

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RAINBOW CHEVROLET, INC., d/b/a
CUTTER CHEVROLET;
STOEBNER HOLDINGS, INC., d/b/a
HONDA WINDWARD, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

YAZAKI CORPORATION, YAZAKI
NORTH AMERICA, INC., DENSO
CORPORATION, DENSO
INTERNATIONAL, AMERICA INC.,

Defendants.

Case No. _____

**Related to: 12-md-02311;
2:12-cv-00300; and, 2:12-cv-00302**

CLASS ACTION COMPLAINT

Jury Trial Demanded

**Filed Under Seal Pursuant to Hawaii
Revised Statute 480-13.3(a)(1)**

CLASS ACTION COMPLAINT

Plaintiffs Rainbow Chevrolet, Inc., d/b/a Cutter Chevrolet (“Plaintiff Rainbow”) and Stoebner Holdings, Inc. d/b/a Honda Windward (“Plaintiff Windward”) (collectively “Plaintiffs”), file this Class Action Complaint on behalf of themselves and all others similarly situated (the “Classes” as defined below).

Plaintiffs bring this class action for damages, injunctive relief and other relief pursuant to federal antitrust laws and state antitrust, unfair competition, and consumer protection laws, demand a trial by jury, and allege as follows:

NATURE OF ACTION

1. Plaintiffs bring this lawsuit as a proposed class action against the Defendants (defined below), manufacturers and suppliers of Fuel Senders (defined below) globally and in the

United States, for engaging in a lengthy conspiracy to suppress and eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of these products, which were sold to automobile manufacturers in the United States and elsewhere. The Defendants' conspiracy successfully targeted the United States automotive industry, raising prices for car manufacturers, car and truck dealers and consumers.

2. The "Class Period" refers to March 2001 to the present.

3. "Fuel Senders" are devices that reside inside the fuel tank of an automobile¹ and measure the amount of fuel in the tank.

4. The Defendants manufacture, market, and sell Fuel Senders throughout the United States and in other countries.

5. Vehicles containing Fuel Senders, as well as Fuel Senders themselves, made by Defendants, are sold in every state of the United States and the District of Columbia.

6. The Defendants and other co-conspirators (as yet unknown to Plaintiffs) agreed, combined, and conspired to rig bids for, and to fix, stabilize, and maintain the prices of Fuel Senders.

7. Competition authorities in the United States, the European Union, and Japan have been investigating a conspiracy involving automotive parts since at least February 2010. As part of its criminal investigation, the DOJ is seeking information about unlawful anticompetitive conduct in the markets for a number of different automotive parts including Fuel Senders, and the Federal Bureau of Investigation ("FBI") has participated in raids, pursuant to search warrants, carried out in the offices of a number of major companies in the industry. The

¹ "Vehicles," "automobiles" or "cars" as used in this Complaint, means any new vehicles bought by automobile dealers throughout the United States, including but not limited to sedans, trucks and sport utility vehicles.

European Commission Competition Authority (“EC”) has also conducted dawn raids at the European offices of several of these companies.

8. Defendant Yazaki Corporation has agreed to plead guilty to participating in a conspiracy to fix prices and rig bids for Fuel Senders from at least as early as March 2004 and continuing until at least February 2010. Defendant Yazaki has agreed to pay a \$470 million criminal fine related to its unlawful participation in three price-fixing and bid rigging conspiracies, including its conspiracies to fix the prices of Fuel Senders. Six Yazaki Corporation executives have also agreed to plead guilty to fixing prices and rigging bids on a number of automotive parts.

9. As part of its forthcoming plea agreement, Yazaki will agree to assist the DOJ in its ongoing criminal investigation into the automotive parts industry.

10. As a direct result of the anti-competitive and unlawful conduct alleged herein, Plaintiffs and the Class paid artificially inflated prices for Fuel Senders or for vehicles containing Fuel Senders. Plaintiffs and the members of the Classes have thereby suffered antitrust injury to their business or property.

JURISDICTION AND VENUE

11. Plaintiffs bring this action under Section 16 of the Clayton Act (15 U.S.C. § 26) to secure equitable and injunctive relief against the Defendants for violating Section 1 of the Sherman Act (15 U.S.C. § 1). Plaintiffs also assert claims for actual and exemplary damages pursuant to state antitrust, unfair competition, and consumer protection laws, and seek to obtain restitution, recover damages and secure other relief against the Defendants for violations of those state laws. Plaintiffs and the Classes also seek attorneys’ fees, costs and other expenses under federal and state law.

12. This Court has jurisdiction over the subject matter of this action pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26), Section 1 of the Sherman Act (15 U.S.C. § 1), and Title 28, United States Code, §§ 1331 and 1337. This Court has subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1332(d) and 1367, as this is a class action in which the matter or controversy exceeds the sum of \$5,000,000.00, exclusive of interest and costs, and in which some members of the proposed Classes are citizens of different states than some of the Defendants.

13. Venue is proper in this district pursuant to Section 12 of the Clayton Act (15 U.S.C. § 22) and 28 U.S.C. §§ 1391(b), (c), and (d), because a substantial part of the events giving rise to Plaintiffs' claims occurred in this district, a substantial portion of the affected interstate trade and commerce discussed below has been carried out in this district, and one or more of the Defendants reside, are licensed to do business in, are doing business in, had agents in, or are found or transact business in this district.

14. This Court has *in personam* jurisdiction over each of the Defendants because each Defendant, either directly or through the ownership and/or control of its subsidiaries, *inter alia*: (a) transacted business in the United States, including in this district; (b) directly or indirectly sold or marketed substantial quantities of Fuel Senders throughout the United States that were specifically designed for vehicles intended to be sold in the United States, including in this district; (c) had substantial aggregate contacts with the United States as a whole, including in this district; or (d) was through its own actions and through the actions of its co-conspirators engaged in an illegal price-fixing conspiracy that was directed at, and had a direct, substantial, reasonably foreseeable and intended effect of causing injury to, the business or property of persons and entities residing in, located in, or doing business throughout the United States, including in this

district; and/or (e) engaged in actions in furtherance of an illegal conspiracy in this district either itself or through its co-conspirators. Defendants also conduct business throughout the United States, including in this district, and they have purposefully availed themselves of the laws of the United States.

15. Defendants engaged in conduct both inside and outside of the United States that caused direct, substantial, reasonably foreseeable, and intended anti-competitive effects upon interstate commerce within the United States and upon import trade and commerce into the United States.

16. The activities of Defendants and their co-conspirators were within the flow of, were intended to, and did have a substantial effect on interstate commerce of the United States. Defendants' products are sold in the flow of interstate commerce.

17. Fuel Senders manufactured abroad by the Defendants and sold for use in automobiles in the United States are goods brought into the United States for sale and, therefore, constitute import commerce. To the extent any Fuel Senders are purchased in the United States and do not constitute import commerce, Defendants' unlawful activities with respect thereto, as more fully alleged herein during the Class Period, had, and continue to have, a direct, substantial, and reasonably foreseeable effect on United States commerce. The anticompetitive conduct, and its effect on United States commerce described herein, proximately caused antitrust injury to the Plaintiffs and members of the Classes in the United States.

18. By reason of the unlawful activities hereinafter alleged, Defendants substantially affected commerce throughout the United States, causing injury to Plaintiffs and members of the Classes. Defendants, directly and through their agents, engaged in activities affecting all states,

to rig bids for, and to fix, stabilize, and maintain the prices of Fuel Senders, and that conspiracy unreasonably restrained trade and adversely affected the market for Fuel Senders.

19. Defendants' conspiracy and wrongdoing described herein adversely affected persons in the United States who purchased Fuel Senders, including Plaintiffs and the Classes.

PARTIES

Plaintiffs

20. Plaintiff Rainbow is a Hawaii corporation, with its principal place of business in Honolulu, Hawaii. Plaintiff Rainbow is an authorized Chevrolet dealer who purchases and sells Chevrolet-brand vehicles containing Fuel Senders manufactured by one or more of the Defendants or their co-conspirators, as well as Fuel Senders manufactured by one or more of the Defendants or their co-conspirators.

21. During the Class Period Plaintiff Rainbow purchased vehicles containing Fuel Senders manufactured by one or more Defendants or their co-conspirators. Plaintiff Rainbow also purchased Fuel Senders, manufactured by one or more Defendants or their co-conspirators, for its repair and service business, during the Class Period. Plaintiff Rainbow purchased and received both the afore-mentioned vehicles and Fuel Senders in Hawaii. Plaintiff Rainbow has also displayed, sold, serviced, and advertised its vehicles in Hawaii during the Class Period.

22. Plaintiff Windward is a Hawaii corporation, with its principal place of business in Kaneohe, Hawaii. Plaintiff Windward is an authorized Honda dealer who purchases and sells Honda-brand vehicles containing Fuel Senders manufactured by one or more of the Defendants or their co-conspirators, as well as Fuel Senders manufactured by one or more of the Defendants or their co-conspirators.

23. During the Class Period Plaintiff Windward purchased vehicles containing Fuel Senders manufactured by one or more Defendants or their co-conspirators. Plaintiff Windward

also purchased Fuel Senders, manufactured by one or more Defendants or their co-conspirators, for its repair and service business, during the Class Period. Plaintiff Windward purchased and received both the afore-mentioned vehicles and Fuel Senders in Hawaii. Plaintiff Windward has also displayed, sold, serviced, and advertised its vehicles in Hawaii during the Class Period.

24. The Plaintiffs described above sell vehicles and Fuel Senders to customers who employ said vehicles and Fuel Senders for personal use.

Defendants

Yazaki Defendants

25. Defendant Yazaki Corporation is a Japanese corporation with its principal place of business in Tokyo, Japan. Defendant Yazaki Corporation manufactured, marketed, and/or sold Fuel Senders, directly or through its U.S. subsidiaries, including Yazaki North America, Inc., that were purchased throughout the United States, including in this district, during the Class Period.

