Michigan  
48243

**GENERAL MOTORS OF CANADA, LTD.**  
1908 Colonel Sam Drive,  
Oshawa, Ontario  
L1H 8P7

**AMERICAN HONDA MOTOR COMPANY, INC.**  
1919 Torrance Blvd.  
Torrance, California  
90501

**HONDA CANADA, INC.**  
715 Milner Avenue  
Toronto, Ontario  
M1B 2K8

**NISSAN NORTH AMERICA, INC.**

PO Box 685003  
Franklin, TN  
37064-5093

**NISSAN CANADA INC.**

5290 Orbitor Drive  
Mississauga, Ontario  
L4W 4Z5

**CHRYSLER LLC**

1000 Chrysler Drive,  
Auburn Hills, Michigan  
48326

**CHRYSLER CANADA INC.**

1 Riverside Dr. West  
Windsor, Ontario  
N9A 4H6

**CANADIAN AUTOMOBILE DEALERS ASSOCIATION**

84 Renfrew Drive  
Markham, Ontario  
L3R 0N9

**NATIONAL AUTOMOBILE DEALERS ASSOCIATION**

8400 Westpark Drive  
McLean, Virginia  
22102

1. The plaintiffs claim:

- a. an order certifying this proceeding as a Class proceeding and appointing the Plaintiffs named herein as representative plaintiffs for the Class;
- b. an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, directing an aggregate assessment of damages;
- c. \$2 Billion in general damages for the Class, or such other sum as this Honourable Court deems just;
- d. an interlocutory and a final mandatory order directing that Defendant comply with the *Competition Act*, R.S.C. 1985, c. C-34 (*"the Act"*),
- e. an order pursuant to s. 23 of the *Class Proceedings Act, 1992*, admitting into evidence statistical information, including statistical information regarding the profits earned by Defendants through their course of conduct designed to unreasonably enhance the price of the products they sold in Canada;
- f. in the alternative to (c) a declaration that the Defendants have been unjustly enriched, to the deprivation of members of the Class, by the excess amount paid by Class Members for Defendants product over what such consumers would expect to pay for such product had Defendants not engaged in their unlawful conduct;

- g. pre-judgment and post-judgment interest on the amounts payable pursuant to subparagraphs (c) and, (f) pursuant to the *Courts of Justice Act*;
- h. punitive, aggravated and exemplary damages in the amount of \$100 million, or such other amount as this Honourable Court deems just;
- i. costs of this action on a substantial indemnity basis plus Goods and Services Tax;
- j. the costs of administering the plan of distribution of the recovery in this action in the sum of \$3 million or such other sum as this Honourable Court deems appropriate; and
- k. such further and other relief as may be required by the *Class Proceedings Act, 1992*, or as this Honourable Court may deem just.

**Summary of the Action**

**Defendants Conspired To Lessen Competition And To Unreasonably Enhance The Price Of New Cars Sold In Canada**

2. In 1993, Canada, the US and Mexico entered into the North American Free Trade Agreement (NAFTA) which eliminated many of the duties, taxes, and tariffs imposed on trade between the parties to that agreement. NAFTA was intended to facilitate, and did facilitate, the free of flow of goods across the Canada/US border. As a result of NAFTA, it became easier and more cost efficient to cross ship high cost goods, such as new cars, between the parties to that agreement.

3. Since approximately 1998, safety and environmental regulations in both the US and Canada governing the sale of new cars in the US and Canada approximate those in the other country, and most new cars sold in the US or in Canada meet substantially most of the environmental and other regulations governing the sale of new cars in both countries with little or no modification.
4. Consequently, since about 1998, cars manufactured for sale in the US and Canada are substantially identical, except for Canada requiring day-time running lights, which if not present on US cars, is a small modification which can be obtained either at Canadian Tire, or at an authorized dealer.
5. Accordingly, Defendants manufacture, assemble, distribute, and sell substantially identical product in both the US and Canada through their networks of authorized dealers in the US and Canada.
6. Due to the differential pricing of Defendants' goods between the two countries, namely that prices in Canada for Defendants' goods have historically been quoted 25-35% higher on average when quoted in Canadian dollars, relative to the prices quoted on identical or comparable product in the US, quoted in US Dollars, opportunities arise for purchasing goods in the other country at a lower absolute cost when adjusted for the applicable exchange rate, either when the Canadian dollar trades at less than 70 cents to the US dollar or when it trades at more than 82-83 cents to the US dollar.
7. Accordingly, when the fluctuations in the currency market provided for the opportunity, described above, such as in 1999-2003, when the Canadian dollar

averaged less than 70 cents to the US dollar, consumers resident in the United States would have saved thousands of dollars by purchasing Defendants' goods from Defendants readily available Canadian Dealers taking advantage of the weak Canadian dollar.

