

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

BARRY REBUCK

Plaintiff

- and -

**FORD MOTOR COMPANY and
FORD MOTOR COMPANY OF CANADA, LIMITED and
YONGE-STEELES FORD LINCOLN SALES LIMITED**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM
Notice of Action issued on January 15, 2016

1. The Plaintiff, Barry Rebeck, on his behalf and on behalf of all class members, claims:
 - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as representative plaintiff on behalf of the proposed class pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “***Class Proceedings Act***”);
 - (b) a declaration that the Representations (as defined below) made by the Defendants regarding the fuel consumption of the Vehicles (as defined below) were contrary to section 52(1) of the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “***Competition Act***”), sections 14 and 17 of the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A (the “***Consumer Protection Act***”), and the parallel provisions of provincial consumer protection legislation¹ (the “***Consumer Protection Legislation***”);

¹ Specifically, the *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 6; *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, ss. 4-5; *The Business Practices Act*, C.C.S.M., c. B120, ss. 2 and 5; *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, ss. 7 and 9; *Business Practices Act*, R.S.P.E.I. 1988, c. B-7, ss. 2-3; *The Consumer Protection Act*, S.S. 1996, c. C-30.1, ss. 5 and 7; *The Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2 ss. 6 and 8; *Consumer Protection Act*, R.S.Q. c. P-40.1, ss. 215 and 219; *Consumer Protection Act*, R.S.N.S. 1989, c. 92, ss. 26 and 28A; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1, ss. 4 and 10; *Consumers Protection Act*, R.S.Y. 2002, c. 40, s. 58; and *Consumer Protection Act*, R.S.N.W.T. 1988, c. C-17, s. 70.

- (c) a declaration pursuant to section 18(15) of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation² that it is in the interest of justice to disregard the requirement to give notice;
- (d) a declaration that the Defendants are jointly and severally liable for any and all damages awarded;
- (e) damages pursuant to section 36(1) of the *Competition Act*, to section 18(2) of the *Consumer Protection Act*, and to the parallel provisions of the Consumer Protection Legislation³ in the amount of \$1,500,000,000;
- (f) exemplary, punitive and aggravated damages in the amount of \$100,000,000;
- (g) prejudgment interest and postjudgment interest, compounded, or pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) costs of this action on a substantial indemnity basis and, pursuant to section 26(9) of the *Class Proceedings Act*, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
- (i) such further and other relief as this Honourable Court may deem just.

The Representative Plaintiff

2. The Plaintiff, Barry Rebuck (“**Rebuck**”), is an individual residing in the City of Vaughan, in the Province of Ontario. On September 17, 2014, Rebuck leased a new Ford Edge (3.5L AWD) model year 2014 (the “**Plaintiff’s Vehicle**”) from the Defendant, Yonge-Steeles Ford Lincoln Sales Limited, in the City of Vaughan, in the Province of Ontario. The lease was for a term of four years.

² Specifically, the *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 7.2(3).

³ Specifically, the *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 13; *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, s. 171; *The Business Practices Act*, C.C.S.M., c. B120, s. 23(2); *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, s. 10(2); *Business Practices Act*, R.S.P.E.I. 1988, c. B-7, s. 4(1); *The Consumer Protection Act*, S.S. 1996, c. C-30.1, s. 16(1); *The Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2 s. 93(1); *Consumer Protection Act*, R.S.Q. c. P-40.1, s. 272; and *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1, s. 15.

The Class

3. The Plaintiff seeks to represent the following class (the “**Class**”) of which he is a Class member:

All persons who purchased or leased a new 2013 or 2014 model year Ford vehicle in Canada (the “**Vehicles**”).

The Defendants

4. The Defendant, Ford Motor Company, is a corporation organized pursuant to the laws of the State of Delaware in the United States. Its head offices are situated in Dearborn, Michigan. Ford Motor Company carries on business in Canada through Ford Motor Company of Canada, Limited. At all material times, Ford Motor Company manufactured, distributed, marketed and sold vehicles to the public that were designed and manufactured in the United States and Canada by Ford Motor Company and Ford Motor Company of Canada, Limited.

5. The Defendant, Ford Motor Company of Canada, Limited, is a corporation incorporated pursuant to the laws of Ontario, the head offices of which are situated in Oakville, Ontario. At all material times, Ford Motor Company of Canada, Limited manufactured, distributed, marketed and sold vehicles to the public that were designed and manufactured in the United States and Canada by Ford Motor Company of Canada, Limited and Ford Motor Company (collectively, “**Ford**”).

6. The Defendant, Yonge-Steeles Ford Lincoln Sales Limited, is a corporation incorporated pursuant to the laws of Canada and carries on business as a Ford dealership in the City of Vaughan, in the Province of Ontario.