26. Defendant Yazaki North America, Inc. is an Illinois corporation and has its principal place of business in Canton Township, Michigan. It is a subsidiary of and owned and controlled by its parent, Defendant Yazaki Corporation. At all times during the Class Period, its activities in the United States were under the control and direction of its Japanese parent, which controlled its policies, sales, and finances. Defendant Yazaki North America manufactured, marketed and/or sold Fuel Senders that were purchased throughout the United States, including in this district, during the Class Period, including by firms that sold such Fuel Senders to Plaintiffs. Yazaki North America's website states that "Yazaki North America is part of the Yazaki Group," and frequently refers to Yazaki North America and its Japanese parent interchangeably as "Yazaki."

27. A number of Yazaki's executives worked at both Yazaki Corporation and its U.S. subsidiary. According to the criminal information filed against him, Yazaki executive Tsuneaki Hanamura worked at both Yazaki Corporation and Yazaki North America, Inc. between January 2000 and February 2010. Ryoji Kawai also worked at both the Japanese parent and the U.S. subsidiary between January 2000 and February 2010. Shigeru Ogawa was employed by both Yazaki Corporation and Yazaki North America between January 2002 and February 2010. Finally, Hisamitsu Takada was employed by the parent and the subsidiary between September 2003 and February 2010. Yazaki Corporation and Yazaki North America, Inc. are referred to collectively as "Yazaki" or "Yazaki Defendants."

Denso Defendants

28. Defendant Denso Corporation is a Japanese company with its principal place of business in Kariya, Japan. Defendant Denso Corporation manufactured, marketed, and/or sold Fuel Senders, directly or through its U.S. subsidiaries, including Denso International America, Inc., that were purchased throughout the United States, including in this district, during the Class Period.

29. Defendant Denso International, America Inc. is a Delaware corporation with its principal place of business in Southfield, Michigan. Defendant Denso America is a subsidiary of, owned by, and controlled by Defendant Denso Corporation. At all times during the Class Period, its activities in the United States were under the control and direction of its Japanese parent, which controlled its policies, sales, and finances. Defendant Denso International America Inc. manufactured, marketed, and/or sold Fuel Senders that were purchased throughout the United States, including in this district, during the Class Period, including by firms that sold such Fuel Senders to Plaintiffs. Denso Corporation's Annual Report for 2011 states that Denso's

North American “Technical Center” is “acting as a design center to support DENSO efforts in Japan”

30. A number of Denso International’s executives also work or have worked for Denso Corporation. Kazumasa Kimura, the COO of Denso International America, serves as one of DENSO Corp.’s executive directors. Kimura is also the former director of the Global Sales and Business Development Division of Denso Corporation. Similarly, Hikaru "Howard" Sugi, the President and CEO of DENSO International America is the senior executive director of Denso Corporation. Defendants Denso Corporation and Denso International America, Inc. are referred to collectively as “Denso” or “Denso Defendants.”

AGENTS AND CO-CONSPIRATORS

31. Each Defendant acted as the principal of or agent for the other Defendant with respect to the acts, violations, and common course of conduct alleged.

32. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as Defendants in this lawsuit, the identities of which are presently unknown, have participated as co-conspirators with Defendants in the offenses alleged in this Complaint, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anti-competitive conduct.

33. Whenever in this Complaint reference is made to any act, deed, or transaction of any corporation or limited liability entity, the allegation means that the corporation or limited liability entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the corporation’s or limited liability entity’s business or affairs.

FACTUAL ALLEGATIONS

A. The Fuel Sender Industry

34. Fuel Senders are located in a vehicle's fuel tank and consist of a float, which is attached to a long metal rod attached to a variable resistor. The resistor measures the amount of pressure the float puts on the bar. As the fuel goes down, the float goes down with it. As it dips, the electrical current in the variable resistor sends weaker electrical signals to the fuel gauge, located in the Instrument Panel Cluster. The gauge will then drop accordingly, indicating there is less fuel in the tank.

35. Fuel Senders are installed by automobile original equipment manufacturers ("OEMs") in new cars as part of the automotive manufacturing process. They are also installed in cars to replace worn out, defective, or damaged Fuel Senders.

36. When purchasing Fuel Senders, OEMs issue Requests for Quotation ("RFQs") to automotive parts suppliers—Fuel Senders are not commodity items. Automotive parts suppliers submit quotations, or bids, to OEMs in response to RFQs and the OEMs usually award the business to the selected automotive parts supplier for four to six years, and that supplier's Fuel Senders are on the market for that amount of time. Typically, the bidding process begins approximately three years prior to the start of production of a new model. Japanese OEMs procure parts for U.S.-manufactured vehicles both in Japan and the United States.

37. Suppliers, including Defendants, supply OEMs with both Fuel Senders to be installed in vehicles and Fuel Senders to be used for replacement purposes.

38. The Defendants and their co-conspirators supplied Fuel Senders to OEMs for installation in vehicles manufactured and sold in the United States and elsewhere. The Defendants and their co-conspirators manufactured Fuel Senders (a) in the United States for installation in vehicles manufactured and sold in the United States, (b) in Japan for export to the

United States and installation in vehicles manufactured and sold in the United States, and (c) in Japan for installation in vehicles manufactured in Japan for export to and sale in the United States.

39. Denso's main customers include: Honda, Toyota, General Motors, Mercedes-Benz, BMW, Chrysler, Subaru, Mazda, Suzuki, Mitsubishi, Nissan, Kia, Hyundai and Volvo, among others. Denso International America's website states: ". . . . DENSO works hand-in-hand with all major automakers worldwide"

40. Yazaki's customers include: Toyota, Chrysler, Ford, Honda, General Motors, Volvo, Volkswagen, Isuzu, Mazda, Mitsubishi, Nissan, Renault, Subaru, and Suzuki. Yazaki North America's website states that ". . . YNA [has] become a valued supplier to virtually every major auto manufacturer in the world."

41. Plaintiffs and members of the proposed Class purchased Fuel Senders indirectly from the Defendants and their co-conspirators. By way of example, automobile dealers indirectly purchase Fuel Senders from Defendants when they purchase new vehicles to sell or lease to consumers. Likewise, when repairing a damaged vehicle or where the vehicle's Fuel Senders are defective, Plaintiffs and other automobile dealers indirectly purchase replacement Fuel Senders from entities who have purchased such products from Defendants.

42. Replacement Fuel Senders sold by OEMs to dealerships are the same as the Fuel Senders installed in vehicles and are made by the same manufacturer who made the Fuel Senders originally installed. Such replacement parts are not the same as aftermarket parts, which are made by different manufacturers than those who manufactured the original parts. The prices of replacement Fuel Senders were inflated by Defendants' collusion, either as a direct effect of their conspiracy or through umbrella effects.

B. The Structure and Characteristics of the Fuel Sender Markets Render the Conspiracy More Plausible.

43. The structure and other characteristics of the Fuel Sender market in the United States are conducive to a price-fixing agreement and have made collusion particularly attractive in these markets. Specifically, the Fuel Sender market: (1) has high barriers to entry; (2) has inelasticity of demand; (3) is highly concentrated; and (4) Defendants had opportunities to conspire.

1. The Fuel Sender Market Has High Barriers to Entry.

44. A collusive arrangement that raises product prices above competitive levels would, under basic economic principles, attract new entrants seeking to benefit from the supra-competitive pricing. Where, however, there are significant barriers to entry, new entrants are less likely. Thus, barriers to entry help facilitate the formation and maintenance of a cartel.

45. There are substantial barriers that preclude, reduce, or make more difficult entry into the Fuel Sender market. A new entrant into the business would face costly and lengthy start-up costs, including multi-million dollar costs associated with manufacturing plants and equipment, energy, transportation, distribution infrastructure, skilled labor, and long-standing customer relationships.

46. In addition, the Yazaki Defendants own several patents for the component parts that make up Fuel Senders. These patents place a significant and costly burden on potential new entrants, who must avoid infringing the patents when entering the markets with a new product.

2. There is Inelasticity of Demand for Fuel Senders.

47. “Elasticity” is a term used to describe the sensitivity of supply and demand to changes in one or the other. For example, demand is said to be “inelastic” if an increase in the price of a product results in only a small decline in the quantity sold of that product, if any. In

other words, customers have nowhere to turn for alternative, cheaper products of similar quality, and so continue to purchase despite a price increase.

48. For a cartel to profit from raising prices above competitive levels, demand must be relatively inelastic at competitive prices. Otherwise, increased prices would result in declining sales, revenues, and profits, as customers purchased substitute products or declined to buy altogether. Inelastic demand is a market characteristic that facilitates collusion, allowing producers to raise their prices without triggering customer substitution and lost sales revenue.

49. Demand for Fuel Senders is highly inelastic. This is because there are no close substitutes for these products. Additionally, customers must purchase Fuel Senders as essential parts of a vehicle, regardless of whether prices are kept at supra-competitive levels. Customers wanting to purchase a car simply have no choice but to purchase Fuel Senders.

50. In addition, OEMs cannot change Fuel Sender suppliers randomly after they choose one because the OEMs design the features of their vehicles so that the Fuel Senders they purchase for a vehicle are then integrated with the electronics and mechanics of the particular vehicle model. Thus, Fuel Sender manufacturers and OEMs must agree on a design that is unique to a particular vehicle model. It would be difficult for a new market entrant to do so.

3. The Market for Fuel Senders is Highly Concentrated.

51. A small number of manufacturers supply Fuel Senders to OEMs.

4. Defendants Had Ample Opportunities to Conspire

52. Defendants attended industry events where they had the opportunity to meet, have improper discussions under the guise of legitimate business contacts, and perform acts necessary for the operation and furtherance of the conspiracy. For example, Defendants and their co-conspirators have regularly attended the annual North American International Auto Show

(“NAIAS”) in Detroit, Michigan and the Automotive Aftermarket Products Expo in Las Vegas, Nevada. Indeed, according to the NAIAS website, DENSO was a premier sponsor of the 2012 event, held from January 9 to January 22.

C. Global Government Investigation Into Price-Fixing in the Automotive Parts Industry.

136. A globally coordinated antitrust investigation is taking place in the United States, Europe, and Japan, aimed at suppliers of automotive parts, including Fuel Senders.

137. The probe originated in Europe as a result of several European OEMs coming together to bring a complaint to the EC. One carmaker is said to have failed to attract competitive bids for automotive wire harnessing systems, leading the company to join with other carmakers to take their complaint to the EC.