8. As a result, it would be expected under natural laws of competition, that if not for the Defendants' conspiracy to artificially maintain their domestic prices in the US at historical levels, the prices of US domestic goods would have fallen to approximate the price levels of the readily available Canadian alternative. Facing eroding profits due to the above, Defendants and the Facilitators (defined below) conspired amongst their related Canadian affiliates, and each other to restrict the free flow of Defendants' product across the Canada/US border.
9. Similarly, beginning in early 2005, when the Canadian dollar began to trade above 80 cents to the US dollar, Canadian residents that purchased their cars in Canada would have saved thousands by purchasing Defendants' goods from US dealers, or by importing the Defendants' product to Canada from the US, as prices for identical product from US sources could be 25-35% lower on average than in Canada after adjusting for exchange rate.
10. For example, even recently when the Canadian Dollar traded over 98 cents to the US dollar, Chrysler advertised its popular SUV, the Grand Cherokee Laredo in the US for \$29, 215 when the same car was advertised in Canada for \$36,215<sup>1</sup>.

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<sup>1</sup> The prices quoted in paragraphs 11,12 and 13 were quoted when the Dollar was over 98 cents. Prices for those cars may have been quoted differently at different times during the Class Period.

11. Honda Motor Company advertised its Odyssey Minivan for \$25,645 in the US when the same car was advertised in Canada for \$33,333. The popular Honda Accord was advertised in the US for \$20,800, when the same car was advertised in Canada for \$24,800.
12. Ford advertised its Jaguar XJ8 in the US for \$85,100, while in Canada it was advertised for \$101,000.
13. The Range Rover Sport was advertised in the US for \$58,500 while in Canada it was advertised for \$78,300.
14. Thus, it would have been expected under natural laws of competition that prices in Canada would fall to approximate the prices of Defendants' product in the US, however, due to Defendants' conspiracy, conduct and directives, which prevented consumers from easily importing new vehicles from the US, prices remained 25%- 35% higher on average in Canada when compared to identical product in the US.
15. In order to prevent consumers on both sides of the US/Canada border from taking advantage of these buying opportunities, and to increase their profits at such consumers' expense, Defendants conspired with each other and among their related affiliate companies to maintain the price advantage Defendants enjoyed in one country over another, when applicable, and to maintain and charge consumers artificially higher prices for Defendants' product than would have otherwise been available save for the conspiracy, by restricting the free flow of Defendants goods across the US/Canada border.

16. The primary purpose and effect of this conspiracy was to increase Defendants' profits and prevent same from natural erosion due to:
  - a. consumers purchasing Defendants' goods in the neighboring country for less than those same goods sold for domestically due to fluctuations in the US/Canadian currency exchange rate, or
  - b. the appurtenant reduction in Defendants' profits due to the natural reduction of the domestic price of Defendants' goods as the price reacted to the competition of the imported goods.
  
17. Defendants' conspiracy and conduct was aimed at buyers in both the United States and Canada and damages consumers in Canada and the United States respectively, depending on the US/Canada currency exchange rate.
  
18. Currently, in order to maintain the price advantage Defendants enjoy in Canada relative to the US, Defendants have ordered their dealer network in the US not to sell product into Canada under pain of charges, and potential loss of franchise, or desired car allotments such as Corvettes.
  
19. Dealers in turn may force consumers to sign no "export clauses" in their purchase agreements to prevent consumers from exporting the cars to the other country, or refuse to sell cars to individuals that cannot provide a domestic address to register their purchase.
  
20. As a further example of Defendants' conduct in Canada to unreasonably enhance the prices of Defendants' product in Canada relative to their "natural" or expected

- level, certain of Defendants have ordered their dealer network in Canada not to honor the warranty provided by the applicable related US company affiliates, contrary to Defendants' practice before they embarked on their conspiracy and course of conduct described above.
21. Thus, in the event a Canadian resident is able to purchase a car in the United States, despite the roadblocks enacted to prevent such purchase, Defendants' dealer network in Canada will not service the car under the manufacturer's warranty and the purchaser will be obligated to pay for the repairs on said vehicle.
22. The result of such agreement is that a Canadian consumer that desires to have the protection typically offered by the manufacturer is required to pay between 25% to 35% more on average for a vehicle in Canada than would be required to import such vehicle from the United States.
23. These inter-company agreements and directives are aimed at having the effect of, and do have the effect of unreasonably enhancing the price of Defendants' product in Canada to the detriment of all Canadian consumers of Defendants' products.

