



Court File No. **VLC-S-S-226271**  
NO. \_\_\_\_\_  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**SAMANTHA CRAWFORD**

PLAINTIFF

AND:

**FCA CANADA INC. and FCA US LLC**

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

**NOTICE OF CIVIL CLAIM**

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

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

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

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

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

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

TIME FOR RESPONSE TO CIVIL CLAIM

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

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

#### CLAIM OF THE PLAINTIFF

### Part 1: STATEMENT OF FACTS

#### Overview

1. The Defendants design, develop, manufacture, distribute, lease, and sell engines and vehicles in Canada. One of their products – the Multiair Engine series – contains a dangerous, latent defect that causes the engines to improperly burn off or consume abnormally high amounts of oil. The Defendants are well aware of such defects but continue to permit the engines to be sold and used by unsuspecting consumers, putting their safety and that of the public at risk. Through this suit, Canadians who purchased or leased vehicles containing the affected engines seek to hold the Defendants accountable and recover their losses.

#### A. The Parties

##### The Representative Plaintiff

2. The Plaintiff, Samantha Crawford, is a resident of Vancouver, British Columbia. In 2019, the Plaintiff purchased a new 2019 Jeep Cherokee equipped with a 2.4L I4 Multiair Engine (the “**Vehicle**”), from Ensign Pacific Chrysler, an authorized FCA dealership in Vancouver, British Columbia.

3. Shortly after purchasing the Vehicle, the Plaintiff began to notice that the Vehicle was using large amounts of engine oil. The Plaintiff suspected this was irregular and took steps to ensure the excessive oil consumption did not damage the engine, including by manually re-filling the Vehicle with engine oil every week. The Plaintiff's spouse has some familiarity with automobile mechanics and was concerned that he or his wife could be in a dangerous situation if the Vehicle stalled while in operation due to low engine oil levels.

4. When the Vehicle had approximately 25,000 kilometres on its odometer, the Plaintiff's spouse went to Ensign Pacific Chrysler, an authorized dealership of the Defendants, to have the Vehicle inspected. He was advised by a technician that there was a software issue causing this problem. The technician performed an FCA recommended software update on the Vehicle, which was intended to remedy the excessive oil consumption problem.

5. Following the software update, the Plaintiff continued to monitor the Vehicle's oil levels and re-fill the engine oil when necessary. The Plaintiff found that the software update did not sufficiently resolve the excessive oil consumption issue.

6. The Plaintiff found that the Vehicle consumed an average of 1 litre of oil per week over the time she owned the vehicle.

7. In or around 2021, the Plaintiff continued to have concerns with the level of engine oil consumed by the Vehicle. The Plaintiff went back to dealership and arranged a trade in for a new 2021 Jeep Cherokee. The Plaintiff received \$20,000 towards the trade in for the Vehicle.

8. At the time of purchase, had the Plaintiff known about the excessive oil consumption, she would not have purchased the Vehicle or would have paid significantly less for the Vehicle.

## The Defendants

9. FCA US LLC (“**Chrysler USA**”) is a North American automaker. FCA Canada Inc. (“**Chrysler Canada**”) is a subsidiary of Chrysler USA. Collectively, Chrysler USA and Chrysler Canada are the “**Defendants**”.
10. Chrysler Canada is a Canadian corporation with its head office in Windsor, Ontario. Chrysler Canada imports newly manufactured Chrysler vehicles, including the Affected Vehicles (as defined in paragraph 15), into Canada for sale or lease, and is responsible for ensuring that those vehicles’ designs are compliant with the regulations for import into Canada.
11. Chrysler Canada sells, leases, services, and repairs the Affected Vehicles in Canada, including in British Columbia, through its network of dealers who are its agents. Money received by a dealer from the purchase or lease of a Chrysler vehicle flows from the dealer to the Defendants.
12. Chrysler Canada administers the warranties for all Affected Vehicles sold in Canada, including in British Columbia, representing that the vehicles are, *inter alia*, free from defects in both material and workmanship.
13. Chrysler USA is a North American automaker headquartered in Auburn Hills, Michigan. Chrysler USA controls and directs Chrysler Canada with respect to virtually all aspects of the Affected Vehicles, including their distribution, lease, and sale in Canada, including in British Columbia.
14. The Defendants operated and continue to operate as an integrated unit and are collectively responsible for the design, research, development, testing, manufacture, production, supply, distribution, marketing, leasing, and sale of the Affected Vehicles to residents of Canada, including in British Columbia. The Defendants prepared and participated in the

development of the owner's manuals, warranty booklets, and maintenance recommendations and/or schedules for the Affected Vehicles and continue to provide service and maintenance for the Affected Vehicles through their extensive network of authorized dealers and service providers, including those operating in British Columbia.

**B. The Class**

15. The Plaintiff seeks to represent the following Class of which she is a member:

All persons, corporations or other entities resident in Canada who are current or former owners and/or lessees of an Affected Vehicle ("**Class**" or "**Class Members**").

16. The "**Affected Vehicle(s)**" are all vehicles designed, developed, manufactured, marketed, distributed, leased, and/or sold by the Defendants and equipped with the Engines.

These Vehicles include, but are not limited to, the following:

<b>Model Year</b>	<b>Model</b>
2015-2017	Chrysler 200
2013-2016	Dodge Dart
2014-2020	Jeep Cherokee
2015-2020	Jeep Renegade
2015-2020	RAM ProMaster City
2017-2020	Jeep Compass
2016-2020	Fiat 500X

17. The "**Engines**" are the 2.4L I4 Multiair Engine (Sales Code ED6), 2.4L I4 PZEV Multiair Engine (Sales Code ED8), 2.4L I4 PZEV Multiair Engine w/ESS (Sales Code EDE), and 2.4L I4 Multiair Engine w/ESS (Sales Code ED) engines designed, developed, and manufactured by the Defendants.