138. On February 8, 2010, the EC executed surprise raids at the European offices of certain automotive parts makers as part of an investigation into anti-competitive conduct related to the manufacturing and sale of automotive parts. The EC also carried out additional raids at the European offices of several suppliers of automotive parts on June 7, 2010. Specifically, the EC investigators raided the offices of Leoni AG, S-Y Systems Technologies Europe GmbH, and Yazaki. “The Commission has reason to believe that the companies concerned may have violated European Union antitrust rules that prohibit cartels and restrictive business practices,” an EC official said in a statement.

139. In February 2010, Japan’s Fair Trade Commission raided the Tokyo offices of Furukawa Electric Co., Ltd., Sumitomo Electric Industries, Ltd., and Yazaki as part of an expansive investigation into collusion in the automotive parts industry dating back to at least 2003.

140. The DOJ has stated that it is conducting an investigation of potential antitrust activity and coordinating its investigation with antitrust regulators in Europe. “The antitrust division is investigating the possibility of anticompetitive cartel conduct of automotive electronic components suppliers,” Justice Department Spokeswoman Gina Talamona said.

141. Indeed, on February 23, 2010, around the same time as the raids by the Japanese and European competition authorities, investigators from the FBI raided three Detroit-area Japanese auto parts makers as part of a federal antitrust investigation. The FBI executed warrants and searched the offices of these companies, including Yazaki’s subsidiary in Canton Township, Michigan, Defendant Yazaki North America. Special Agent Sandra Berchtold said the affidavits supporting issuance of the warrants were sealed in federal court. To obtain search warrants, the United States was legally required to have probable cause, accepted by a magistrate, to believe that it would obtain evidence of an antitrust violation as a result of executing the search warrant—that is, the United States had to have evidence sufficient to warrant a person of reasonable caution to believe that raiding the offices of a seemingly lawful business would uncover evidence of antitrust violations and that claimed evidence must have been examined and accepted by a magistrate. That belief, which was recounted in sworn affidavits or testimony, must be grounded on reasonably trustworthy information.

D. Defendants’ Collusive Conduct

142. Defendants conspired to rig bids, fix prices and allocate business with regard to Fuel Senders.

E. Yazaki Guilty Plea Agreement

143. On January 30, 2012, the DOJ announced that Yazaki Corporation had agreed to pay a \$470 million fine and plead guilty to a three-count criminal information charging Yazaki Corporation with: (1) participating in a combination and conspiracy with its co-conspirators to

suppress and eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of, automotive wire harnesses² and related products sold to automobile manufacturers in the United States and elsewhere from at least as early as January 2000 and continuing until at least February 2010 in violation of the Sherman Act, 15 U.S.C. § 1; (2) participating in a combination and conspiracy with its co-conspirators to suppress and eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of, instrument panel clusters sold to automobile manufacturers in the United States and elsewhere from at least as early as December 2002 and continuing until at least February 2010 in violation of the Sherman Act, 15 U.S.C. § 1; and (3) participating in a combination and conspiracy with its co-conspirators to suppress and eliminate competition in the automotive parts industry by agreeing to fix, stabilize, and maintain the prices of Fuel Senders sold to an automobile manufacturer in the United States and elsewhere from at least as early as March 2004 and continuing until at least February 2010 in violation of the Sherman Act, 15 U.S.C. § 1.

144. Yazaki's plea agreement for all of these products requires it and its subsidiaries to cooperate with the DOJ, including producing documents in their control and providing their "directors, officers and employees . . . for interviews and the provision of testimony in grand jury, trial and other judicial proceedings."

145. Yazaki pleaded guilty to engaging the following activities to perpetuate the Instrument Panel Clusters conspiracy:

- a. participating in meetings, conversations, and communications in the United States and Japan to discuss the bids and price quotations to be submitted to automobile manufacturers in the United States and elsewhere;

² A wire harness is the "central nervous system" of an automotive vehicle and consists of the wires or cables and data circuits that run throughout the vehicle.

- b. agreeing, during those meetings, conversations, and communications, on bids and price quotations to be submitted to automobile manufacturers in the United States and elsewhere;
- c. agreeing, during those meetings, conversations, and communications, to allocate the supply of Instrument Panel Clusters sold to automobile manufacturers in the United States and elsewhere on a model-by-model basis;
- d. agreeing, during those meetings, conversations, and communications, to coordinate price adjustments requested by automobile manufacturers in the United States and elsewhere;
- e. submitting bids, price quotations, and price adjustments to automobile manufacturers in the United States and elsewhere in accordance with the agreements reached;
- f. selling Instrument Panel Clusters to automobile manufacturers in the United States and elsewhere at collusive and noncompetitive prices;
- g. accepting payment for Instrument Panel Clusters sold to automobile manufacturers in the United States and elsewhere at collusive and noncompetitive prices;
- h. engaging in meetings, conversations, and communications in the United States and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme; and
- i. employing measures to keep their conduct secret, including but not limited to using code names and meeting at private residences or remote locations.

146. According to the criminal information filed against Yazaki Corporation, Yazaki Corporation and its co-conspirators carried out the Fuel Sender conspiracy by:

- a. participating in meetings, conversations, and communications to discuss the price quotations to be submitted to an automobile manufacturer in the United States and elsewhere;
- b. agreeing, during those meetings, conversations, and communications, on price quotations to be submitted to an automobile manufacturer in the United States and elsewhere;
- c. agreeing, during those meetings, conversations, and communications, to coordinate price adjustments requested by an automobile manufacturer in the United States and elsewhere;

- d. submitting price quotations, and price adjustments to an automobile manufacturer in the United States and elsewhere in accordance with the agreements reached;
- e. selling Fuel Senders to an automobile manufacturer in the United States and elsewhere at collusive and noncompetitive prices; and
- f. accepting payment for Fuel Senders sold to an automobile manufacturer in the United States and elsewhere at collusive and noncompetitive prices.

147. Yazaki's plea agreement states that it sold its Fuel Senders through a United States subsidiary, located in the Eastern District of Michigan.

148. Six Yazaki executives have pleaded guilty in connection with the conspiracy to rig bids, fix prices, and allocate markets of automotive parts: (1) Tsuneaki Hanamura; (2) Kazuhiko Kashimoto; (3) Ryoji Kawai; (4) Shigeru Ogawa; (5) Toshio Sudo; and (6) Hisamitsu Takada.

149. "As a result of this international price-fixing and bid-rigging conspiracy, automobile manufacturers paid noncompetitive and higher prices for parts in cars sold to U.S. consumers," said Sharis A. Pozen, Acting Assistant Attorney General in charge of the Department of Justice's Antitrust Division, concerning the automotive component conspiracy being investigated by the DOJ. "This [automotive component] cartel harmed an important industry in our nation's economy, and the Antitrust Division with the Federal Bureau of Investigation will continue to work together to ensure that these kinds of conspiracies are stopped."

150. "When companies partner to control and price fix bids or contracts, it undermines the foundation of the United States' economic system," said FBI's Special Agent in Charge Andrew G. Arena. "The FBI is committed to aggressively pursuing any company involved in antitrust crimes."

151. Deputy Assistant Attorney General Scott Hammond, recently stated that the automotive parts cartel is “the biggest [cartel] with respect to the impact on U.S. business and consumers.”

F. Denso’s Guilty Plea Agreement

152. Defendant Denso Corp. agreed to plead guilty and was sentenced to pay a total of \$78 million in criminal fines with respect to a two-count criminal information charging Denso Corporation with: (1) participating in a combination and conspiracy with its co-conspirators to suppress and eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of electronic control units sold to an automobile manufacturer in the United States and elsewhere from at least as early as January 2000 and continuing until at least February 2010 in violation of the Sherman Act, 15 U.S.C. § 1; (2) participating in a combination and conspiracy with its co-conspirators to suppress and eliminate competition in the automotive parts industry by agreeing to rig bids for, and to fix, stabilize, and maintain the prices of heater control panels sold to an automobile manufacturer in the United States and elsewhere from at least as early as January 2000 and continuing until at least February 2010 in violation of the Sherman Act, 15 U.S.C. § 1. Denso admitted to engaging in the same illegal activities, to which Yazaki pleaded guilty including:

- i. Participating in meetings, conversations, and communications in the United States and Japan to discuss the bids and price quotations;
- ii. Agreeing, during those meetings, conversations, and communications, on bids and price quotations to be submitted;
- iii. Agreeing, during those meetings, conversations, and communications, to allocate the supply of ECUs and HCPs on a model-by-model basis;
- iv. Agreeing, during those meetings, conversations, and communications, to coordinate price adjustments requested by an automobile manufacturer in the United States and elsewhere;

- v. Submitting bids, price quotations, and price adjustments to an automobile manufacturer in the United States and elsewhere in accordance with the agreements reached;
- vi. Selling ECUs and HCPs to an automobile manufacturer in the United States and elsewhere at collusive and noncompetitive prices;
- vii. Accepting payment for ECUs and HCPs sold to an automobile manufacturer in the United States and elsewhere at collusive and noncompetitive prices;
- viii. Engaging in meetings, conversations, and communications in the United States and elsewhere for the purpose of monitoring and enforcing adherence to the agreed-upon bid-rigging and price-fixing scheme; and
- ix. Employing measures to keep their conduct secret, including but not limited to using code names and meeting at private residences or remote locations.

G. Additional Criminal Pleadings in the Automotive Parts Industry.

153. In addition to Yazaki's guilty plea in connection with a Fuel Sender conspiracy, a number of other manufacturers of automotive parts have pleaded guilty, or agreed to plead guilty for price-fixing and bid-rigging in the automotive parts industry, including: Furukawa Electric Co., Ltd.; G.S. Electech, Inc.; Fujikura Ltd.; Tokai Rika, Ltd.; TRW Deutschland Holding GmbH; Autoliv, Inc.; and Nippon Seiki. These companies have pleaded guilty to engaging in the same conduct as Yazaki and Denso with regard to Automotive Wire Harness Systems, Instrument Panel Clusters, Heater Control Panels, seat belts, steering wheels, and airbags. The majority of these violators pleaded guilty to engaging in bid rigging, price fixing, and market allocation during the same time period as Yazaki and Denso, with multiple OEMs as their targets.