**The Parties**

24. GENERAL MOTORS CORPORATION ("GM") is a corporation organized under the laws of Delaware, with its principal place of business at 300 Renaissance Center, Detroit, Michigan. GM manufactures and distributes several new motor

vehicle brands, including Buick, Cadillac, Chevrolet, GMC, Hummer, Oldsmobile, Pontiac, Saab, and Saturn.

25. GENERAL MOTORS OF CANADA, LTD. ("GM Canada") is a subsidiary of GM, with its principal place of business at 1908 Colonel Sam Drive, Oshawa, Ontario, Canada.
26. AMERICAN HONDA MOTOR COMPANY, INC. is a subsidiary of Honda Motor Company, Ltd., a Japanese corporation, with its principal place of business at 1919 Torrance Blvd., Torrance, California.
27. HONDA CANADA, INC. is a subsidiary of Honda Motor Company, Ltd., with its principal place of business at 715 Milner Avenue, Toronto, Ontario, Canada.
28. NISSAN NORTH AMERICA, INC. ("Nissan North America") is a subsidiary of Nissan Motor Company Ltd., a Japanese corporation, with its principal place of business at Franklin Tennessee.
29. NISSAN CANADA INC. is a subsidiary of Nissan Motor Company Ltd with its principal place of business at 5290 Orbitor Drive, Ontario, L4W 4Z5
30. CHRYSLER, LLC ("Chrysler") is a Michigan registered entity with its principal address at 1000 Chrysler Drive, Auburn Hills, Michigan.
31. CHRYSLER CANADA, INC. ("Chrysler Canada") is a subsidiary of Chrysler with its principal place of business at 1 Riverside Drive West, Windsor, Ontario, Canada.

32. The CANADIAN AUTOMOBILE DEALERS ASSOCIATION (CADA) is headquartered in Mississauga, Ontario.
33. NATIONAL AUTOMOBILE DEALERS ASSOCIATION (NADA) is headquartered in McLean, Virginia and represents over 43,000 franchised motor vehicle dealers across the United States.
34. Defendants other than CADA and Nada may be referred to collectively herein as Defendants.
35. Defendants CADA and NADA are referred to collectively herein as the “Facilitators.”

**The Plaintiffs**

36. Dr. Harvey Erlich resides in Toronto, Ontario.
37. Mr. Daniel Berkovits resides in Toronto, Ontario.
38. Mr. David Bain resides in Toronto, Ontario
39. Mr. Akiva Medjuk resides in Toronto, Ontario.

**The Class**

40. Plaintiffs bring this action on behalf of all persons resident in Canada that:

- a. Purchased or leased or intended to purchase or lease a new car that was manufactured, distributed, sold, or assembled by one of the Defendants listed above;
- b. Between August 2005 and August 2007 (the Class Period); and
- c. Who paid more in absolute terms (adjusted for exchange rate) than the comparable or identical car in the United States.

**Details of Defendants Conspiracy**

41. Plaintiffs plead that the allegations in this claim have been committed by Defendants, and that the same were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of each of the Defendants' affairs.
42. To implement their conspiracy to artificially enhance the prices of their product sold in Canada and the US, as applicable, Defendants, engaged in a series of concerted actions, agreements and directives amongst each other, their related Canadian, US, and foreign affiliates, and their US and Canadian dealer networks, intended to have the effect of, and having the effect of reducing competition in the US and Canada marketplace for new cars, and enhancing the price of Defendants' product in the US and Canada, as applicable at various times.

43. The manner through which Defendants accomplished such conspiracy was by attempting to control and limit the cross shipping of new cars from Canada to the US and from the US to Canada.
44. Beginning in at least December 2001, Defendants communicated with one another through CADA and NADA and agreed amongst themselves and each other to act to stop the cross shipping of new cars across the Canada/US border.
45. For example, a Daimler Chrysler memorandum marked "Urgent" and dated December 20, 2001 from Lewis C. Scott, Daimler Chrysler's Zone Manager in Denver, Colorado to all dealers in the Denver zone, entitled "Imported Canadian Vehicles," states: *Following is the latest information on the Canadian vehicle issue: Our management has spoken to the corporate headquarters of several of our competitors regarding this issue and have copies of their policies. The issue is currently being reviewed by our legal department, and it appears as though our policy will greatly mirror that of our competitors. The probability is that we will suspend the warranty on vehicles that come into the U.S. for retail sale....The plan is to have a detailed policy in place during the first quarter of 2002.*
46. As is clear from the Chrysler Memorandum, the policy of not honouring warranties on imported cars was implemented by Chrysler, and its competitors, to address Defendants' "issue" with cars being cross shipped from Canada to the United States.
47. As forecast by this memorandum, by mid-2002, the Defendants stopped honouring warranties for the service and repair of new vehicles exported from