## **C. Factual Allegations**

### **The Engines**

18. In 2013, the Defendants introduced a new 2.4L engine. The new 2.4L engine was marketed as the “Tigershark” or “Turbo” engine and employs an electro-hydraulic “MultiAir” technology that is proprietary to the Defendants.

### **Life-Threatening and Dangerous Latent Defects in the Engines**

#### ***The Latent Defects***

19. Engine oil is necessary to reduce wear on moving parts throughout the engine, improve sealing within the combustion chamber, and to cool the engine by carrying heat away from the moving parts. If there is insufficient engine oil, the engine will not have the necessary lubrication or cooling, causing premature wear of internal parts, inadequate performance, and catastrophic engine failure.

20. The latent defects, described below, pose a material safety risk to the operators and passengers of the Affected Vehicles. The dangers of excessive and/or abnormal oil consumption include increased mechanical breakdown, including sudden breakdown while an Affected Vehicle is in active use, and a resulting increase in the risk of injury or death. The Plaintiff and many other Class Members have experienced the fallout related to the latent defects and the Defendants continue to put owners and lessees of the Affected Vehicles at risk.

21. The latent defects also materially reduce the value of the Affected Vehicles. The Plaintiff and Class Members would not have purchased the Affected Vehicles or would have paid much less for the Affected Vehicles had they been aware of the latent defects.

#### ***The Oil Consumption Defect***

22. The Affected Vehicles contain a significant design and/or manufacturing defect in the Engines that causes the Engines to improperly burn off and/or consume abnormally high amounts of oil (the “**Oil Consumption Defect**”). As a result of this latent defect, the Affected Vehicles can stall or shut down during normal operation, placing the occupants and surrounding vehicles at an increased risk of serious injury and death.

23. The Oil Consumption Defect manifests in problems with the pistons and/or rings in the Engines. The top sidewall of each engine piston contains piston rings that prevent engine oil from entering the combustion chamber, as well as optimizing compression. But the oil control strategy in the Affected Vehicles does not work as intended, allowing engine oil to escape past the oil control piston ring and into the combustion area. This is the result of oil control piston rings that do not integrate properly with the cylinders in which they operate. Although piston rings do not require maintenance and are purportedly lifetime parts, the rings in the Affected Vehicles wear down, whereby the oil control piston ring is worn flush with the piston wall, allowing engine oil to be consumed during the compression cycle. If there is insufficient engine oil, the engine will not have the necessary lubrication or cooling, causing premature wear of internal parts and catastrophic engine failure.

24. To avoid such catastrophic engine failure, the Defendants employ a “safety feature” whereby upon detecting low oil pressure, the Affected Vehicles simply shut down, without warning. Because of the Oil Consumption Defect, the Affected Vehicles are prone to sudden and unexpected shut down, creating unsafe driving conditions when the vehicle stalls or shuts off without warning, unreasonably threatening the safety of drivers and passengers in the Affected Vehicles.

25. The Oil Consumption Defect also increases the expected cost of ownership and maintenance of the Affected Vehicles. In order to prevent their vehicles from stalling or shutting down unexpectedly, the Plaintiff and Class Members have been required to replenish the oil of their vehicles at excessive and abnormal rates. Additionally, the Oil Consumption Defect has the consequential effect of shortening the expected lifespan of other mechanical components of the Affected Vehicles. Because of this, the Plaintiff and Class Members have and will be forced to replace these components at a much higher rate than they reasonably expected when purchasing the vehicles.

***The Oil Indicator Defect***

26. The sudden stall or shut down caused by the latent defects in the Engines in the Affected Vehicles could be avoided in some scenarios if the Defendants' alert systems operated as intended and alerted drivers of the Affected Vehicles that the engine oil is running low, however, the systems do not (the "**Oil Indicator Defect**"). As a result of this latent defect, drivers of an Affected Vehicle only become aware of the dangerously low level of engine oil after it causes the engine to stall or shut down.

27. The Oil Indicator Defect is present in both the oil change indicator system and the oil pressure warning light. Despite the fact that the Defendants have purportedly equipped the Affected Vehicles with these two warning systems, which they designed and implemented, these systems exacerbate the issues related to the Oil Consumption Defect.

28. First, the oil change indicator system is a software based, algorithm-driven device that purportedly takes into account various engine operating conditions to determine when the oil needs changing, such as ambient temperature and typical trip length. It then alerts the driver of the need for an oil change. As stated in the owner's manual of the Affected Vehicles:

Your vehicle is equipped with an automatic oil change indicator system. The oil change indicator system will remind you that it is time to take your vehicle in for scheduled maintenance.

Based on engine operation conditions, the oil change indicator message will illuminate. This means that service is required for your vehicle. Operating conditions such as frequent short-trips, trailer tow, extremely hot or cold ambient temperatures will influence when the "Change Oil" or "Oil Change Required" message is displayed.

29. Importantly, the oil change indicator does not take into account actual, as opposed to predicted, oil levels. As such, it does not alert drivers of the Affected Vehicles to low oil levels or oil loss, even when oil levels are critically and/or dangerously low. Therefore, when the Affected Vehicles experience the critically and/or dangerously low levels of oil, they are automatically shut down to protect the engine before the oil indicator system is illuminated. This represents a complete failure of the oil change indicator system to monitor and provide meaningful information regarding the real world status of the Affected Vehicle's oil levels and, therefore, the potential consequences.