7. The Defendants were located or resident in Ontario under section 2(1) of the *Consumer*

Protection Act and in the applicable province under the parallel provisions of the Consumer Protection Legislation.⁴

The Nature of the Claim

8. This class action concerns the false, misleading or deceptive representations made by the Defendants to the public which understated the fuel consumption of the Vehicles (the “**Representations**”).

9. The Representations were made for the purpose of promoting, directly or indirectly to the public, the supply or use of the Vehicles, or the business interests of the Defendants. The Representations were made knowingly or recklessly. The Representations were made to the public, including the Class. The Representations were false or misleading in a material respect, namely as to the performance characteristics, standard, benefits and quality of the Vehicles.

10. The Class entered into written agreements with agents or dealers of Ford for the purchase or lease of the Vehicles after the Defendants had made, or while the Defendants were making, the Representations to the public.

Fuel Consumption Ratings in Canada

11. Each year, Natural Resources Canada (“**NRCan**”) publishes a fuel consumption guide providing model-specific fuel consumption information about new light-duty vehicles, which includes passenger cars, pickup trucks, SUVs and vans. NRCan relies upon vehicle manufacturers, including Ford, to test their own vehicles using standardized testing procedures and to self-report fuel consumption results, which then appear in NRCan’s annual Fuel Consumption Guides and on the EnerGuide Label for Vehicles (the “**EnerGuide Label**”).

⁴ Specifically, the *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 5.

12. EnerGuide is the official mark of the Government of Canada for rating and labelling the energy consumption or efficiency of certain consumer products.

13. Although EnerGuide labels are mandatory for certain prescribed consumer products pursuant to the *Energy Efficiency Regulations*, S.O.R./94-651, at all material times there was, and remains, no statutory authority for the placement of EnerGuide labels on vehicles in Canada. Rather, the EnerGuide Label is affixed to all new light-duty vehicles for retail sale or lease in Canada pursuant to a voluntary agreement between vehicle manufacturers, including Ford, and the Government of Canada.

14. The EnerGuide Label provides a fuel consumption rating for each vehicle to which it is affixed based upon the ratings published in the annual Fuel Consumption Guides.

15. Prior to the 2015 model year, such fuel consumption ratings were based on two test cycles: a city test simulating urban driving in stop-and-go traffic, and a highway test, simulating a mixture of open highway and rural road driving (the “**2-Cycle Testing Method**”).

16. The 2013 Fuel Consumption Guide (the “**2013 Guide**”) stated that, commencing in 2015, a different test methodology for determining fuel consumption ratings in Canada would be adopted to “better approximate real world driving conditions and behaviours”. This test methodology would incorporate three additional test cycles accounting for air conditioner usage, cold temperature operation and higher speeds with more rapid acceleration and braking (the “**5-Cycle Testing Method**”). The 5-Cycle Testing Method had already been employed by the US Environmental Protection Agency (the “**EPA**”) since 2008.

17. According to the 2013 Guide, the 5-Cycle Testing Method results in higher fuel consumption ratings compared to the 2-Cycle Testing Method and, as a result, fuel consumption

ratings for most vehicles would “increase by about 15%”.

18. The 2014 Fuel Consumption Guide (the “**2014 Guide**”) reaffirmed this transition to an “improved testing procedure” and asserted that the 5-Cycle Testing Method was “more representative of typical driving conditions and styles”. The 2014 Guide further stated that for the same make and model, the 5-Cycle Testing Method produced fuel consumption ratings that were “10 to 20% higher” than the ratings under the 2-Cycle Testing Method, as they accounted for “additional factors that better approximate everyday driving”.

19. For the model year 2015, vehicle manufacturers, including Ford, used the 5-Cycle Testing Method to determine the fuel consumption ratings of their new light-duty vehicles and their fuel consumption ratings were published in the 2015 Fuel Consumption Guide (the “**2015 Guide**”). The 2015 Guide states that the 5-Cycle Testing Method is “more representative of typical driving conditions and styles”.

False, Misleading or Deceptive Representations

20. At all material times, the Defendants used the fuel consumption ratings based on the 2-Cycle Testing Method in their multimedia advertisements, sales brochures, the Ford website and on the EnerGuide Labels in Canada.

21. At all material times, the Defendants’ Representations relied upon the 2-Cycle Testing Method ratings despite the Defendants’ knowledge or recklessness with regard to the material discrepancies between the fuel consumption ratings produced by the 2-Cycle and 5-Cycle Testing Methods, and the Defendants’ knowledge or recklessness that, as compared with the 5-Cycle Testing Method, the 2-Cycle Testing Method ratings did not as accurately represent the Vehicles’ actual, expected fuel consumption under normal, real world driving conditions. In so

doing, the Defendants knowingly or recklessly failed to disclose that the Vehicles could not achieve the represented fuel consumption ratings under normal, real world driving conditions. Although, at all material times, the more representative 5-Cycle Testing Method was available for the Defendants' use when they made the Representations, and had been the standard employed by the EPA since 2008, the Defendants did not use it. As a result, the Representations understated the Vehicles' actual, expected fuel consumption under normal, real world driving conditions by an average of at least 15 percent.