H. Damage to Plaintiffs and Other Automobile Dealers Caused by Defendants' Illegal Activities.

154. Defendants' conspiracy resulted in Defendants charging inflated prices to firms who directly purchased Fuel Senders from them and in those purchasers raising their prices to subsequent purchasers.

155. Having paid higher prices for the Fuel Senders in the cars they sold to Plaintiffs and the Classes and the Fuel Senders they sold to Plaintiffs and the Classes, firms who sold such Fuel Senders and vehicles passed Defendants' overcharges on to Plaintiffs and the Classes.

156. The impact of Defendants' conspiracy on Plaintiffs' businesses was substantial. Analysis of automobile dealer profit margins and other data indicates that automobile dealers were substantially injured by higher prices paid for Fuel Senders and vehicles regardless of the "pass on" of some portion of such prices to end users.

157. Given the brand differentiation of auto dealers' products and different locations of automobile dealerships, among other reasons, Plaintiffs and similarly situated automobile dealers had to and did absorb a significant portion of the overcharges that they paid due to Defendants' illegal activities. Plaintiffs and similarly situated automobile dealers did not "pass on" all of the overcharges or higher but for prices caused by Defendants' illegal activities.

158. Plaintiffs have standing and have suffered damage compensable by indirect purchaser laws and they and members of the classes they seek to represent have sustained significant damage and injury as a result of Defendants' conspiracy.

CLASS ACTION ALLEGATIONS

159. Plaintiffs bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, seeking equitable and injunctive relief on behalf of the following class (the "Nationwide Class"):

All automobile dealers that during the Class Period, (a) purchased Fuel Senders manufactured by the Defendants or any current or former subsidiary or affiliate

thereof or any co-conspirator, or (b) purchased vehicles containing Fuel Senders manufactured by the Defendants or any current or former subsidiary, affiliate thereof or co-conspirator.

160. Plaintiffs also bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to the common law of unjust enrichment and the antitrust, unfair competition, and consumer protection laws of the states whose laws are in the Second and Third Claims below (the “Indirect Purchaser States”). These claims are brought by Plaintiffs on behalf of themselves and persons and entities in the Indirect Purchaser States as follows (the “Damages Class”):

All automobile dealers, in the Indirect Purchaser States, that, during the Class Period (a) purchased Fuel Senders manufactured by one of the Defendants or any current or former subsidiary or affiliate thereof, or any co-conspirator or (b) purchased vehicles containing Fuel Senders manufactured by one of the Defendants or any current or former subsidiary, affiliate or co-conspirator thereof.

161. The Nationwide Class and the Damages Class are referred to herein as the “Classes.” Excluded from the Classes are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities, and instrumentalities of the federal government, states, and their subdivisions, agencies, and instrumentalities.

162. Although Plaintiffs do not know the exact number of the members of the Classes, Plaintiffs believe there are at least thousands of members in each Class.

163. Common questions of law and fact exist as to all members of the Classes. This is particularly true given the nature of Defendants’ conspiracy, which was generally applicable to all the members of both Classes, thereby making appropriate relief with respect to the Classes as a whole. Such questions of law and fact common to the Classes include, but are not limited to:

- (a) Whether Defendants and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain or stabilize the prices of Fuel Senders sold in the United States;

- (b) The identity of the participants of the alleged conspiracy;
- (c) The duration of the alleged conspiracy and the acts carried out by Defendants and their co-conspirators in furtherance of the conspiracy;
- (d) Whether the alleged conspiracy violated the Sherman Act, as alleged in the First Claim for Relief;
- (e) Whether the alleged conspiracy violated state antitrust and unfair competition law, and/or state consumer protection law, as alleged in the Second and Third Claims for Relief;
- (f) Whether Defendants unjustly enriched themselves to the detriment of the Plaintiffs and the members of the Classes, thereby entitling Plaintiffs and the members of the Classes to disgorgement of all benefits derived by Defendants, as alleged in the Fourth Claim for Relief;
- (g) Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of Plaintiffs and the members of the Classes;
- (h) The effect of the alleged conspiracy on the prices of Fuel Senders sold in the United States during the Class Period;
- (i) Whether the Defendants and their co-conspirators fraudulently concealed the conspiracy's existence from the Plaintiffs and the members of the Classes;
- (j) The appropriate injunctive and related equitable relief for the Nationwide Class; and
- (k) The appropriate class-wide measure of damages for the Damages Class.

164. Plaintiffs' claims are typical of the claims of the members of the Classes, and Plaintiffs will fairly and adequately protect the interests of the Classes. Plaintiffs and all members of the Classes are similarly affected by Defendants' wrongful conduct in that they paid artificially inflated prices for Fuel Senders purchased indirectly from Defendants or their co-conspirators.

165. Plaintiffs' claims arise out of the same common course of conduct giving rise to the claims of the other members of the Classes. Plaintiffs' interests are coincident with, and not

antagonistic to, those of the other members of the Classes. Plaintiffs are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

166. The questions of law and fact common to the members of the Classes predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

167. Class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism provide injured entities with a method for obtaining redress for claims that might not be practicable to pursue individually and substantially outweigh any difficulties that may arise in the management of this class action.

168. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

PLAINTIFFS AND THE CLASSES SUFFERED ANTITRUST INJURY

169. Defendants' price-fixing conspiracy had the following effects, among others:

- (a) Price competition has been restrained or eliminated with respect to Fuel Senders;
- (b) The prices of Fuel Senders have been fixed, raised, maintained, or stabilized at artificially inflated levels;
- (c) Defendants charged purchasers of their Fuel Senders inflated, fixed, and stabilized prices for such Fuel Senders;
- (d) Having paid higher prices for components of the cars they sold to Plaintiffs and the Classes and the Fuel Senders they sold to Plaintiffs and

the Classes, firms who sold Defendants' Fuel Senders and vehicles to Plaintiffs and the Classes passed Defendants' overcharges on to them;

- (e) Defendants' overcharges passed through each level of distribution as they traveled to Plaintiffs and the Classes; and
- (f) Automobile dealers purchasing Fuel Senders and vehicles containing Fuel Senders have been deprived of free and open competition.

170. During the Class Period, Plaintiffs and the members of the Classes paid supracompetitive prices for Fuel Senders.

171. An increase in the prices of Fuel Senders caused an increase in the price of vehicles during the Class Period.

172. The market for Fuel Senders and the market for cars are inextricably linked and intertwined because the market for Fuel Senders exists to serve the vehicle market. Without the vehicles, the Fuel Senders have little to no value because they have no independent utility and must be inserted into vehicles to serve any function. Indeed, the demand for vehicles creates the demand for Fuel Senders.

173. Fuel Senders are identifiable, discrete physical products that remain essentially unchanged when incorporated into a vehicle. As a result, Fuel Senders follow a traceable physical chain of distribution from the Defendants to Plaintiffs and the members of the Classes, and any costs attributable to Fuel Senders can be traced through the chain of distribution to Plaintiffs and the members of the Classes.

174. Just as Fuel Senders can be physically traced through the supply chain, so can their price be traced to show that changes in the prices paid by direct purchasers of Fuel Senders affect prices paid by indirect purchasers of new motor vehicles containing Fuel Senders.

175. Fuel Senders have their own part numbers, which permit them to be tracked.

176. Fuel Senders are pieces of sophisticated electrical equipment that are necessary to operate a vehicle.

177. Fuel Senders are found in every vehicle and can be removed from a finished vehicle and replaced.

178. The Fuel Senders subject to Defendants' conspiracy and at issue in this lawsuit only have one use: to be inserted into vehicles, regardless of whether they are sold separately or in vehicles.

179. The purpose of the conspiratorial conduct of the Defendants and their coconspirators was to raise, fix, rig, or stabilize the price of Fuel Senders and, as a direct and foreseeable result, the price of new motor vehicles containing Fuel Senders and the price of Fuel Senders purchased for repair purposes. Economists have developed techniques to isolate and understand the relationship between an "explanatory" variable and a "dependent" variable in those cases when changes in the dependent variable are explained by changes in a multitude of variables, even when all such variables may be changing simultaneously. That analysis—called regression analysis—is commonly used in the real world and in litigation to determine the impact of a price increase on one cost in a product or service that is an assemblage of costs. Thus, it is possible to isolate and identify only the impact of an increase in the price of Fuel Senders on prices for new motor vehicles, even though such products contain a number of other components whose prices may be changing over time. A regression model can explain how variation in the price of Fuel Senders affects changes in the price of new motor vehicles. In such models, the price of Fuel Senders would be treated as an independent or explanatory variable. The model can isolate how changes in the price of Fuel Senders impact the price of new motor vehicles containing Fuel Senders while controlling for the impact of other price-determining factors.

180. The precise amount of the overcharge impacting the prices of new motor vehicles containing Fuel Senders can be measured and quantified. Commonly used and well-accepted economic models can be used to measure both the extent and the amount of the supra-competitive charge passed through the chain of distribution. Thus, the economic harm to Plaintiffs and members of the Classes can be quantified.

181. By reason of the alleged violations of the antitrust laws, Plaintiffs and the members of the Classes have sustained injury to their businesses or property, having paid higher prices for Fuel Senders than they would have paid in the absence of Defendants' illegal contract, combination, or conspiracy, and, as a result, have suffered damages in an amount presently undetermined. This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent and Plaintiffs' and Class members' damages are measureable.

PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS

A. The Statute of Limitations Did Not Begin to Run Because Plaintiffs Did Not And Could Not Discover The Claims.

182. Plaintiffs repeat and reallege the allegations set forth above.

183. Plaintiffs and the members of the Classes had no knowledge of the combination or conspiracy alleged herein, or of facts sufficient to place them on inquiry notice of the claims set forth herein, until the public announcements of Yazaki Corporation's agreement to plead guilty to fixing prices, rigging bids and allocation of business on January 30, 2012.

184. Plaintiffs and members of the Classes did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until January 30, 2012.