30. Second, the oil pressure warning light is a device that purportedly illuminates when low engine oil pressure is detected. As stated in the owner's manual of the Affected Vehicles:

This light indicates low oil pressure. If the light turns on while driving, stop the vehicle and shut off the engine as soon as possible. A chime will sound when this light turns on. Do not operate the vehicle until the cause is corrected. This light does not indicate how much oil is in the engine. The engine oil level must be checked under the hood.

31. Again, the oil pressure warning light fails to alert drivers of the Affected Vehicles in advance of the vehicle spontaneously shutting off as a result of low oil levels. This represents a complete failure of the oil pressure warning light to monitor and provide meaningful information regarding the real-world status of the Affected Vehicle's oil levels and, therefore, the potential consequences.

### **The Technical Service Bulletins**

32. A Technical Service Bulletin (“**TSB**”) is issued by a vehicle manufacturer to the manufacturer’s dealers (and therefore is not provided to customers in the ordinary course) when there are repeat occurrences of a reported problem. On July 31, 2015, Chrysler USA issued TSB No. 09-007-15 which provided guidance on what was considered to be an acceptable rate of oil consumption for all 2013-2016 vehicles equipped with gasoline engines. This TSB demonstrates that the Defendants were aware as early as 2015 that consumers were experiencing oil consumption issues.

33. On May 16, 2020, the Defendants issued TSB No. 09-006-20 which continues to address the oil consumption issues for the Affected Vehicles. This TSB describes the symptom/condition as follows:

The customer may comment that the vehicles [sic] engine oil level is low or they need to add oil between oil change intervals and no visible signs of oil leaking from the engine.

34. TSB No. 09-006-20 also provides a diagnosis and a proposed repair procedure. However, given the ongoing issues experienced by the Plaintiff and class members, the proposed repair procedure in TSB No. 09-006-20 does not adequately address or resolve the Oil Consumption Defect or the Oil Indicator Defect.

35. To date, no remedy to the Oil Consumption Defect and/or Oil Indicator Defect, have been implemented by the Defendants.

36. The *Motor Vehicle Safety Act*, R.S.C. 1993, c.16, requires that an original equipment manufacturer report safety defects to Transport Canada. To the Plaintiff’s knowledge, no safety defects have been reported to Transport Canada by the Defendants with respect to the Oil

Consumption Defect and/or the Oil Indicator Defect despite the associated dangers as described herein.

### **The NHTSA Complaints**

37. In addition to multiple online complaints made by various owners and lessees, since as early as 2015, hundreds of complaints have been filed with the United States National Highway Traffic Safety Administration (“**NHTSA**”) regarding the Affected Vehicles. These complaints include stalling events without warning, shut down events without warning, low oil levels, and high levels of oil consumption in the Affected Vehicles.

### **The Defendants’ Knowledge of the Defects**

38. The Defendants have long been aware of the latent defects in the Engines but have intentionally, negligently, and/or recklessly concealed the latent defects from the Plaintiff and other Class Members, failed to warn the Plaintiff and the other Class Members of the serious personal safety risks from the latent defects, and failed to adequately notify the appropriate authorities of the safety risks.

39. At all material times, the Defendants had notice and knowledge of the latent defects plaguing the Engines through, *inter alia*, the following: (i) numerous complaints they received from consumers (ii) information received from dealers, including dealership repair records; (iii) NHTSA complaints and records; (iv) warranty and post-warranty claims; (v) the high number of replacement parts ordered from the Defendants; and (vi) their own internal records, including pre-sale durability testing.

40. The Defendants’ customer relations departments routinely monitor the internet for customer complaints and regularly receive and respond to customer calls concerning, *inter alia*,

product defects. Through these activities, the Defendants were made aware of the latent defects in the Engines and their potential danger.

41. The Defendants also collect and analyze field data, including, but not limited to, repair requests made at dealerships and service centres, technical reports prepared by engineers who have reviewed vehicles for which warranty coverage is requested, parts sales reports, and warranty claims data.

42. The Defendants' warranty departments similarly review and analyze warranty claims data submitted by their dealerships, agents and authorized service technicians to identify defect trends in their vehicles. The Defendants knew or ought to have known about the latent defects in the Engines because of the high number of replacement parts ordered from the Defendants.

43. In Canada, Chrysler service centres are required to order replacement parts directly from Chrysler Canada. Other independent vehicle repair shops that service Affected Vehicles also order replacement parts directly from Chrysler Canada. Chrysler Canada routinely monitors part sales reports and is responsible for the shipping of parts requested by dealerships and technicians.

44. Chrysler Canada had detailed, accurate, and real-time data regarding the number and frequency of replacement part orders. The sudden increase in orders for the Engines and engine components used in the Affected Vehicles was known to Chrysler Canada and ought to have alerted it to the scope and severity of the latent defects.

45. The Defendants knew or ought to have known about the latent defects in the Engines from NHTSA complaints and records. The Defendants routinely monitor these complaints and records to identify potential defects in their vehicles.

46. Although the Defendants became aware of the latent defects in the Engines much earlier, the Defendants' own Technical Service Bulletin dated July 31, 2015 (TSB No. 09-007-15) was an explicit acknowledgment of the reports of abnormal oil consumption. As such, the Defendants knew, or ought to have known, of the latent defects in the Engines at least as early as July 31, 2015. This was before the majority of the Affected Vehicles were sold or leased.

47. The Defendants are experienced in the design, testing, and manufacturing of passenger vehicles. As an experienced manufacturer, the Defendants conduct testing on incoming batches of components, including the Engines, to verify that the components are free from defects and comply with the Defendants' specifications.