Canada to the United States. This policy was implemented through Defendants' United States dealers, in furtherance of the conspiracy.

48. The identical corporate policy not to honor warranties on imports was implemented by Chrysler's Canadian affiliate at that time, or subsequently, and was intended to prevent or restrict cars being imported to Canada from the US.

49. Defendants bolstered their conspiracy by instructing and directing their Dealer Networks in the US and Canada *inter alia*:

- a. Not to honour warranties in one country on cars imported from the other country, or placing other warranty restrictions on imported cars;
- b. Not to install properly calibrated United States or Canadian standard speedometers and odometers in new vehicles imported from the other country.

50. In March 2002, Ford informed its Canadian dealers that Ford would now

- a. trace exports back to 1999 in order to impose chargebacks, restrict allocations, and otherwise punish exporting dealers;
- b. conduct VIN traces every 60 days to monitor exports and to enforce the export prohibition; and fund and otherwise support Canadian Ford dealers in the event they are sued for refusing to sell automobiles based on export concerns.

51. Plaintiffs plead that Ford took similar actions and gave similar directives to its US dealer network to prevent cars being exported from the US to Canada.

52. Additionally, some Defendants sought and obtained agreements from their Canadian and US dealers :

- a. To require new vehicle customers to execute "No Export" agreements, agreeing not to export the vehicle out of Canada or the US, as applicable, for a stated period. If violated, these agreements could require either the customer or the dealer to pay a substantial penalty of 10 to 50% of the vehicle's value;
- b. To conduct "due diligence" investigations of prospective buyers to identify those buyers intending to export the new vehicles to the other country, and not to sell to such buyers; and
- c. To refuse to provide new vehicle owners who imported or exported the cars to or from the other country with information regarding safety recalls.

53. Plaintiffs plead that the exact details of the directives given to Defendants' US Dealers are currently known only to Defendants and their Dealer networks.

54. Some or all of the Defendants took numerous measures to enforce these constraints on their Canadian dealers which may have included the following:

- a. Penalizing Canadian dealers that sold new vehicles that were exported to the United States through "chargebacks." These chargebacks took the form

of either "liquidated damages" or some percentage of the value of the vehicle, which in either case amounted to several thousand dollars per vehicle;

- b. Threatening to withhold inventory of popular styles and colors of vehicles to Canadian dealers which did not comply with the export restrictions;
- c. Threatening to terminate the dealerships of Canadian dealers which refused to comply;
- d. Creating and exchanging "blacklists" of persons known to purchase vehicles for export into Canada;
- e. Attempting to persuade authorized parts dealers not to provide odometer packages to convert from kilometers to miles; and
- f. Using the dealer trade associations as a conduit to exchange information among themselves, including strategies and procedures for eliminating the "export problem."

55. Plaintiffs plead that the same or similar threats and directives were aimed at the US dealers to force them to comply with the "no export" restrictions. Plaintiffs plead that the exact details of these threats are currently known only to Defendants and to their Dealer networks.

56. The agreements and conduct described herein have had the following effects, among others:

- a. Inter-brand price competition in the sale of new vehicles in Canada has been suppressed and restrained;
- b. Retail prices of vehicles purchased by Plaintiffs and other members of the proposed Class have been unreasonably enhanced; and
- c. The supply of new vehicles in Canada has been limited to quantities fewer than would be available in a competitive market.

57. CADA and NADA facilitated the conspiracy detailed above, and participated in unreasonably enhancing the prices of Defendants' Product sold in Canada.

58. NADA and CADA conspired with the Defendants to institute practices to eliminate the cross export of cars made for sale in Canada or the United States to the other country.

59. In early 2001, the CADA and NADA facilitated communications and discussions between Defendants and their related foreign and domestic affiliates, regarding the prevention of cars being cross shipped across the Canada/US border.