185. Plaintiffs and the members of the Classes are automobile dealers who had no direct contact or interaction with any of the Defendants in this case and had no means from

which they could have discovered the combination and conspiracy described in this Complaint until the public announcements of Yazaki Corporation's agreement to plead guilty on January 30, 2012.

186. No information in the public domain was available to the Plaintiffs and the members of the Classes prior to the public announcement of Yazaki Corporation's agreement to plead guilty to fixing prices, rigging bids and allocation of business on January 30, 2012, that revealed sufficient information to suggest that any one of the Defendants was involved in a criminal conspiracy to price fix and rig bids for Fuel Senders. Plaintiffs and the members of the Classes had no means of obtaining any facts or information concerning any aspect of Defendants' dealings with OEMs or other direct purchasers, much less the fact that they had engaged in the combination and conspiracy alleged herein.

187. For these reasons, the statute of limitations as to Plaintiffs' and the Classes' claims did not begin to run, and has been tolled with respect to the claims that Plaintiffs and the members of the Classes have alleged in this Complaint.

B. Fraudulent Concealment Tolled the Statute of Limitations.

188. In the alternative, application of the doctrine of fraudulent concealment tolled the statute of limitations on the claims asserted herein by Plaintiffs and the Classes. Plaintiffs and the members of the Classes did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until the announcement of Yazaki Corporation's agreement to plead guilty to price fixing, bid rigging and market allocation for Fuel Senders.

189. Because Defendants' agreements, understandings, and conspiracies were kept secret until January 30, 2012, Plaintiffs and members of the Classes before that time were

unaware of Defendants' unlawful conduct, and they did not know or suspect before then that they were paying supracompetitive prices for Fuel Senders throughout the United States during the Class Period.

190. The affirmative acts of the Defendants alleged herein, including acts in furtherance of the conspiracy, were wrongfully concealed and carried out in a manner that precluded detection.

191. Furthermore, Defendants' anticompetitive conspiracy was, by its very nature, inherently self-concealing. Fuel Senders are not exempt from antitrust regulation and, thus, before January 30, 2012, Plaintiffs reasonably considered it to be a competitive industry. Accordingly, a reasonable person under the circumstances would not have been alerted to begin to investigate the legitimacy of Defendants' Fuel Senders prices before January 30, 2012.

192. Because Defendants concealed and took affirmative actions to prevent discovery of their conspiracy, and because Plaintiffs and class members, as indirect purchasers, had no information about the direct purchases of Fuel Senders, Plaintiffs and Class members had neither actual nor constructive knowledge of Defendants' conspiracy until January 30, 2012.

193. Plaintiffs and the members of the Classes could not have discovered the alleged contract, conspiracy or combination at an earlier date by the exercise of reasonable diligence because of the deceptive practices and techniques of secrecy employed by the Defendants and their co-conspirators to avoid detection of, and fraudulently conceal, their contract, combination, or conspiracy.

194. Because the alleged conspiracy was both self-concealing and affirmatively concealed by Defendants and their co-conspirators, Plaintiffs and members of the Classes had no knowledge of the alleged conspiracy, or of any facts or information that would have caused a

reasonably diligent person to investigate whether a conspiracy existed, until January 30, 2012, when the DOJ first publicly announced that Yazaki Corporation had agreed to plead guilty to engaging in anticompetitive conduct concerning Fuel Senders.

195. As a result of Defendants' fraudulent concealment of their conspiracy, the running of any statute of limitations has been tolled with respect to any claims that Plaintiffs and the members of the Classes have alleged in this Complaint.

FIRST CLAIM FOR RELIEF

Violation of Section 1 of the Sherman Act (on behalf of Plaintiffs and the Nationwide Class)

196. Defendants and unnamed conspirators entered into and engaged in a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

197. The acts done by each of the Defendants as part of, and in furtherance of, their contract, combination, or conspiracy were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of Defendants' affairs.

198. At least as early as 2001, and continuing until at least the filing of this Complaint, the exact dates being unknown to Plaintiffs, Defendants and their co-conspirators entered into a continuing agreement, understanding and conspiracy in restraint of trade to artificially fix, raise, stabilize, and control prices for Fuel Senders, thereby creating anticompetitive effects.

199. The anticompetitive acts were intentionally directed at the United States market for Fuel Senders and had a substantial and foreseeable effect on interstate commerce by raising and fixing prices for Fuel Senders throughout the United States.

200. The conspiratorial acts and combinations have caused unreasonable restraints in the market for Fuel Senders.

201. As a result of Defendants' unlawful conduct, Plaintiffs and other similarly situated indirect purchasers in the Nationwide Class who purchased Fuel Senders have been harmed by being forced to pay inflated, supracompetitive prices for Fuel Senders and vehicles containing Fuel Senders.

202. In formulating and carrying out the alleged agreement, understanding, and conspiracy, Defendants and their co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices and course of conduct set forth herein.

203. Defendants' conspiracy had the following effects, among others:

- (a) Price competition in the market for Fuel Senders has been restrained, suppressed, and/or eliminated in the United States;
- (b) Prices for Fuel Senders sold by Defendants and their co-conspirators have been fixed, raised, maintained, and stabilized at artificially high, non-competitive levels throughout the United States;
- (c) Prices for vehicles purchased by Plaintiffs and members of the Nationwide Class containing Fuel Senders manufactured by Defendants and their co-conspirators were inflated; and
- (d) Plaintiffs and members of the Nationwide Class who purchased Fuel Senders indirectly from Defendants have been deprived of the benefits of free and open competition.

204. Plaintiffs and members of the Nationwide Class have been injured and will continue to be injured in their business and property by paying more for Fuel Senders and vehicles containing Fuel Senders than they would have paid and will pay in the absence of the conspiracy.

205. Plaintiffs and members of the Nationwide Class will continue to be subject to Defendants' price-fixing, bid-rigging, and market allocations, which will deprive Plaintiffs and members of the Nationwide Class of the benefits of free competition, including competitively-priced Fuel Senders and vehicles containing Fuel Senders.

206. Plaintiffs and members of the Nationwide Class will continue to lose funds due to overpayment for Fuel Senders and vehicles containing Fuel Senders, as they are required to purchase vehicles and Fuel Senders in order to continue to operate their businesses.

207. The alleged contract, combination, or conspiracy is a *per se* violation of the federal antitrust laws.

208. Plaintiffs and members of the Nationwide Class will be at the mercy of Defendants' unlawful conduct until the Court orders an injunction.

209. Plaintiffs and members of the Nationwide Class are entitled to an injunction against Defendants, preventing and restraining the violations alleged herein.

SECOND CLAIM FOR RELIEF

Violation of State Antitrust Statutes (on behalf of Plaintiffs and the Damages Class)

210. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

211. From at least as early as 2001 until at least the filing of this Complaint, Defendants and their co-conspirators engaged in a continuing contract, combination, or conspiracy with respect to the sale of Fuel Senders in unreasonable restraint of trade and commerce and in violation of the various state antitrust and other statutes set forth below.

212. The contract, combination, or conspiracy consisted of an agreement among the Defendants and their co-conspirators to fix, raise, inflate, stabilize, and/or maintain artificially

supracompetitive prices for Fuel Senders and to allocate customers for Fuel Senders in the United States.

213. In formulating and effectuating this conspiracy, Defendants and their co-conspirators performed acts in furtherance of the combination and conspiracy, including:

- (a) participating in meetings and conversations among themselves in the United States and elsewhere during which they agreed to price Fuel Senders at certain levels, and otherwise to fix, increase, inflate, maintain, or stabilize effective prices paid by Plaintiffs and members of the Damages Class with respect to Fuel Senders sold in the United States;
- (b) allocating customers and markets for Fuel Senders in the United States in furtherance of their agreements; and
- (c) participating in meetings and conversations among themselves in the United States and elsewhere to implement, adhere to, and police the unlawful agreements they reached.

214. Defendants and their co-conspirators engaged in the actions described above for the purpose of carrying out their unlawful agreements to fix, maintain, decrease, or stabilize prices and to allocate customers with respect to Fuel Senders.

215. Defendants' anticompetitive acts described above were knowing, willful, and constitute violations or flagrant violations of the following state antitrust statutes.

216. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Arizona Revised Statutes, §§ 44-1401, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Arizona; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Arizona; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period, Defendants' illegal conduct substantially affected Arizona commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants entered into agreements in restraint of trade in violation of Ariz. Rev. Stat. §§ 44-1401, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Ariz. Rev. Stat. §§ 44-1401, *et seq.*

217. Defendants have entered into an unlawful agreement in restraint of trade in violation of the California Business and Professions Code, §§ 16700, *et seq.*

(a) During the Class Period, Defendants and their co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce described above in violation of Section 16720 of the California Business and Professions Code. Defendants, each of them, have acted in violation of Section 16720 to fix, raise, stabilize, and maintain prices of, and allocate markets for, Fuel Senders at supracompetitive levels.

(b) The aforesaid violations of Section 16720, California Business and Professions Code, consisted, without limitation, of a continuing unlawful trust and concert of action among the Defendants and their co-conspirators the substantial terms of which were to fix, raise, maintain, and stabilize the prices of, and to allocate markets for, Fuel Senders.

(c) For the purpose of forming and effectuating the unlawful trust, the Defendants and their co-conspirators have done those things which they combined and conspired to do, including but in no way limited to the acts, practices and course of conduct set forth above and

the following: (1) Fixing, raising, stabilizing, and pegging the price of Fuel Senders; and (2) Allocating among themselves the production of Fuel Senders.

(d) The combination and conspiracy alleged herein has had, *inter alia*, the following effects upon the commerce of California: (1) Price competition in the sale of Fuel Senders has been restrained, suppressed, and/or eliminated in the State of California; (2) Prices for Fuel Senders sold by Defendants and their co-conspirators have been fixed, raised, stabilized, and pegged at artificially high, non-competitive levels in the State of California and throughout the United States; and (3) Those who purchased Fuel Senders or vehicles containing Fuel Senders manufactured by Defendants and their co-conspirators have been deprived of the benefit of free and open competition.