48. In fact, the Defendants represent to its customers and the public that they put their vehicles, their engines, and their engine components, through very stringent and tough tests. In their advertising and promotional brochures for Jeep Cherokee Trailhawk vehicles, FCA states "every Cherokee Trailhawk proudly wears a Trail Rated badge indicating it has been tested to perform masterfully in five categories" and that the Engine is "the benchmark for an efficient and powerful ride."

49. Accordingly, the Defendants knew or ought to have known that the Engines used in the Affected Vehicles are defective and likely to fail prematurely, costing the Plaintiff and the Class Members thousands of dollars in expenses and present serious safety risks to the Plaintiff, the Class Members, and the public.

### **Marketing of the Affected Vehicles**

50. Despite the fact that the Defendants knew or ought to have known that the Engines used in the Affected Vehicles are defective, likely to prematurely fail, and are dangerous, the

Defendants advertise the vehicles for sale and lease in Canada without acknowledgement of same. As part of these national advertising campaigns, the Defendants routinely state that the Affected Vehicles are safe and reliable. At all material times, the Defendants failed to disclose the Oil Consumption Defect and the Oil Indicator Defect.

### **The Defendants' Conduct**

51. Despite their knowledge of the latent defects in the Engines:

- (a) the Defendants continued to market the Affected Vehicles as being safe and of a high quality;
- (b) even within the warranty period, Chrysler Canada routinely refused to repair the Affected Vehicles free of charge when the defects manifested;
- (c) even within the warranty period, Chrysler Canada routinely refused to offer to reimburse its customers who incurred out-of-pocket expenses to repair the defects or for the costs of excessive oil consumption;
- (d) Chrysler Canada and its agents refused to disclose the existence of the defects when Affected Vehicles displaying symptoms consistent with the defects were brought in for service;
- (e) Chrysler Canada and its agents ignored the defects in Affected Vehicles until they caused significant mechanical problems necessitating costly repairs;
- (f) Chrysler Canada has attempted to circumvent its warranty obligations related to the latent defects in the Engines by faulting Class Members;

- (g) the Defendants did not inform Class Members of the true cause of the engine damage, vehicle stalling, and catastrophic engine shut down;
- (h) the Defendants have refused to take any action to correct the latent defects when they manifest in the Affected Vehicles after the expiration of the warranty period;  
and
- (i) Chrysler Canada has failed to recall and/or offer adequate engine repairs and/or replacements for every Affected Vehicle.

**Part 2: RELIEF SOUGHT**

52. The Plaintiff, on her own behalf and on behalf of the proposed Class Members, claims against the Defendants as follows:

- (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff of the Class pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c.50 ("**CPA**");
- (b) a declaration that the Defendants, or some of them, were negligent in the design, research, development, testing, manufacturing, marketing, advertisement, promotion, distribution, warning, sale, leasing, warranting, servicing, and/or repair of the Affected Vehicles;
- (c) a declaration that the Defendants, or some of them, are vicariously liable for the acts and omissions of their officers, directors, agents, employees, and representatives;

- (d) a declaration that the Defendants, or some any of them, breached the express warranties for the Affected Vehicles;
  
- (e) a declaration that the Defendants, or any of them, breached the implied warranties for the Affected Vehicles contrary to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.2 (“**BPCPA**”), and similar provisions under the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A; *Consumer Protection Act*, CQLR c P-40.1; *Consumer Protection Act*, R.S.A. 200, c C-26.3; *Consumer Protection Act*, C.C.S.M. c C200; *The Business Practices Act*, C.C.S.M. c B120; *Consumer Protection and Business Practices Act*, S.N.L. 2009, c C-31.1; *Business Practices Act*, R.S.P.E.I. 1988, c B-7; *Consumer Protection Act*, R.S.P.E.I. c C-19; *The Consumer Protection and Business Practices Act*, S.S. 2013, c C-30.2; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c C-18.1; *Consumer Protection Act*, R.S.N.S. 1989, c 92; *Consumer Protection Act*, R.S.N.W.T. 1988, c C-17; *Consumer Protection Act*, R.S.N.W.T. (Nu) 1988, c C-17; and *Consumers Protection Act*, R.S.Y. 2002, c 40 (“**Equivalent Consumer Protection Statutes**”);
  
- (f) a declaration that the Defendants, or any of them, breached the implied warranties for the Affected Vehicles contrary to the *Sale of Goods Act*, R.S.B.C. 1996, c.410 (“**SGA**”), and similar provisions under the *Sale of Goods Act*, R.S.O. 1990, c S 1; *Civil Code of Quebec*, C.Q.L.R. c CCQ-1991; *Sale of Goods Act*, R.S.A. 2000, c S-2; *The Sale of Goods Act*, C.C.S.M. c S10; *Sale of Goods Act*, R.S.N.L. 1990, c S-6; *Sale of Goods Act*, R.S.P.E.I. 1988, c S-1; *Sale of Goods Act*, R.S.S. 1978, c S-1; *Sale of Goods Act*, R.S.N.B. 2016, c 110; *Sale of Goods Act*, R.S.N.S. 1989, c 408; *Sale of Goods Act*, R.S.N.W.T. 1998, c S-2;

*Sale of Goods Act*, R.S.N.W.T. (Nu) 1998, c S-2; and *Sale of Goods Act*, R.S.Y. 2002, c 198 (“**Equivalent Sale of Goods Statutes**”);

- (g) a declaration that the Defendants, or any of them, breached the *Motor Vehicle Safety Act*, S.C. 1992, c.16 (“**MVSA**”) by failing to provide notice of latent engine defects to the Plaintiff and Class Members;
- (h) a declaration that the Defendants, or any of them, were unjustly enriched at the expense of the Plaintiff and the Class Members;
- (i) general damages;
- (j) special damages;
- (k) punitive damages;
- (l) disgorgement of the Defendants’ profits and other equitable relief;
- (m) a reference to decide any issues not decided at the trial of the common issues;
- (n) costs of administration and notice, plus applicable taxes, pursuant to s. 24 of the *CPA*;
- (o) prejudgment interest compounded and post-judgement interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (p) such further and other relief as to this Honourable Court may seem just.