60. As a result of CADA's and NADA's participation in and facilitation of communication between Defendants, in early 2001, some or all Defendants took identical or similar actions and issued similar or identical directives to their respective Dealer Networks; namely Defendants:

- a. threatened their respective Canadian dealers with stricter enforcement of chargeback provisions;

- b. reinforced their requirements that Canadian dealers condition sales on consumers' entry into "No Export" agreements;
- c. used the same language and terms in "No Export" agreements as those used by competitors;
- d. imposed allocation restrictions on exporting Canadian dealers;
- e. pursued termination of Canadian dealers found selling cars for use in the United States; and
- f. required Canadian dealers to conduct "due diligence" investigations of prospective buyers to root out United States citizens and other potential exporters.

61. In May 2002, Defendants representatives gathered at the 2002 New York Auto Show in New York City and met with senior representatives of both CADA and NADA to discuss the export "problem." Defendants suggested that CADA's members police non-compliant dealers. The discussions also covered a proposed checklist of practices Canadian dealers could employ to stop export sales.

62. The Facilitators also assisted Defendants in their conspiracy to lessen competition and to unreasonably enhance prices for their product by assisting in the creation of a litigation defense fund for the protection of dealers that incurred costs or legal fees arising out of Defendants directives, and in furtherance of the conspiracy.

63. CADA's and NADA's own literature implicates them in the facilitation of the conspiracy to prevent the cross shipping of cars across the Canada/US border, detailed herein.
64. A CADA Newsletter, dated April 2002, stated that in late 2001, CADA formed a new Industry Relations Committee to deal with "industry issues" such as "export sales." It also noted that during 2001, CADA met "with a full compliment [sic] of Industry Representatives and Manufacturers Associations representations" to "attempt to resolve the issue" of export sales.
65. In April 2002, CADA announced that it would work with manufacturers and dealers to develop "general industry guidelines, due diligence standards and best practices" for dealers to use to stop the export of new automobiles from Canada to the United States.
66. In June 2002, CADA announced that it "[was] currently working closely with manufacturers and NADA" to find a solution to the export problem. Subsequently, CADA issued a report to its members in August 2002 entitled "Motor Vehicle Industry Strategy Against Export Sales." That report describes the communication and collaboration and consensus extensive collaboration, coordination, and agreement among the Defendants, manufacturer trade associations, and dealer trade associations to stop export sales. The report describes "recent meetings between CADA and the manufacturers' associations" where "a multi-faceted strategy was discussed" and a "consensus to work together" was reached to prevent new automobile exports from Canada to the

United States. Further, with respect to Canadian dealers' due diligence in investigating prospective customers, an "'industry' list that all manufacturers could agree on" was discussed.

67. The August 2002 CADA report also detailed the Defendants' strategy of requiring "national use of 'not for export' language in sales contracts." Further, the report describes a "recent meeting" between CADA and NADA at which "it was evident that [export] sales into the U.S. is a major issue with NADA and its dealers." It reported that, U.S. dealers are "looking to CADA and Canadian dealers to address these issues, and [NADA] will cooperate wherever possible in assisting CADA with initiatives addressing export sales".

68. Finally, a CADA report states that at "the most recent" CADA meeting, representatives of the Defendants discussed pursuit of an industry-wide solution and "a united campaign against the unauthorized exporting of new vehicles into the U.S.A."

### **Plaintiffs Details**

69. Mr. Berkovits leased a Jeep Grand Cherokee Overland, during the Class Period. The sales price of the Jeep under the lease was \$58,645 Chrysler advertised that Jeep in the US at less than \$40,000.

70. Dr. Harvey Erlich leased two Honda Accords during the Class Period. The sales price of one of the Accords under one lease was \$32,971 and the price of the

second Accord under the second lease was \$36,984. The same Accord as was leased by Dr. Erlich is advertised in the US at less than \$30,000.

71. Mr. David Bain purchased a GMC Yukon Denali during the Class Period. The sale price of the vehicle under the lease was \$69,615. The same car was advertised in the US for approximately \$50,000.

72. Mr. Akiva Medjuk leased a Nissan Altima during the Class Period. The sale price of the vehicle was \$31,182. The same car was advertised in the US for \$24,430.