22. The Representations were designed to, and did in fact, exploit the Plaintiff's and the Class members' desire for value, convenience and fuel-efficiency in order to sell the Vehicles.

23. The Representations were false, misleading or deceptive as follows:

- (a) The Defendants promoted understated fuel consumption ratings that were far better than what the public would actually experience using the Vehicles under normal, real world driving usage;
- (b) The Defendants failed to disclose material facts regarding the nature of the represented fuel consumption ratings, omitting that such ratings were based upon the 2-Cycle Testing Method; an outmoded testing method that fails to provide actual, expected fuel consumption levels under normal, real world driving conditions and, as a result, produces fuel consumption ratings that are misleading and lower than the fuel consumption ratings under the 5-Cycle Testing Method; and
- (c) The Defendants failed to disclose the Vehicles' 5-Cycle Testing Method ratings, the existence or availability thereof, or the imminent transition to the more

representative 5-Cycle Testing Method for determining fuel consumption ratings in Canada.

24. In the Defendants' promotional materials for the Vehicles, a footnote to the represented fuel consumption ratings stated in fine print, "Fuel consumption ratings based on Government of Canada approved test methods. Actual fuel consumption will vary". In addition, the Vehicles' EnerGuide Labels, upon which the official Government of Canada and EnerGuide logos figured prominently, stated, "These estimates are based on the Government of Canada's approved criteria and testing methods. The actual fuel consumption of this vehicle may vary. Refer to the Fuel Consumption Guide". The Vehicles' EnerGuide Labels also stated, "Ask your dealer for the FUEL CONSUMPTION GUIDE or call 1-800-387-2000." The Plaintiff further states that the Defendants' statements in this regard were false, misleading or deceptive as follows:

- (a) In so far as the Defendants promoted the published fuel consumption ratings using government-approved test methods, the Defendants provided the impression that the represented fuel consumption ratings were certified by the Government of Canada, met regulatory standards, or were subject to government regulation, lending unwarranted credibility to fuel consumption ratings that, in reality, were produced pursuant to a voluntary fuel consumption reporting scheme between vehicle manufacturers and the Government of Canada; and
- (b) The Vehicles' actual fuel consumption was not reasonably expected to be less than the represented 2-Cycle Testing Method rating, but in fact, was expected to be higher based on the 5-Cycle Testing Method ratings.

25. The Defendants' statements in this regard were inadequate, as they did not sufficiently

qualify the represented fuel consumption ratings and did not sufficiently bring the false, misleading or deceptive nature of the Representations to the attention of the public. In addition, referring the public to the Fuel Consumption Guide, as per the Vehicles' EnerGuide Labels, was insufficient to limit the Defendants' liability as the public should not be required to refer to additional, extrinsic materials in order to discover the misleading nature of the represented fuel consumption ratings.

The Plaintiff

26. On September 17, 2014, Rebuck leased the Plaintiff's Vehicle from the Defendant, Yonge-Steeles Ford Lincoln Sales Limited for a four-year term. The Representations stated that the Plaintiff's Vehicle would consume 11.8 litres per 100 km for city driving and 7.8 litres per 100 km for highway driving (the "**Represented Fuel Consumption**"). However, the Plaintiff's Vehicle did not achieve the Represented Fuel Consumption under normal, real world driving conditions. In fact, when used for highway driving, the actual fuel consumption of the Plaintiff's Vehicle was approximately 22 litres per 100 km, exceeding the Represented Fuel Consumption by over 100 percent.

27. After service inspection of the Plaintiff's Vehicle, Rebuck was advised that the Plaintiff's Vehicle was operating according to specification and, thereafter, it continued to exceed the Represented Fuel Consumption by approximately 100 percent.

The Defendants Engaged in Unfair Practices

28. The Defendants knowingly or recklessly made the false or misleading material Representations to the public, including the Class, for the purpose of promoting, directly or indirectly, the supply or use of the Vehicles contrary to section 52(1) of the *Competition Act*.

29. The Defendants engaged in unfair practices by making the false, misleading or deceptive Representations contrary to sections 14 and 17 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation.⁵

30. In particular, but without limiting the scope of the Defendants' unfair practices contrary to sections 14 and 17 of the *Consumer Protection Act* and the Consumer Protection Legislation, the Defendants falsely, misleadingly or deceptively made:

- (a) representations that the Vehicles had performance characteristics, benefits or qualities which they did not have;
- (b) representations that the Vehicles were of a particular standard and quality which they were not; and
- (c) representations using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact where such use or failure tended to deceive.