### **Part 3: LEGAL BASIS**

#### **A. Causes of Action**

##### **Negligence**

53. At all material times, the Defendants owed a duty of care to the Plaintiff and Class Members to provide a product that was free from defects.

54. As the designers, researchers, developers, testers, manufacturers, marketers, advertisers, promoters, distributors, lessors, sellers, warrantors, servicers, and repairers of the Affected Vehicles intended for use by ordinary consumers, the Defendants owed a duty of care to the Plaintiff and Class Members to ensure that the Affected Vehicles were reasonably safe for use.

55. The Affected Vehicles pose a serious risk of injury and death to the Plaintiff and Class Members on account of the Oil Consumption Defect and the Oil Indicator Defect.

56. At all material times, the Defendants owed a duty of care to the Plaintiff and Class Members and breached the standard of care expected in the circumstances as outlined herein. Once aware of the latent defects, the Defendants had a duty to warn the Plaintiff and Class Members of the risks associated with the Affected Vehicles.

57. The Defendants are and were in a relationship of proximity to the Plaintiff and the Class Members. It was reasonably foreseeable that if the Affected Vehicles contained the Oil Consumption Defect and the Oil Indicator Defect, harm to the Plaintiff and the Class Members would result.

58. At all material times, it was reasonably foreseeable that a failure by the Defendants to design and manufacture reasonably safe vehicles and thereafter to monitor the performance of

such vehicles following market introduction, and to take corrective measures when required, would cause harm to the Plaintiff and Class Members.

59. At all material times, the Defendants, or any of them, owed a duty of care to the Plaintiff and the Class Members to:

- (a) exercise reasonable care in the design, research, development, testing, manufacturing, marketing, advertisement, promotion, distribution, leasing, sale, warranting, servicing, and repair of the Affected Vehicles;
- (b) ensure that the Affected Vehicles were fit for their intended and/or reasonably foreseeable use;
- (c) conduct appropriate testing to determine that the Affected Vehicles were fit for their intended and/or reasonably foreseeable use;
- (d) take all reasonable steps necessary to manufacture, promote, lease, and/or sell a product that was not unreasonably dangerous to those who use it;
- (e) properly, adequately, and fairly warn of the magnitude and scope of the defects;
- (f) ensure that consumers and the public were kept fully and completely informed of all defects associated with the Affected Vehicles in a timely manner;
- (g) not withhold from consumers and the public material facts concerning the safety, performance, and reliability of the Affected Vehicles;
- (h) monitor, investigate, evaluate, and follow up on reports of defects in the Affected Vehicles; and
- (i) provide a timely and effective fix to rectify the defects.

60. The reasonable standard of care expected in the circumstances required the Defendants to act fairly, reasonably, honestly, candidly and with due care in the course of designing, developing, testing, and manufacturing the Affected Vehicles and having them certified, imported, marketed and distributed. The Defendants, through their employees, officers, directors and agents, failed to meet the reasonable standard of care in that regard and similarly failed to warn the Plaintiff and the Class Members of the latent defects.

61. The Plaintiff's and the Class Members' damages were caused by the negligence of the Defendants. Such negligence includes, but is not limited to, the following:

- (a) the Defendants failed to adequately design, research, develop, test, and/or manufacture the Affected Vehicles before marketing, advertising, promoting, warranting, leasing, and selling the Affected Vehicles as suitable and safe for use in an intended and/or reasonably foreseeable manner;
- (b) the Defendants failed to ensure that the Affected Vehicles were free of defects and of merchantable quality;
- (c) the Defendants failed to adequately test the Affected Vehicles and their Engines in a manner that would fully disclose the magnitude and scope of the defects associated with the Affected Vehicles;
- (d) the Defendants failed to provide the Plaintiff and Class Members with proper, adequate, and/or fair warning of the defects;
- (e) the Defendants failed to design and establish an effective and timely procedure for repair of the defects;

- (f) the Defendants failed to adequately monitor, evaluate, and act upon reports of the defects;
- (g) the Defendants failed to provide any or any adequate updates and/or current information to the Plaintiffs and the Class Members in a timely fashion respecting the defects as such information became available;
- (h) after becoming aware of problems with the Affected Vehicles, the Defendants failed to issue adequate warnings, failed to issue a recall, failed to publicize the problems, and failed to otherwise act properly in a timely manner to alert the public to the defects;
- (i) the Defendants represented that the Affected Vehicles were fit for their intended purposes and of merchantable quality when the Defendants knew or ought to have known that these representations were false;
- (j) the Defendants made misrepresentations that were unreasonable given that the defects were known or ought to have been known by the Defendants;
- (k) the Defendants knowingly and intentionally concealed from the Plaintiff and the Class Members that the Affected Vehicles suffered from defects (and the associated costs, safety risks, and diminished value of the Affected Vehicles);  
and
- (l) the Defendants failed to timely cease the manufacturing, marketing, distribution, leasing, and/or sale of the Affected Vehicles when it knew or ought to have known of the defects.