### **Conspiracy under the Competition Act**

73. Plaintiffs incorporate by reference paragraphs 1-72 as though completely reproduced herein.

74. Plaintiffs Plead that Defendants conduct described herein is a violation of S. 45(1) of the *Act* which provides in relevant part:

*Every one who conspires, combines, agrees or arranges with another person*  
*(a) to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,*  
*(b) to prevent, limit or lessen, unduly, the manufacture or production of a product or to enhance unreasonably the price thereof,*  
*(c) to prevent or lessen, unduly, competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance on persons or property, or*  
*(d) to otherwise restrain or injure competition unduly,*  
*is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million dollars or to both*

75. Plaintiffs claim that the conduct described herein above was a breach of *S 45(1)* in that:

- a. Defendants conduct described herein amounts to a conspiracy to:
  - i. Enhance unreasonably the price of Defendants' product sold in Canada; and
  - ii. Lessen unduly the competition in the production, manufacture, supply of a product; and
  - iii. Otherwise restrained competition unduly.

76. Plaintiffs plead that as a result of Defendants' conduct:

- a. Prices of Defendants' products were enhanced unreasonably in Canada; and
- b. Defendants lessened competition in the production and supply of Defendants' product; and
- c. That there was in general unduly limited competition as a result of Defendants' conduct.

77. Plaintiffs claim that as a result of Defendants' conduct, Plaintiffs and the Class Members have suffered damages.

78. Plaintiffs plead that they and the Class may recover Damages from Defendants under *S 36(1)* of the Act which provides in relevant part that:

*Any person who has suffered loss or damage as a result of*

*(a) conduct that is contrary to any provision of Part VI, . . .*

*may, in any court of competent jurisdiction, sue for and recover from the person who engaged in the conduct or failed to comply with the order an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section.*

79. Defendants NADA and CADA facilitated this conspiracy by:

- a. Sponsoring meetings to exchange information among manufacturers;
- b. Promoting the development of an industry-wide checklist of practices dealers could employ to stop export sales; and
- c. Assisting Defendants in enforcing the agreements described above.

80. These actions violate S. 45(1) of the *Act* as described above.

81. Plaintiffs plead that as a result of the actions of CADA and NADA they have suffered damages as described above.

82. Plaintiffs plead that if Defendants' conduct is not enjoined by this court, Canadian consumers will continue to suffer damages.

83. Accordingly, Plaintiffs request that this Court issue an injunction ordering Defendants to stop their anti-competitive behavior, requiring that Defendants allow the prices quoted for their product in Canada to fall to their natural level.

**Violation of Provincial Consumer Protection Statutes.**

84. Plaintiffs incorporate by reference the allegations in paragraphs 1-83 as if they were fully reproduced herein.
85. As a direct result of Defendants' anticompetitive, deceptive, unfair, unconscionable conduct, Plaintiffs and members of the Class were denied access to an alternative channel of distribution of new motor vehicles and forced to pay artificially high prices for their new motor vehicles.
86. Defendants conduct described herein is an unfair business practice and accordingly violates S 17 (1) of the *Consumer Protection Act, 2002, S.O. 2002, c. 30, Sch. A (Consumer Protection Act)* which provides in relevant part: “*No person shall engage in an unfair business practice*”.
87. Other provinces have enacted similar Consumer Protection Legislation.
88. Plaintiffs plead that as a result of Defendants' conduct described herein, and as a result of Defendants' unfair business practice, they and the Class Members have suffered damages.
89. Defendants, except CADA and NADA, have engaged in unfair competition or have committed unfair business practices in violation of the *Consumer Protection Act*, and other Consumer Protection legislation in other Provinces.

**Unjust Enrichment**

90. Plaintiffs incorporate by reference the allegations in paragraphs 1-89 as though completely reproduced herein.
91. Defendants have been unjustly enriched by their conduct described herein, which caused Plaintiffs and the Class Members to pay artificially high and unreasonably enhanced prices for their vehicles in Canada.
92. There is no juristic reason for the enrichment.
93. The Plaintiffs and the Class Members have suffered a corresponding deprivation.
94. It would be inequitable for the Defendants to retain their profits they earned at the Plaintiffs' and the Class Members' expense through their unlawful conduct described herein.

**Legislation**

95. The Plaintiffs plead and rely on:
- a. *Consumer Protection Act, 2002, S.O. 2002, c. 30, Sch. A.*
  - b. *the Competition Act, R.S.C. 1985, c. C-34.*
  - c. *The Class Proceedings Act, 1992.*
96. The plaintiff proposes that this action be tried in the City of Toronto.

25 Sept 2007

September 25, 2007

**JUROVIESKY AND RICCI LLP**

**Henry Juroviesky** (LSUC # 53233S)

**Eliezer Karp** (LSUC#54317P )

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