The Class Suffered Damages

31. The Class members' payments for the Vehicles exceeded the value that the Vehicles had to the Class members as a result of the discrepancy between the Defendants' represented fuel consumption levels and the actual, expected fuel consumption levels under normal, real world driving conditions. The Class claims damages based on the excess annual fuel costs incurred, and to be incurred, by Class members as a result of this discrepancy.

32. Ford sold or leased approximately 269,800 of the 2013 model year Vehicles and 276,700 of the 2014 model year Vehicles in Canada. The Vehicles' fuel consumption ratings under the 5-

⁵ Specifically, the *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 6; *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, ss. 4-5; *The Business Practices Act*, C.C.S.M., c. B120, ss. 2 and 5; *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, ss. 7 and 9; *Business Practices Act*, R.S.P.E.I. 1988, c. B-7, ss. 2-3; *The Consumer Protection Act*, S.S. 1996, c. C-30.1, ss. 5 and 7; *The Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2 ss. 6 and 8; *Consumer Protection Act*, R.S.Q. c. P-40.1, ss. 215 and 219; *Consumer Protection Act*, R.S.N.S. 1989, c. 92, ss. 26 and 28A; *Consumer Product Warranty and Liability Act*, S.N.B. 1978, c. C-18.1, ss. 4 and 10; *Consumers Protection Act*, R.S.Y. 2002, c. 40, s. 58; and *Consumer Protection Act*, R.S.N.W.T. 1988, c. C-17, s. 70.

Cycle Testing Method exceeded the Vehicles' fuel consumption ratings under the 2-Cycle Testing Method by an average of approximately 15 percent. As a result, Class members experienced, and will experience, 15 percent higher average annual fuel consumption than represented, resulting in a commensurate 15 percent average increase in annual fuel costs throughout the term of ownership or lease of the Vehicles.

33. The damages are quantified, in part, based on the following:

- (a) average annual driving distance in Canada of 20,000 km;
- (b) average term of vehicle ownership in Canada of 9 years;
- (c) average term of vehicle lease in Canada of 4 years; and
- (d) forecasted annual fuel prices of \$1.29/L (regular), \$1.41/L (premium) and \$1.29/L (diesel) for model year 2013, and \$1.30/L (regular), \$1.42/L (premium) and \$1.29/L (diesel) for model year 2014, as published in the 2013 and 2014 Guides.

34. Rescission of the Class members' agreements with the Defendants pursuant to section 18(1) of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation⁶ is not possible because the return or restitution of the Vehicles is no longer possible.

Notice

35. The Plaintiff provided notice pursuant to s. 18(3) of the *Consumer Protection Act* on behalf of the Class by letter dated September 11, 2015.

36. In response, by letter dated October 1, 2015, Ford offered no remedy or compensation,

⁶ Specifically, the *Fair Trading Act*, R.S.A. 2000, c. F-2, s. 13(2); *The Business Practices Act*, C.C.S.M., c. B120, s. 23(2); *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, s. 10(2); and *Business Practices Act*, R.S.P.E.I. 1988, c. B-7, s. 4.

but admitted as follows:

Please be advised that the fuel consumption information published in the 2014 Guide that also appears in Ford's advertising material is generated using Government of Canada approved test methods. These standardized tests are required because it is impossible to drive all options of every new vehicle model under all possible conditions. The values generated through this procedure allow fair and reliable **comparisons** of the relative fuel consumption of different vehicles and **in no way predict** the fuel consumption your client would get in his particular vehicle. [Emphasis as per original Ford letter.]

37. The Defendants' Representations were false, misleading or deceptive because they failed to disclose that the represented fuel consumption ratings were for comparative purposes and would "in no way predict" the Vehicles' actual, expected fuel consumption under normal, real world driving usage.

Service Outside Ontario

38. The Plaintiff pleads and relies on section 17.02 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, allowing for service *ex juris* of foreign defendants. Specifically, this originating process herein may be served without court order outside Ontario in that the claim, *inter alia*, is:

- (a) in respect of personal property situated in Ontario (rule 17.02(a));
- (b) for the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02(c));
- (c) against a person outside Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario (rule 17.02(o)); and
- (d) against a person carrying on business in Ontario (rule 17.02(p)).

February 12, 2016

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FORD MOTOR COMPANY AND FORD MOTOR
COMPANY OF CANADA, LIMITED AND
YONGE-STEELLES FORD LINCOLN SALES
LIMITED

Plaintiff

Defendants

Court File No.: CV-16-544545-00CP

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SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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