62. As a result of the Defendants' negligence, the Plaintiff and the Class Members suffered and will continue to suffer damages as particularized below.

### **Breach of Express Warranty**

63. In connection with the purchase and/or lease of the Affected Vehicles, the Defendants provided powertrain warranty coverage for the Affected Vehicles for 5 years or 100,000 kilometres, which obliges the Defendants to repair or replace any part that is defective under normal use under the powertrain warranty.

64. The Plaintiff and Class Members leased and/or owned the Affected Vehicles within the warranty period but had no knowledge of the existence of the Oil Consumption Defect or the Oil Indicator Defect, which was known and concealed by the Defendants.

65. Despite the existence of the warranty, the Defendants failed to inform or warn the Plaintiff and Class Members that the Affected Vehicles contained the Oil Consumption Defect and the Oil Indicator Defect during the warranty periods and thus, wrongfully transferred the costs of repair or replacement to the Plaintiff and Class Members.

66. The Defendants breached their express warranty promising the repair and correct a design and/or manufacturing defect, a defect in materials or workmanship, or defective parts as to the Affected Vehicles.

67. The Defendants were aware of the Oil Consumption Defect and the Oil Indicator Defect allowing them to cure the breach of warranty. However, the Defendants concealed the Oil Consumption Defect and the Oil Indicator Defect and have neglected, failed, and/or refused to repair or fix the Oil Consumption Defect or the Oil Indicator Defect. The Defendants have refused to provide an adequate and timely warranty repair for the Oil Consumption Defect and the Oil Indicator Defect and any lessees or owners who have presented an Affected Vehicle for

warranty repair due to the Oil Consumption Defect or the Oil Indicator Defect have been denied adequate repairs.

### **Breach of the *BPCPA* and Equivalent Consumer Protection Statutes**

68. The Defendants were and continue to be “suppliers” as that term is defined in the *BPCPA* and the Equivalent Consumer Protection Statutes. The Plaintiff and the Class Members were “consumers” as that term is defined in the *BPCPA* and the Equivalent Consumer Protection Statutes.

69. The Defendants’ marketing, promotion, labelling, leasing, and sale of the Affected Vehicles constituted and continues to constitute a “consumer transaction” as that term is defined in the *BPCPA* and the Equivalent Consumer Protection Statutes.

70. Section 4(3) of the *BPCPA* prohibits a supplier from making deceptive or misleading representations about their goods and specifically includes failure to state a material fact. The presence of the Oil Consumption Defect and the Oil Indicator Defect is a material fact that the Defendants had a duty to disclose to the Plaintiff and the Class Members in contravention of the *BPCPA*.

71. Section 8(3) of the *BPCPA* prohibits unconscionable acts and practices. Section 8(3)(b) states that it is an unconscionable act or practice to take advantage of a consumer’s inability to protect their own interest due to ignorance. The Plaintiff and Class Members had no way to know of the Oil Consumption Defect or the Oil Indicator Defect prior to the purchase or lease of an Affected Vehicle.

72. The Defendants’ acts were false, misleading or deceptive under section 4 of the *BPCPA* and unfair, unconscionable and/or otherwise prohibited practices under section 8 of the *BPCPA*,

and the Equivalent Consumer Protect Statutes (as set out in Schedules “A” and “B”), given that, among other things, the Defendants knew, or ought to have known, that:

- (a) failure to disclose the presence of the Oil Consumption Defect or the Oil Indicator Defect was false, misleading, and deceptive;
- (b) given the presence of the Oil Consumption Defect and the Oil Indicator Defect, the Affected Vehicles were not of the particular standard, quality or grade as set out by the Defendants;
- (c) failure to disclose the presence of the Oil Consumption Defect or the Oil Indicator Defect was a failure to state a material fact in respect of the Affected Vehicles;
- (d) the Plaintiff and Class Members were unable to receive all expected benefits from the Affected Vehicles;
- (e) the consumer transactions were excessively one-sided in favour of the Defendants;
- (f) the terms of the consumer transactions were so adverse to the Plaintiff and Class Members as to be inequitable;
- (g) such further other conduct concealed by the Defendants and unknown to the Plaintiff; and/or
- (h) such other ways as will be proven at trial.

73. The Defendants had a duty to disclose the presence of the Oil Consumption Defect and the Oil Indicator Defect to the Plaintiff and Class Members, and the Defendants’ silence and omissions demonstrate their failure to do so. Without being informed of these material facts

regarding the potential safety issues regarding the Affected Vehicles, it was reasonably foreseeable that the Plaintiff and Class Members purchased the Affected Vehicles with an explicit and implicit understanding that the Affected Vehicles were safe and that they would not be exposed to a dangerous safety defect.

74. In its role as designer, researcher, developer, tester, and/or manufacturer of the Affected Vehicles, the Defendants knew or ought to have known that the presence of the Oil Consumption Defect and the Oil Indicator Defect without notice to consumers would deceive and/or mislead consumers to judge the Affected Vehicles as safe. The Defendants had total control over the design, research, development, testing, and/or manufacturing of the Affected Vehicles. The relationship between the Defendants and the Plaintiff and Class Members who leased or purchased an Affected Vehicle is characterized by a fundamental inequality of information. Failure by the Defendants to abide by their duty not to withhold material facts about the Affected Vehicles from consumers resulted in a substantial deception to the Plaintiff and Class Members, a deception operating to the Defendants' benefit as a direct consequence of the Defendants' misconduct. The Defendants' conduct in all of the circumstances was unconscionable.

