



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued
Délivré par voie électronique : 26-May-2021
London

DANA HOLLETT

Plaintiff

and

FCA CANADA INC.
and FCA US LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

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

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date May 26, 2021 Issued by _____
Local Registrar

Address of court office: London Court House
80 Dundas Street
London ON N6A 6A3

TO: FCA CANADA INC.
1 Riverside Drive West
Windsor ON N9A 5K3

AND TO: FCA US LLC
100 Chrysler Drive
Auburn Hills MI 48326-2766

CLAIM

DEFINED TERMS

1. The following definitions apply for the purposes of this Statement of Claim:

- a) **“Affected Vehicle(s)”** means 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:

Model Year	Model
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
2017-2020	Fiat Toro

- b) **“Chrysler”** means collectively FCA Canada Inc. and FCA US LLC;
- c) **“Chrysler Canada”** means FCA Canada Inc., a subsidiary of FCA US LLC;
- d) **“Chrysler USA”** means FCA US LLC, a North American automaker headquartered in Auburn Hills, Michigan;
- e) **“Class”** and/or **“Class Member(s)”** means all persons, corporations or other entities resident in Canada who are current or former owners and/or lessees of an **Affected Vehicle**;

- f) “***Class Proceedings Act***” means the *Class Proceedings Act, 1992*, SO 1992, c.6, as amended;
- g) “***Consumer Protection Act***” means the *Consumer Protection Act, 2002*, SO 2002, c 30, Schedule A and the parallel provisions of the consumer protection legislation in other Canadian provinces as described in Appendix 1 hereto;
- h) “***Courts of Justice Act***” means the Ontario *Courts of Justice Act*, RSO 1990, c.C-43, as amended;
- i) “**Defendants**” means collectively Chrysler Canada and Chrysler USA;
- j) “**Engine(s)**” means 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;
- k) “**Excluded Person(s)**” means the Defendants and their officers, directors, and their respective heirs, successors, and assigns;
- l) “***Motor Vehicle Safety Act***” means the *Motor Vehicle Safety Act*, SC 1992, c.16, as amended;
- m) “**NHTSA**” means the U.S. National Highway Traffic Safety Administration;
- n) “***Rules of Civil Procedure***” means the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194; and

- o) “*Sale of Goods Act*” means the *Sale of Goods Act*, RSO 1990, c S 1, and the parallel provisions of the sale of goods legislation in other Canadian provinces as described in Appendix 2 hereto.

RELIEF CLAIMED

2. The Plaintiff on her own behalf and on behalf of Class Members, seeks:

- (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*;
- (b) a declaration that the Defendants, or any 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 any 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 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 *Consumer Protection Act* and the *Sale of Goods Act*;
- (f) a declaration that the Defendants, or any of them, breached the *Motor Vehicle Safety* by failing to provide notice of latent engine defects to the Plaintiff and Class Members;
- (g) a declaration that the Defendants, or any of them, were unjustly enriched at the expense of the Plaintiff and the Class Members;
- (h) general damages and special damages in the amount of \$100,000,000;
- (i) punitive damages in the amount of \$25,000,000;
- (j) disgorgement of the Defendants’ profits and other equitable relief;
- (k) a reference to decide any issues not decided at the trial of the common issues;
- (l) costs of administration and notice, plus applicable taxes, pursuant to s. 26(9) of the *Class Proceedings Act*;

- (m) costs of this action pursuant to the *Class Proceedings Act*, the *Courts of Justice Act*, and the *Rules of Civil Procedure*;
- (n) prejudgment interest compounded and post-judgement interest in accordance with ss. 128 and 129 of the *Courts of Justice Act*; and
- (o) such further and other relief as to this Honourable Court may seem just.

THE PARTIES

The Plaintiff

3. The Plaintiff is an individual residing in Keswick Ridge, New Brunswick. On April 2, 2020, the Plaintiff purchased a 2018 Jeep Compass.

4. On February 3, 2021, the Plaintiff's vehicle suddenly stalled while moving through an intersection. No warning lights were illuminated prior to the vehicle stalling. After several attempts, the Plaintiff was able to re-start the vehicle and exit the intersection. Later that day with her son in the vehicle, the Plaintiff's vehicle again suddenly stalled while moving through an intersection. Again, no warning lights were illuminated prior to the vehicle stalling. After several attempts, the Plaintiff was able to re-start the vehicle and exit the intersection.