(e) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property in that they paid more for Fuel Senders than they otherwise would have paid in the absence of Defendants' unlawful conduct. As a result of Defendants' violation of Section 16720 of the California Business and Professions Code, Plaintiffs and members of the Damages Class seek treble damages and their cost of suit, including a reasonable attorney's fee, pursuant to Section 16750(a) of the California Business and Professions Code.

218. Defendants have entered into an unlawful agreement in restraint of trade in violation of the District of Columbia Official Code §§ 28-4501, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout the District of Columbia; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiffs and members of the Damages

Class, including those who resided in the District of Columbia and/or purchased Fuel Senders or vehicles in the District of Columbia, were deprived of free and open competition, including in the District of Columbia; and (4) Plaintiffs and members of the Damages Class, including those who resided in the District of Columbia and/or purchased Fuel Senders or vehicles in the District of Columbia, paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders, including in the District of Columbia.

(b) During the Class Period, Defendants' illegal conduct substantially affected District of Columbia commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of District of Columbia Code Ann. §§ 28-4501, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under District of Columbia Code Ann. §§ 28-4501, *et seq.*

219. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Hawaii Revised Statutes Annotated §§ 480-1, *et seq.*

(a) Defendants' unlawful conduct had the following effects: (1) Fuel Senders' price competition was restrained, suppressed, and eliminated throughout Hawaii; (2) Fuel Senders' prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Hawaii; (3) Plaintiff and members of the Damages Class were deprived of free and open competition; and (4) Plaintiff and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period, Defendants' illegal conduct substantially affected Hawaii commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Hawaii Revised Statutes Annotated §§ 480-4, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Hawaii Revised Statutes Annotated §§ 480-4, *et seq.*

220. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Illinois Antitrust Act, 740 Illinois Compiled Statutes 10/1, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Illinois; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Illinois; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period, Defendants' illegal conduct substantially affected Illinois commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of 740 Illinois Compiled Statutes 10/1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under 740 Illinois Compiled Statutes 10/1, *et seq.*

221. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Iowa Code §§ 553.1, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Iowa; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Iowa; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period, Defendants' illegal conduct substantially affected Iowa commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Iowa Code §§ 553.1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Iowa Code §§ 553.1, *et seq.*

222. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Kansas Statutes Annotated, §§ 50-101, *et seq.*

(b) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Kansas; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Kansas; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(c) During the Class Period, Defendants' illegal conduct substantially affected Kansas commerce.

(d) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(e) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Kansas Stat. Ann. §§ 50-101, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Kansas Stat. Ann. §§ 50-101, *et seq.*

223. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Maine Revised Statutes, Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Maine; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Maine; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period, Defendants' illegal conduct substantially affected Maine commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*

224. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Michigan Compiled Laws Annotated §§ 445.771, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Michigan; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Michigan; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period, Defendants' illegal conduct substantially affected Michigan commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Michigan Comp. Laws Ann. §§ 445.771, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Michigan Comp. Laws Ann. §§ 445.771, *et seq.*

225. Defendants have entered into an unlawful agreement in unreasonable restraint of trade in violation of the Minnesota Statutes Annotated §§ 325D.49, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Minnesota; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Minnesota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period Defendants' illegal conduct substantially affected Minnesota commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Minnesota Stat. §§ 325D.49, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Minnesota Stat. §§ 325D.49, *et seq.*

226. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Mississippi Code Annotated §§ 75-21-1, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Mississippi; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Mississippi; (3) Plaintiffs and members of the Damages Class, including those who resided in Mississippi and/or purchased Fuel Senders or vehicles in Mississippi were deprived of free and open competition, including in Mississippi; and (4) Plaintiffs and members of the Damages Class, including those who resided in Mississippi and/or purchased Fuel Senders or vehicles in Mississippi paid supracompetitive, artificially inflated prices for Fuel Senders, including in Mississippi.

(b) During the Class Period, Defendants' illegal conduct substantially affected Mississippi commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Mississippi Code Ann. § 75-21-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Mississippi Code Ann. § 75-21-1, *et seq.*

227. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nebraska Revised Statutes §§ 59-801, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Nebraska; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels

throughout Nebraska; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period, Defendants' illegal conduct substantially affected Nebraska commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nebraska Revised Statutes §§ 59-801, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nebraska Revised Statutes §§ 59-801, *et seq.*

228. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nevada Revised Statutes Annotated §§ 598A.010, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Nevada; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Nevada; (3) Plaintiffs and members of the Damages Class, including those who resided in Nevada and/or purchased Fuel Senders or vehicles in Nevada, were deprived of free and open competition including in Nevada; and (4) Plaintiffs and members of the Damages Class, including those who resided in Nevada and/or purchased Fuel Senders or vehicles in

Nevada, paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders, including in Nevada.

(b) During the Class Period, Defendants' illegal conduct substantially affected Nevada commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A.060, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nevada Rev. Stat. Ann. §§ 598A.010, *et seq.*

229. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Hampshire Revised Statutes §§ 356:1, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout New Hampshire; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New Hampshire; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period Defendants' illegal conduct substantially affected New Hampshire commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of New Hampshire Revised Statutes §§ 356:1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New Hampshire Revised Statutes §§ 356:1, *et seq.*

230. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Mexico Statutes Annotated §§ 57-1-1, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq.* Accordingly, Plaintiffs and

members of the Damages Class seek all relief available under New Mexico Stat. Ann. §§ 57-1-1, *et seq.*

231. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New York General Business Laws §§ 340, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout New York; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class, including those who resided in New York and/or purchased Fuel Senders or vehicles in New York, were deprived of free and open competition, including in New York; and (4) Plaintiffs and members of the Damages Class, including those who resided in New York, paid supracompetitive, artificially inflated prices for Fuel Senders when they purchased, including in New York, Fuel Senders or vehicles containing Fuel Senders, or purchased, including in New York, Fuel Senders or vehicles that were otherwise of lower quality, than would have been absent the conspirators' illegal acts, or were unable to purchase Fuel Senders or vehicles that they would have otherwise have purchased absent the illegal conduct.

(b) During the Class Period, Defendants' illegal conduct substantially affected New York commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of the New York Donnelly Act, §§ 340, *et seq.* The conduct set forth above

is a per se violation of the Act. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New York Gen. Bus. Law §§ 340, *et seq.*

232. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Carolina General Statutes §§ 75-1, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout North Carolina; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class, including those who resided in North Carolina and/or purchased Fuel Senders or vehicles in North Carolina, were deprived of free and open competition, including in North Carolina; and (4) Plaintiffs and members of the Damages Class, including those who resided in North Carolina and/or purchased Fuel Senders or vehicles in North Carolina, paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles including in North Carolina.

(b) During the Class Period, Defendants' illegal conduct substantially affected North Carolina commerce. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(c) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of North Carolina Gen. Stat. §§ 75-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under North Carolina Gen. Stat. §§ 75-1, *et seq.*

233. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Dakota Century Code §§ 51-08.1-01, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout North Dakota; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout North Dakota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on North Dakota commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of North Dakota Cent. Code §§ 51-08.1-01, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under North Dakota Cent. Code §§ 51-08.1-01, *et seq.*

234. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Oregon Revised Statutes §§ 646.705, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Oregon; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Oregon; (3) Plaintiffs and members of the Damages Class were deprived of free and

open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period Defendants' illegal conduct had a substantial effect on Oregon commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Oregon Revised Statutes §§ 646.705, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Oregon Revised Statutes §§ 646.705, *et seq.*

235. Defendants have entered into an unlawful agreement in restraint of trade in violation of the South Dakota Codified Laws §§ 37-1-3.1., *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout South Dakota; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout South Dakota; (3) Plaintiffs and members of the Damages Class, including those who resided in South Dakota and/or purchased Fuel Senders or vehicles in South Dakota, were deprived of free and open competition including in South Dakota; and (4) Plaintiffs and members of the Damages Class, including those who resided in South Dakota and/or purchased vehicles or Fuel Senders in South Dakota, paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders including in South Dakota.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on South Dakota commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under South Dakota Codified Laws Ann. §§ 37-1, *et seq.*

236. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Tennessee Code Annotated §§ 47-25-101, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Tennessee; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Tennessee; (3) Plaintiffs and members of the Damages Class, including those who resided in Tennessee and/or purchased Fuel Senders or vehicles in Tennessee, were deprived of free and open competition including in Tennessee; and (4) Plaintiffs and members of the Damages Class, including those who resided in Tennessee, and/or purchased Fuel Senders or vehicles in Tennessee, paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders including in Tennessee.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on Tennessee commerce. As a direct and proximate result of Defendants' unlawful conduct,

Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(c) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Tennessee Code Ann. §§ 47-25-101, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Tennessee Code Ann. §§ 47-25-101, *et seq.*

237. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Utah Code Annotated §§ 76-10-911, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Utah; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Utah; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on Utah commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Utah Code Annotated §§ 76-10-911, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Utah Code Annotated §§ 76-10-911, *et seq.*

238. Defendants have entered into an unlawful agreement in restraint of trade in violation of the 9 Vermont Stat. Ann. §§ 2451, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Vermont; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period Defendants' illegal conduct had a substantial effect on Vermont commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of 9 Vermont Stat. Ann. §§ 2451, *et seq.* Plaintiffs are entitled to relief pursuant to 9 Vermont Stat. Ann. § 2465 and any other applicable authority. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under 9 Vermont Stat. Ann. §§ 2451, *et seq.*

239. Defendants have entered into an unlawful agreement in restraint of trade in violation of the West Virginia Code §§ 47-18-1, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout West Virginia; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels

throughout West Virginia; (3) Plaintiffs and members of the Damages Class, including those who resided in West Virginia and/or purchased Fuel Senders or vehicles in West Virginia, were deprived of free and open competition including in West Virginia; and (4) Plaintiffs and members of the Damages Class, including those who resided in West Virginia and/or purchased vehicles or Fuel Senders in West Virginia, paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders including in West Virginia.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on West Virginia commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of West Virginia §§ 47-18-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under West Virginia §§ 47-18-1, *et seq.*

240. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Wisconsin Statutes §§ 133.01, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Wisconsin; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Wisconsin; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period Defendants' illegal conduct had a substantial effect on Wisconsin commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Wisconsin Stat. §§ 133.01, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Wisconsin Stat. §§ 133.01, *et seq.*

241. Plaintiffs and members of the Damages Class in each of the above states have been injured in their business and property by reason of Defendants' unlawful combination, contract, conspiracy, and agreement. Plaintiffs and members of the Damages Class have paid more for Fuel Senders and vehicles containing Fuel Senders than they otherwise would have paid in the absence of Defendants' unlawful conduct. This injury is of the type the antitrust laws of the above states were designed to prevent and flows from that which makes Defendants' conduct unlawful.