75. These are unfair practices, and as a result, the Plaintiff and other Class Members have suffered damages and are entitled to recovery pursuant to section 171 of the *BPCPA* and similar provisions in the Equivalent Consumer Protection Statutes (as set out in Schedules "A" and "B").

76. Further, or alternatively, the Class Members in some or all of the provinces/territories are entitled to rescission of the purchase, lease or other related agreements pursuant to section 18 of Ontario's *Consumer Protection Act* and equivalent provisions of the balance of the Equivalent Consumer Protection Statutes (as set out in Schedules "A" and "B"). To the extent necessary,

the Class Members are entitled to a waiver of any notice requirements under the applicable provisions of the Equivalent Consumer Protection Statutes, particularly as the Defendants concealed the actual state of affairs from Class Members.

77. The Defendants are jointly and severally liable together with their authorized Ford dealerships to the Plaintiff and the Class Members.

**Breach of the *Sale of Goods Act***

78. The Defendants were and continue to be a seller as that term is defined in the *SGA* and the Equivalent Sale of Goods Statutes. The Plaintiff and the Class Members were buyers or lessees as that term is defined in the *SGA* and the Equivalent Sale of Goods Statutes.

79. The Defendants' marketing, promotion, labelling, leasing, and sale of the Affected Vehicles continued and continues to constitute a sale or lease as that term is defined in the *SGA* and the Equivalent Sale of Goods Statutes.

80. Section 18 of the *SGA* provides an implied statutory warranty and condition as to quality and fitness that the Affected Vehicles were of merchantable condition. The Defendants knew or had reason to know the specific use for which the Affected Vehicles were purchased and/or lease.

81. As a result of the Oil Consumption Defect and the Oil Indicator Defect, as described herein, the Affected Vehicles were not of merchantable condition when sold and/or leased and are not fit for the ordinary purpose of providing safe and reliable transportation.

82. The Defendants were aware of the Oil Consumption Defect and the Oil Indicator Defect allowing them to cure the breach of warranty. However, the Defendants concealed the Oil Consumption Defect and the Oil Indicator Defect and have neglected, failed, and/or refused to

repair or fix the Oil Consumption Defect or the Oil Indicator Defect. The Defendants have refused to provide an adequate and timely warranty repair for the Oil Consumption Defect and the Oil Indicator Defect and any lessees or owners who have presented an Affected Vehicle for warranty repair due to the Oil Consumption Defect or the Oil Indicator Defect have been denied adequate repairs.

### **Unjust Enrichment**

83. The Defendants caused the Class Members to pay money for a product which was contrary to the *BPCPA* and such other Equivalent Consumer Protection Statutes as courts have held to supply a wrongful act for the purpose of the unjust enrichment analysis, the Class Member should not have paid for or, in the alternative, for which they should have paid less than they did.

84. As a result of this conduct, the Defendants were enriched by the payment or overpayment.

85. The Class Members suffered a deprivation corresponding to the Defendants' enrichment.

86. There is no juristic reason for the Defendants' enrichment and the Class Members' corresponding deprivation. The breaches of the *MVSA* negate any juristic reasons, including contract, for the enrichment; such contracts are void or voidable. The Class Members are entitled to restitution and/or a disgorgement of profits as a result of the Defendants' unjust enrichment.

### **B. Damages**

87. The Plaintiff and Class Members have suffered loss and damage caused by the wrongful and negligent acts of the Defendants.

88. Class Members face the loss of the ability to sell or exercise lease purchase options for the Affected Vehicles at the Class Members' anticipated fair market value.

89. The Class Members have suffered or will suffer inconvenience and have incurred or will incur special damages arising from any necessary repairs to the Affected Vehicles, including loss of income, loss of use of the Affected Vehicles during any such repair periods, diminished value of the Affected Vehicles, the costs associated with the use of other automobiles or other expenses during such periods.

90. The Defendants' conduct described above was deliberate, arrogant, high-handed, outrageous, reckless, wanton, entirely without care, secretive, callous, willful, disgraceful and in contemptuous disregard of the rights, personal safety and interests of the Plaintiff, Class Members, and the public. Accordingly, the Plaintiff and Class Members are entitled to an award of punitive damages.

### **Disgorgement of Profits**

91. In the alternative to damages, the Plaintiff claims disgorgement of the revenues generated by the Defendants as a result of their unlawful conduct, including under the Equivalent Consumer Protection Statutes (as set out in Schedules "A" and "B", as applicable) and at common law.

92. Disgorgement is appropriate for the following reasons, among others:

- (a) revenue was acquired in such a manner that the Defendants cannot in good conscience retain it;

- (b) the integrity of the marketplace would be undermined if the Defendants were to profit from their wrongdoing;
- (c) absent the Defendants' tortious conduct, the Affected Vehicles could not have been marketed at their prices nor would the Defendants have received the same revenue from them in Canada;
- (d) disgorgement of profits retained by the Defendants would serve a compensatory purpose;
- (e) ordinary remedies of contract law are inadequate to protect and vindicate the contractual rights of the Plaintiff and Class Members; and
- (f) disgorgement of profits is an appropriate way to measure the punitive damages claimed herein.