5. On February 4, 2021, the Plaintiff took the vehicle to the Fairview Dodge Jeep Chrysler dealership. On route, while changing lanes, the vehicle again suddenly stalled with no warning. Upon arrival at the dealership, the Plaintiff reported the issue and was advised that there was a recall issued for her vehicle regarding oil consumption. The Plaintiff was advised that this recall was completed and indicated that the reason the vehicle had been stalling was due to very low oil levels. The Plaintiff was advised to monitor the oil level of the vehicle, keep track of those levels, and if the level was low, not to add any oil but instead to return to the dealership. At that time, the Plaintiff was also advised that in addition to the recall, the dealership was aware of other reports

of low oil levels in other Affected Vehicles. The Plaintiff's vehicle received an oil change and the Plaintiff was advised to return for a further oil change after 2,400 km. After departing from the dealership, the Plaintiff began monitoring the oil level in her vehicle.

6. On March 10, 2021, the Plaintiff noted that the oil level was low, however, she had only driven 2,075 km since the last oil change. The Plaintiff brought the vehicle to the dealership and was advised that the oil had dropped 0.5 litres. The Plaintiff was advised that the oil consumption was within the oil consumption range as indicated in Technical Service Bulletin No. 09-006-20 issued May 16, 2020 and to again to monitor the vehicle until the 2,400 km was reached.

7. On March 10, 2021, the Plaintiff called Chrysler Canada to explain the situation with her vehicle. Chrysler Canada advised the Plaintiff to continue to monitor the oil level.

8. On March 15, 2021, the Plaintiff again attended at the dealership as the vehicle had at that point been driven 2,342 km. At the dealership, the Plaintiff was advised that the oil level was down 1 litre of oil since the last oil change. However, as the Plaintiff had not returned at precisely 2,400 km, Chrysler Canada would not take any steps for further repairs. The Plaintiff was again advised to monitor the oil levels and return after the vehicle has been driven a further 2,400 km. To date, the Plaintiff's vehicle has not been repaired and continues to consume oil at an abnormally high rate. The Plaintiff remains fearful of driving the vehicle due to the ongoing danger of unexpected stalling events.

9. If the Plaintiff had been aware of the defects with the vehicle, she would not have purchased the vehicle.

The Class

10. 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.

The Defendants

11. Chrysler Canada is a Canadian corporation with its head office in Windsor, Ontario. Chrysler Canada imports newly manufactured Chrysler vehicles, including the Affected Vehicles, into Canada for sale or lease, and is responsible for ensuring that those vehicles' designs are compliant with the regulations for import into Canada.

12. Chrysler Canada sells, leases, services, and repairs the Affected Vehicles in Canada 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.

13. Chrysler Canada administers the warranties for all Affected Vehicles sold in Canada, representing that the vehicles are, *inter alia*, free from defects in both material and workmanship.

14. 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.

15. 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. 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.

THE FACTS

The Engines

16. 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 which is proprietary to the Defendants.

Life-Threatening and Dangerous Latent Defects in the Engines

The Latent Defects

17. 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.

18. 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 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.

19. 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

20. 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 the course of normal operation, placing the occupants and surrounding vehicles at an increased risk of serious injury and death.

21. 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.

22. 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.

23. 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 excessively 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

24. The sudden stall or shut down caused by the latent defects in the Engines 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 was 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.

25. 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, these systems exacerbate the issues related to the Oil Consumption Defect.

26. 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.

27. 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.

28. 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.

29. 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

30. A Technical Service Bulletin ("TSB") is issued by a vehicle manufacturer 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 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.

31. 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.

32. 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.

33. To date, no remedy to the Oil Consumption Defect and/or Oil Indicator Defect, have been implemented by the Defendants and no Transport Canada Recalls have been issued by Chrysler regarding any of the defects described herein.

34. The *Motor Vehicle Safety Act* requires that an original equipment manufacturer report safety defects to Transport Canada. No safety defects have been reported to Transport Canada with respect to the Oil Consumption Defect and/or the Oil Indicator Defect.

The NHTSA Complaints

35. In addition to multiple online complaints made by various owners and lessees, since as early as 2015, hundreds of complaints have been filed with NHTSA. 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

36. 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.

37. 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, including the Plaintiff; (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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

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

44. 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.

45. 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.

46. 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.

47. 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

48. 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

49. 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;
- (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.

CAUSES OF ACTION

Negligence

50. 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.

51. 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.

52. The Affected Vehicles pose a serious risk of injury and death to the Plaintiff and Class Members on account of the latent defects.

53. 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.

54. 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 latent defects, harm to the Plaintiff and the Class Members would result.

55. 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.

56. 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.

57. 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.

58. 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.

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

Breach of Warranties

60. The Defendants expressly or impliedly warranted to the Plaintiff and the Class Members that the Affected Vehicles were reasonably fit for the purpose of safe driving, that the Affected Vehicles were of merchantable quality, that the Affected Vehicles were free from defects and/or that the Affected Vehicles were of acceptable quality. The warranties included the Engines.