242. In addition, Defendants have profited significantly from the aforesaid conspiracy. Defendants' profits derived from their anticompetitive conduct come at the expense and detriment of the Plaintiffs and the members of the Damages Class.

243. Accordingly, Plaintiffs and the members of the Damages Class in each of the above jurisdictions seek damages (including statutory damages where applicable), to be trebled or otherwise increased as permitted by a particular jurisdiction's antitrust law, and costs of suit, including reasonable attorneys' fees, to the extent permitted by the above state laws.

THIRD CLAIM FOR RELIEF

**Violation of State Consumer Protection Statutes
on behalf of Plaintiffs and the Damages Class**

244. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

245. Defendants knowingly engaged in unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices in violation of the state consumer protection and unfair competition statutes listed below.

246. Defendants have knowingly entered into an unlawful agreement in restraint of trade in violation of the Arkansas Code Annotated, § 4-88-101.

(a) Defendants knowingly agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which Fuel Senders were sold, distributed, or obtained in Arkansas and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) The aforementioned conduct on the part of the Defendants constituted “unconscionable” and “deceptive” acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10).

(c) Defendants’ unlawful conduct had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Arkansas; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Arkansas; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(d) During the Class Period, Defendants' illegal conduct substantially affected Arkansas commerce and consumers.

(e) As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

(f) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10) and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

247. Defendants have engaged in unfair competition or unfair, unconscionable, deceptive or fraudulent acts or practices in violation of California Business and Professions Code § 17200, *et seq.*

(a) During the Class Period, Defendants marketed, sold, or distributed Fuel Senders in California, and committed and continue to commit acts of unfair competition, as defined by Sections 17200, *et seq.* of the California Business and Professions Code, by engaging in the acts and practices specified above.

(b) During the Class Period, Defendants' illegal conduct substantially affected California commerce and consumers.

(c) This claim is instituted pursuant to Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution from these Defendants for acts, as alleged herein, that violated Section 17200 of the California Business and Professions Code, commonly known as the Unfair Competition Law.

(d) The Defendants' conduct as alleged herein violated Section 17200. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants, as alleged herein,

constituted a common, continuous, and continuing course of conduct of unfair competition by means of unfair, unlawful, and/or fraudulent business acts or practices within the meaning of California Business and Professions Code, Section 17200, *et seq.*, including, but not limited to, the following: (1) the violations of Section 1 of the Sherman Act, as set forth above; (2) the violations of Section 16720, *et seq.*, of the California Business and Professions Code, set forth above;

(e) Defendants' acts, omissions, misrepresentations, practices, and nondisclosures, as described above, whether or not in violation of Section 16720, *et seq.*, of the California Business and Professions Code, and whether or not concerted or independent acts, are otherwise unfair, unconscionable, unlawful or fraudulent;

(f) Defendants' acts or practices are unfair to purchasers of Fuel Senders (or vehicles containing them) in the State of California within the meaning of Section 17200, California Business and Professions Code; and

(g) Defendants' unlawful conduct had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout California; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout California; (3) Plaintiffs and members of the Damages Class, including those who resided in California and/ or purchased Fuel Senders or vehicles in California, were deprived of free and open competition, including in California; and (4) Plaintiffs and members of the Damages Class, including those who resided in California and/or purchased Fuel Senders or vehicles in California, paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders, including in California.

(h) Defendants' acts and practices are unlawful, fraudulent or deceptive within the meaning of Section 17200 of the California Business and Professions Code.

(i) Plaintiffs and members of the Damages Class are entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of such business acts or practices.

(j) The illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future.

(k) The unlawful, fraudulent, deceptive, and unfair business practices of Defendants, and each of them, as described above, have caused and continue to cause Plaintiffs and the members of the Damages Class to pay supracompetitive and artificially-inflated prices for Fuel Senders (or vehicles containing them). Plaintiffs and the members of the Damages Class suffered injury in fact and lost money or property as a result of such unfair competition.

(l) As alleged in this Complaint, Defendants and their co-conspirators have been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair competition. Plaintiffs and the members of the Damages Class are accordingly entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of such business practices, pursuant to the California Business and Professions Code, Sections 17203 and 17204.

248. Defendants have engaged in unfair competition or unlawful, unfair, unconscionable, or deceptive acts or practices in violation of District of Columbia Code § 28-3901, *et seq.*

(a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at which Fuel Senders were sold, distributed, or obtained in the District of Columbia.

(b) The foregoing conduct constitutes “unlawful trade practices,” within the meaning of D.C. Code § 28-3904.

(c) During the Class Period, Defendants’ illegal conduct substantially affected District of Columbia commerce and consumers.

(d) Plaintiffs were not aware of Defendants’ price-fixing conspiracy and were therefore unaware that they were being unfairly and illegally overcharged. There was a gross disparity of bargaining power between the parties with respect to the price charged by Defendants for Fuel Senders. Defendants had the sole power to set that price and Plaintiffs had no power to negotiate a lower price.

(e) Moreover, Plaintiffs lacked any meaningful choice in purchasing Fuel Senders because they were unaware of the unlawful overcharge, because they had to purchase Fuel Senders in order for their vehicles to be operable and because there was no alternative source of supply through which Plaintiffs could avoid the overcharges.

(f) Defendants’ conduct with regard to sales of Fuel Senders, including their illegal conspiracy to secretly fix the price of Fuel Senders at supracompetitive levels and overcharge purchasers, was substantively unconscionable because it was one-sided and unfairly benefited Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair advantage of Plaintiffs.

(g) Defendants’ unlawful conduct had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout the District of Columbia; (2)

Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiffs and the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(h) The aforementioned conduct on the part of the Defendants constituted “unconscionable trade practices,” in that such conduct, *inter alia*, resulted in a gross disparity between the value received by Plaintiffs and the members of the Damages Class and the prices paid by them for Fuel Senders. Plaintiffs and the Class members paid artificially inflated prices for vehicles and Fuel Senders, which resulted from Defendants’ conspiracy, rather than an increase in the value of the Fuel Senders they purchased.

(i) As a direct and proximate result of the Defendants’ conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of District of Columbia Code § 28-3901, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

249. Defendants have engaged in unfair competition or unlawful, unfair, unconscionable, or deceptive acts or practices in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*

(a) Defendants’ unlawful conduct had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Florida; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Florida; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition;

(4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders; and (5) Reasonable purchasers in Florida were deceived into believing that they were paying competitive prices for their vehicles and Fuel Senders.

(b) During the Class Period, Defendants' illegal conduct substantially affected Florida commerce and consumers.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) Defendants have engaged in unfair competition or unlawful, unfair or deceptive acts or practices in violation of Florida Stat. § 501.201, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

250. Defendants have engaged in unfair competition or unlawful, unfair, unconscionable, or deceptive acts or practices in violation of the Massachusetts Gen. Laws, Ch 93A, § 1 *et seq.*

(a) Defendants were engaged in trade or commerce as defined by G.L. 93A. Defendants, in a market that includes Massachusetts, agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which Fuel Senders were sold, distributed, or obtained in Massachusetts and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) The aforementioned conduct on the part of the Defendants constituted "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce," in violation of Massachusetts Gen. Laws, Ch 93A, § 2, 11.

(c) Defendants' unlawful conduct had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Massachusetts; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Massachusetts; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(d) During the Class Period, Defendants' illegal conduct substantially affected Massachusetts commerce and consumers.

(e) As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

(f) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Massachusetts Gen. Laws, Ch 93A, §§ 2, 11, that were knowing or willful, and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute, including multiple damages.

251. Defendants have engaged in unfair competition or unlawful, unfair, unconscionable, or deceptive acts or practices in violation of the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*

(a) Defendants engaged in the conduct described herein in connection with the sale of Fuel Senders in trade or commerce in a market that includes Missouri.

(b) During the Class Period, Defendants' illegal conduct substantially affected Missouri commerce and consumers.

(c) Defendants agreed to, and did in fact affect, fix, control, and/or maintain at artificial and non-competitive levels, the prices at which Fuel Senders were sold, distributed, or obtained in Missouri which conduct constituted unfair practices in that it was unlawful under federal and state law, violated public policy, was unethical, oppressive, and unscrupulous, and caused substantial injury to Plaintiffs and members of the Damages Class.

(d) Defendants concealed, suppressed, and omitted to disclose material facts to Plaintiffs and members of the Damages Class concerning Defendants' unlawful activities and artificially inflated prices for Fuel Senders. The concealed, suppressed, and omitted facts would have been important to Plaintiffs and members of the Damages Class as they related to the cost of Fuel Senders and vehicles they purchased. Plaintiffs and members of the Damages Class were lead to believe that they were purchasing Fuel Senders at prices established by a free and fair market.

(e) Defendants' unlawful conduct had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Missouri; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Missouri; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(f) The foregoing acts and practices constituted unlawful practices in violation of the Missouri Merchandising Practices Act.

(g) As a direct and proximate result of the above-described unlawful practices, Plaintiffs and members of the Damages Class suffered ascertainable loss of money or property.

(h) Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Missouri's Merchandising Practices Act, specifically Mo. Rev. Stat. § 407.020, which prohibits "the act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . ," as further interpreted by the Missouri Code of State Regulations, which provides for the relief sought in this count.

252. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the New Mexico Stat. § 57-12-1, *et seq.*

(a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining at non-competitive and artificially inflated levels, the prices at which Fuel Senders were sold, distributed, or obtained in New Mexico and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) Plaintiffs were not aware of Defendants' price-fixing conspiracy and were therefore unaware that they were being unfairly and illegally overcharged. There was a gross disparity of bargaining power between the parties with respect to the price charged by Defendants for Fuel Senders. Defendants had the sole power to set that price and Plaintiffs had no power to negotiate a lower price. Moreover, Plaintiffs lacked any meaningful choice in purchasing Fuel Senders because they were unaware of the unlawful overcharge, because they had to purchase Fuel Senders in order for their vehicles to be operable and because there was no alternative source of supply through which Plaintiffs' could avoid the overcharges. Defendants' conduct with regard to sales of Fuel Senders, including their illegal conspiracy to secretly fix the price of Fuel Senders at supracompetitive levels and overcharge consumers, was substantively

unconscionable because it was one-sided and unfairly benefited Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair advantage of Plaintiffs.

(c) The aforementioned conduct on the part of the Defendants constituted “unconscionable trade practices,” in violation of N.M.S.A. § 57-12-3, in that such conduct, *inter alia*, resulted in a gross disparity between the value received by Plaintiffs and the members of the Damages Class and the prices paid by them for Fuel Senders as set forth in N.M.S.A. § 57-12-2E. Plaintiffs and members of the Class paid artificially inflated prices for vehicles and Fuel Senders, caused by Defendants’ conspiracy, rather than an increase in the value of the Fuel Senders.

(d) Defendants’ unlawful conduct had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(e) During the Class Period, Defendants’ illegal conduct substantially affected New Mexico commerce and consumers.

(f) As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

(g) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of New Mexico Stat. § 57-12-1, *et seq.*, and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

253. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

(a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the prices at which Fuel Senders were sold, distributed, or obtained in New York and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) Defendants deceptively led purchasers, such as Plaintiffs and Class members, to believe that the Fuel Senders they had purchased as replacements and inside vehicles had been sold at fair, legal and competitive prices, or that any price increases for Fuel Senders were for valid business reasons, when Fuel Senders had in fact been sold at collusively obtained inflated prices, that were passed on to purchasers and increases were caused by Defendants' conspiracy.

(c) Defendants alone possessed material information that was relevant to purchasers of the Fuel Senders they manufactured, but failed to provide the information.

(d) The conduct of the Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349, which resulted in injuries to purchasers and broad adverse impact on the public at large, and harmed the public interest of New York State in an honest marketplace in which economic activity is conducted in a competitive manner.

(e) Because of Defendants' unlawful trade practices in the State of New York, New York purchasers who indirectly purchased Fuel Senders were misled to believe that they were

paying a fair price for Fuel Senders or the price increases for Fuel Senders were for valid business reasons; and similarly situated purchasers were potentially affected by Defendants' conspiracy.

(f) Defendants' unlawful conduct had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout New York; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class, who resided in and/or made purchases of vehicles or Fuel Senders in New York, were deprived of free and open competition and were subject to Defendants' deceptive practices in New York; and (4) Plaintiffs and members of the Damages Class, who resided in and/or made purchases of vehicles and Fuel Senders in New York, paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders, and were subjected to Defendants' deceptive practices.

(g) Defendants knew that their unlawful trade practices with respect to pricing Fuel Senders would have an impact on all purchasers in New York and not just the Defendants' direct customers.

(h) Defendants knew that their unlawful trade practices with respect to pricing Fuel Senders would have a broad impact, causing class members who indirectly purchased Fuel Senders to be injured by paying more for Fuel Senders than they would have paid in the absence of Defendants' unlawful trade acts and practices.

(i) During the Class Period, Defendants, marketed, sold, or distributed Fuel Senders in New York and their illegal conduct substantially affected New York commerce and New York purchasers.

(j) During the Class Period, each of the Defendants named herein, directly, or indirectly and through affiliates they dominated and controlled manufactured, sold, and/or distributed Fuel Senders in New York.

(k) Plaintiffs and members of the Damages Class seek all relief available pursuant to N.Y. Gen. Bus. Law § 349(h).

254. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*

(a) Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the prices at which Fuel Senders were sold, distributed, or obtained in North Carolina and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

(b) The conduct of the Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of North Carolina law, which resulted in injuries to purchasers of Fuel Senders and vehicles, and broad adverse impact on the public at large, and harmed the public interest of North Carolina purchasers in an honest marketplace in which economic activity is conducted in a competitive manner.

(c) Defendants' unlawful conduct had the following effects upon purchasers of Fuel Senders in North Carolina: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout North Carolina; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class, including those who resided in North Carolina and/or purchased Fuel Senders or vehicles in North Carolina, were deprived of free and open competition including in North Carolina; and (4) Plaintiffs and members of the Damages Class, including those who

resided in North Carolina and/or purchased Fuel Senders or vehicles in North Carolina, paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders including in North Carolina.

(d) During the Class Period, Defendants' illegal conduct substantially affected North Carolina commerce and purchasers of Fuel Senders and vehicles.

(e) Defendants' price-fixing conspiracy could not have succeeded absent deceptive conduct by Defendants to cover up their illegal acts. Secrecy was integral to the formation, implementation and maintenance of Defendants' price-fixing conspiracy. Defendants committed inherently deceptive and self-concealing actions, of which Plaintiffs could not possibly have been aware.

(f) During the Class Period, each of the Defendants named herein, directly, or indirectly and through affiliates they dominated and controlled, manufactured, marketed, sold and/or distributed Fuel Senders in North Carolina.

(g) Plaintiffs and members of the Damages Class seek actual damages for their injuries caused by these violations in an amount to be determined at trial and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

255. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq.*

(a) Defendants' combinations or conspiracies had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout South Carolina;

(2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout South Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(b) During the Class Period, Defendants' illegal conduct had a substantial effect on South Carolina commerce.

(c) As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

(d) Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Ann. §§ 39-5-10, *et seq.*, and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

256. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*

(a) Defendants agreed to, and did in fact, act in restraint of trade or commerce in a market that includes Vermont, by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the prices at which Fuel Senders were sold, distributed, or obtained in Vermont.

(b) Defendants deliberately failed to disclose material facts to Plaintiffs and members of the Damages Class concerning Defendants' unlawful activities and artificially inflated prices for Fuel Senders. Defendants owed a duty to disclose such facts, given that such facts were in Defendants' sole possession and not available to Plaintiffs and the Class members through any

other source. Defendants breached their duty by their silence. Defendants misrepresented to all purchasers during the Class Period that Defendants' Fuel Senders prices were competitive and fair.

(c) Defendants' unlawful conduct had the following effects: (1) Fuel Senders price competition was restrained, suppressed, and eliminated throughout Vermont; (2) Fuel Senders prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Fuel Senders and vehicles containing Fuel Senders.

(d) As a direct and proximate result of the Defendants' violations of law, Plaintiffs and members of the Damages Class suffered an ascertainable loss of money or property as a result of Defendants' use or employment of unconscionable and deceptive commercial practices as set forth above. That loss was caused by Defendants' willful and deceptive conduct, as described herein.

(e) Defendants' deception, including their affirmative misrepresentations and omissions concerning the price of Fuel Senders, likely misled all purchasers acting reasonably under the circumstances to believe that they were purchasing Fuel Senders at prices set by a free and fair market. Defendants' misleading conduct and unconscionable activities constitute unfair competition or unfair or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

FOURTH CLAIM FOR RELIEF

**Unjust Enrichment
on behalf of Plaintiffs and the Damages Class**

257. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

258. Plaintiffs bring this claim under the laws of all state listed in the Second and Third Claims, *supra*.

259. As a result of their unlawful conduct described above, Defendants have and will continue to be unjustly enriched. Defendants have been unjustly enriched by the receipt of, at a minimum, unlawfully inflated prices and unlawful profits on sales of Fuel Senders.

260. Defendants have benefited from their unlawful acts and it would be inequitable for Defendants to be permitted to retain any of the ill-gotten gains resulting from the overpayments made by Plaintiffs or the members of the Damages Class for Fuel Senders.

261. Plaintiffs and the members of the Damages Class are entitled to the amount of Defendants' ill-gotten gains resulting from their unlawful, unjust, and inequitable conduct. Plaintiffs and the members of the Damages Class are entitled to the establishment of a constructive trust consisting of all ill-gotten gains from which Plaintiffs and the members of the Damages Class may make claims on a pro rata basis.

262. Pursuit of any remedies against the firms from whom Plaintiffs and the Class members purchased vehicles containing Fuel Senders and Fuel Senders subject to Defendants' conspiracy would have been futile, given that those firms did not take part in Defendants' conspiracy.

PRAYER FOR RELIEF

Accordingly, Plaintiffs respectfully request that:

A. The Court determine that this action may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to each and every member of the Classes;

B. The unlawful conduct, contract, conspiracy, or combination alleged herein be adjudged and decreed:

(a) An unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;

(b) A *per se* violation of Section 1 of the Sherman Act;

(c) An unlawful combination, trust, agreement, understanding, and/or concert of action in violation of the state antitrust and unfair competition and consumer protection laws as set forth herein; and

(d) Acts of unjust enrichment by Defendants as set forth herein.

C. Plaintiffs and the members of the Damages Class recover damages, to the maximum extent allowed under such laws, and that a joint and several judgment in favor of Plaintiffs and the members of the Damages Class be entered against Defendants in an amount to be trebled to the extent such laws permit;

D. Plaintiffs and the members of the Damages Class recover damages, to the maximum extent allowed by such laws, in the form of restitution and/or disgorgement of profits unlawfully gained from them;

E. Defendants, their affiliates, successors, transferees, assignees and other officers, directors, partners, agents, and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any

manner continuing, maintaining, or renewing the conduct, contract, conspiracy, or combination alleged herein, or from entering into any other contract, conspiracy, or combination having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

F. Plaintiffs and the members of the Damages Class be awarded restitution, including disgorgement of profits Defendants obtained as a result of their acts of unfair competition and acts of unjust enrichment;

G. Plaintiffs and the members of the Classes be awarded pre- and post- judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of this Complaint;

H. Plaintiffs and the members of the Classes recover their costs of suit, including reasonable attorneys' fees, as provided by law; and

I. Plaintiffs and members of the Classes have such other and further relief as the case may require and the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

Dated: August 16, 2013

Respectfully submitted,

/s/ Gerard V. Mantese

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