### **C. Statutes Relied Upon**

93. The Plaintiff and Class Members plead and rely upon the following statutes as set out in Schedules "A" and "B":

- (a) *Business Practices Act*, CCSM c B120, as amended, section 2, 3, 4, 5, 6, 7, and 23 and the regulations thereto the provisions of which are set out in Schedule "B";
- (b) *Consumer Protection Act*, CCSM c C200, as amended, section 1, 58, 58.1, 58.2, 136.1, as set out in Schedule "B";
- (c) *Business Practices Act*, RSPEI 1988, c B-7, as amended, section 1, 2, 3, and 4 and the regulations thereto as set out in Schedule "B";

- (d) *Consumer Protection Act*, RSPEI c C-19, as amended, section 1 and 14, as set out in Schedule “B”;
- (e) *Business Practices and Consumer Protection Act*, SBC 2004, c 2, as amended, section 4, 5, 8, 9, 10, 171, and 172 and the regulations thereto;
- (f) *Civil Code of Quebec*, CQLR c CCQ-1991, as amended, and the regulations thereto;
- (g) *Class Proceedings Act*, RSBC 1996, c 50, as amended;
- (h) *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A, as amended, sections 2, 5, 9(1), 9(2), 14, 15, 16, 17, 18, and 19 and the regulations thereto as set out in Schedule “B”;
- (i) *Consumer Protection Act*, CQLR c P-40.1, as amended, sections 215, 218, 219, 220, 221, 222, 228, 239, 252, 253, 271, and 272, and the regulations thereto as set out in Schedule “B”;
- (j) *Consumer Protection Act*, RSNS 1989, c 92, as amended, section 2, 26, and 28, and the regulations thereto as set out in Schedule “B”;
- (k) *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, as amended, sections 2, 7, 8, 9, and 10, and the regulations thereto as set out in Schedule “B”;
- (l) *Consumer Protection and Business Practices Act*, SS 20134, c C-30.2, sections 2, 4, 6-16, 18-22, 24-33, 35, 36, 37, 39, 91, and 93, and the regulations thereto as set out in Schedule “B”;

- (m) *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, as amended;
- (n) *Consumer Protection Act*, RSA 2000, c. C-26.3, as amended, sections 1, 5, 6, 7, 7.2, 7.3, and 13, and the regulations thereto as set out in Schedule "B";
- (o) *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1, as amended, sections 1, 4, 10-13, 15-17, and 27, and the regulations thereto as set out in Schedule "B";
- (p) *Consumer Protection Act*, RRSY 2002, c 40, as amended, sections 1 and 58(1)-(7), and the regulations thereto as set out in Schedule "B";
- (q) *Consumer Protection Act*, RSNWT 1988, c C-17, as amended, sections 1, 70(e)-(f) and (h), and the regulations thereto as set out in Schedule "B";
- (r) *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17, as amended, sections 1, 70(e)-(f) and (h), and the regulations thereto as set out in Schedule "B";
- (s) *Sale of Goods Act*, R.S.B.C. 1996, c.410, as amended, sections 18 and 56 and the regulations thereto;
- (t) *Sale of Goods Act*, R.S.O. 1990, c S 1, as amended, sections 15 and 51, and the regulations thereto as set out in Schedule "B";
- (u) *Sale of Goods Act*, R.S.A. 2000, c S-2 as amended, sections 16 and 52, and the regulations thereto as set out in Schedule "B";
- (v) *The Sale of Goods Act*, C.C.S.M. c S10, as amended, sections 16 and 54, and the regulations thereto as set out in Schedule "B";

- (w) *Sale of Goods Act*, R.S.N.L. 1990, c S-6, as amended, sections 16 and 54, and the regulations thereto as set out in Schedule “B”;
- (x) *Sale of Goods Act*, R.S.P.E.I. 1988, c S-1, as amended, sections 16 and 53, and the regulations thereto as set out in Schedule “B”;
- (y) *Sale of Goods Act*, R.S.S. 1978, c S-1, as amended, sections 16 and 52, and the regulations thereto as set out in Schedule “B”;
- (z) *Sale of Goods Act*, R.S.N.B. 2016, c 110, as amended, sections 20, and 67-69, and the regulations thereto as set out in Schedule “B”;
- (aa) *Sale of Goods Act*, R.S.N.S. 1989, c 408, as amended, sections 17 and 54, and the regulations thereto as set out in Schedule “B”;
- (bb) *Sale of Goods Act*, R.S.N.W.T. 1998, c S-2, as amended, sections 18, 60 and 62, and the regulations thereto as set out in Schedule “B”;
- (cc) *Sale of Goods Act*, R.S.N.W.T. (Nu) 1998, c S-2, as amended, sections 18, 60 and 62, and the regulations thereto as set out in Schedule “B”; and
- (dd) *Sale of Goods Act*, R.S.Y. 2002, c 198, as amended, sections 15 and 50, and the regulations thereto as set out in Schedule “B”.

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Place of trial:

Vancouver, BC, Canada

The address of the registry is:

800 Smithe Street  
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Dated: July 28, 2022



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Signature of  
lawyer for plaintiff

Emily Assini

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AND TO: FCA US LLC  
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Rule 7-1(1) of the Supreme Court Civil Rules states:

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

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

The Plaintiff, Samantha Crawford, claims the right to serve this pleading on the Defendants outside British Columbia, on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding, and the Plaintiff and other Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003 c.28 (the “**CJPTA**”) in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10(f) – (h) of the *CJPTA* because this proceeding:

- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia;

## Appendix

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

The within proposed class proceeding arises out of the Defendants failure to disclose or remedy defects of design and/or manufacturing relating to excessive oil consumption in the Affected Class Vehicles causing sudden vehicle stalling and significant engine damage, creating a serious safety hazard.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

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

### **Part 3: THIS CLAIM INVOLVES:**

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

### **Part 4:**

1. *Class Proceedings Act*, R.S.B.C. 1996, c. 50
2. *Business Practices and Consumer Protection Act*, S.B.C. 2004;
3. *Sale of Goods Act*, R.S.B.C 1996, c. 410