61. Chrysler Canada provided the purchasers and lessees of the Affected Vehicles with a written warranty that provides and represents, among other things, that each Affected Vehicle will be free of defects in material and workmanship. In addition, an implied warranty applies to each

transaction between the purchasers of the Affected Vehicles and Chrysler Canada to the same effect pursuant to the *Consumer Protection Act*, the parallel provisions of the consumer protection legislation in other Canadian provinces, the *Sale of Goods Act*, the parallel provisions of the sale of goods legislation in other Canadian provinces, the *Motor Vehicle Safety Act*, and the common law.

62. Despite and contrary to the foregoing warranties and representations, the Defendants sold and leased the Affected Vehicles when they knew or ought to have known of the latent defects and the Defendants concealed or failed to disclose the latent defects to the Plaintiff and the Class Members.

63. Chrysler Canada has breached its warranties with the Plaintiff and Class Members, and as a result, the Plaintiff and Class Members have suffered damages.

Unjust Enrichment

64. The Defendants caused the Plaintiff and the Class Members to pay for a product that they would not have otherwise purchased or leased; or, in the alternative, for which they should have paid less than they did.

65. As a result, the Defendants were enriched by the payment or overpayment.

66. The Plaintiff and Class Members suffered a deprivation equal to the Defendants' enrichment.

67. There is no juristic reason for the Defendants' enrichment and the Class Members' corresponding deprivation. Class Members are entitled to restitution for the Defendants' unjust enrichment.

DAMAGES

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

69. 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.

70. 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.

71. 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.

72. This conduct warrants that the Defendants pay punitive damages to the Plaintiff and the Class Members.

PLACE OF TRIAL

73. The Plaintiff proposes that this action be tried in London, Ontario.

May 26, 2021

MCKENZIE LAKE LAWYERS LLP

140 Fullarton Street, Suite 1800

London, ON N6A 5P2

Michael J Peerless (LSO # 34127P)

Sabrina Lombardi (LSO # 52116R)

Emily Assini (LSO # 59137J)

Tel: 519-672-5666

Fax: 519-672-2674

Lawyers for the Plaintiff

APPENDIX 1

Alberta: *Consumer Protection Act*, RSA 2000, c C-26.3.

British Columbia: *Business Practices and Consumer Protection Act*, SBC 2004, c 2.

Manitoba: *The Business Practices Act*, CCSM c B120, c 2 and *The Consumer Protection Act*, CCSM c C200.

New Brunswick: *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1.

Newfoundland and Labrador: *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1.

Northwest Territories: *Consumer Protection Act*, RSNWT 1988, c C-17.

Nova Scotia: *Consumer Protection Act*, RSNS 1989, c 92.

Nunavut: *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17.

Prince Edward Island: *Consumer Protection Act*, RSPEI 1988, c C-19 and the *Business Practices Act*, RSPEI 1988, c B-7.

Quebec: *Consumer Protection Act*, CQLR c P-40.1.

Saskatchewan: *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2.

Yukon: *Consumers Protection Act*, RSY 2002, c 40.

APPENDIX 2

Alberta: *Sale of Goods Act*, RSA 2000, c S-2.

British Columbia: *Sale of Goods Act*, RSBC 1996, c 410.

Manitoba: *The Sale of Goods Act*, CCSM c S10.

New Brunswick: *Sale of Goods Act*, RSNB 2016, c 110.

Newfoundland and Labrador: *Sale of Goods Act*, RSNL 1990, c S-6.

Northwest Territories: *Sale of Goods Act*, RSNWT 1998, c S-2.

Nova Scotia: *Sale of Goods Act*, RSNS 1989, c 408.

Nunavut: *Sale of Goods Act*, RSNWT (Nu) 1998, c S-2.

Prince Edward Island: *Sale of Goods Act*, RSPEI 1988, c S-1.

Quebec: *Civil Code of Quebec*, CQLR c CCQ-1991.

Saskatchewan: *Sale of Goods Act*, RSS 1978, c S-1.

Yukon: *Sale of Goods Act*, RSY 2002, c 198.

DANA HOLLETT
Plaintiff

-and- FCA CANADA INC. et al.
Defendants

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PROCEEDING COMMENCED AT
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STATEMENT OF CLAIM

MCKENZIE LAKE LAWYERS LLP
140 Fullarton Street, Suite 1800
London, Ontario N6A 5P2

Michael J. Peerless (LSO # 34127P)
Sabrina Lombardi (LSO # 52116R)
Emily Assini (LSO #59137J)
Tel: 519-672-5666
Fax: 519-672-2674

Lawyers for the Plaintiff