Amended pursuant to Supreme
Court Civil Rule 6-1(1)(b)(ii)

AMENDMENTS CONSENTED TO:

K.S. Garcha Lawyer for the Plaintiff	Peter J. Pliskza Lawyer for the Defendants

Amended pursuant to Supreme Court Civil Rule 6-1(1)(a)
on November 24, 2020

Original filed on October 20, 2020

NO. S2010558
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ANDREW KEITH JACQUARD

PLAINTIFF

AND:

FCA CANADA INC. and
FCA US LLC

DEFENDANTS

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

FURTHER AMENDED 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(S)

Part 1: STATEMENT OF FACTS

A. Introduction

1. The within proposed class proceeding involves model year 2014-2019 Dodge Ram 1500, ~~and~~ 1500 Classic and Jeep Grand Cherokee vehicles designed, manufactured, tested, assembled, marketed, advertised, distributed, leased and/or sold by the Defendants, FCA CANADA INC. and FCA US LLC, equipped with a 3.0 litre EcoDiesel engine containing Exhaust Gas Recirculation ("EGR") coolers ("Affected Class Vehicles") that are susceptible

to thermal fatigue, leading the ERG coolers to crack internally over time and leak coolant, which can cause combustion within the intake manifold and lead to engine compartment fire and/or a sudden loss of power ("EGR Cooler Defect").

2. Since 2002, diesel engines have utilized cooled EGR so as to meet governmental regulatory nitrogen vehicle emission standards pursuant to the *Canadian Environmental Protection Act*, 1999, S.C., c.33 in Canada and the *Clean Air Act*, 42 U.S.C.§ 7521 et seq (1970) in the United States of America.

3. The EGR system in the Affected Class Vehicles works by recirculating a portion of an engine's exhaust gas back to the engine cylinders. As such, this dilutes the oxygen in the incoming air stream and provides gases inert to combustion to act as absorbents of combustion heat to reduce peak in-cylinder temperatures.

4. A key component of the EGR system is the EGR cooler. This component is used to lower the temperature of the exhaust gases that are recirculated by the EGR system. The EGR cooler is constantly subjected to high heat.

5. The figure below illustrates an EGR cooler.

Image: EGR cooler
Credit: Valeo

6. The Defendants' EGR cooler in the Affected Class Vehicles is unreasonably fragile in

design and/or manufacture as it is subject to internal cracking due to thermal fatigue. This cracking is catastrophic as it can introduce pre-heated vaporized coolant into the vehicle's EGR system. As such, this can result in combustion within the intake manifold leading to engine compartment fire and/or a sudden loss of power.

7. In or about October 2019 the Defendants announced a voluntary recall of ~~the Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles containing the EGR cooler. The Defendants acknowledged and/or admitted that the EGR Cooler Defect places vehicle occupants, as well as those outside the vehicle, at risk of serious injury or harm and is present in all of the ~~Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles.

8. The Defendants knew or were aware as early as 2014, or earlier, from industry sources and/or other vehicle manufacturers, of the tendency of EGR coolers to crack due to thermal fatigue and the need to implement design features to mitigate this risk. However, it was not until May 2019 that the Defendants opened an investigation into the matter and finally admitting, and/or acknowledging, pursuant to an October 2019 recall that the EGR cooler was susceptible to thermal fatigue, which could crack internally over time leading to engine compartment fire and posing a serious safety hazard to vehicle occupants, as well as those outside the vehicle.

9. When the October 2019 recall was announced the Defendant, FCA US LLC, advised American owners and/or lessees of ~~the Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles that "the remedy for this condition is not currently available" but that the company was "making every effort to finalize the remedy as quickly as possible". Customers were told they would be notified "when the remedy is available. Once you receive your follow-up notice, simply contact your . . . dealer right away to schedule a service appointment." This created the expectation that a fix or repair would be available soon for all ~~Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles regardless of whether the EGR Cooler Defect had already resulted in a crack or not, and that the Defendant, FCA US LLC, would contact owners and/or lessees of ~~the Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles when a fix or repair was available.

10. Further, American owners and/or lessees of ~~the Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles were advised in the interim to "monitor their coolant levels" and contact their dealerships if the levels were "consistently low." This created the impression that monitoring would be adequate to mitigate the danger, and that if an owner and/or lessee advised a dealership of low coolant levels, then contacting the dealership would enable the owner and/or lessee to obtain some remedy.

11. Similarly, the Defendant, FCA CANADA INC., pursuant to the October 2019 recall, advised Canadian owners and/or lessees of ~~the Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles of the EGR Cooler Defect, which may lead to engine compartment fire and the risk of injury or harm to vehicle occupants and persons outside of the vehicle. Canadian owners and/or lessees of ~~the Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles were further advised to contact an authorized Defendant, FCA CANADA INC., dealership to schedule a service appointment as to replacement of the EGR cooler with a new EGR cooler that was not susceptible to thermal fatigue.

12. The Defendant, FCA US LLC, subsequently sent notices to certain American owners and/or lessees of ~~the Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles informing them that a fix or repair was available for their specific vehicle. The notice indicated "it is extremely important to take steps now to repair your vehicle to ensure the safety of your passengers." This notice, in addition to suggesting that the earlier message that monitoring coolant levels would be sufficient, was not correct and misrepresented to owners and/or lessees of ~~the Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles that a fix or repair was available. However, despite these specific notifications to American owners and/or lessees of ~~the Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles and the Defendant, FCA US LLC's, announcement that a fix or repair was available for the 2014–2015 and 2016 model years, American and Canadian owners and/or lessees of ~~the Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles are still routinely being denied a fix or repair due to part unavailability.

13. The Defendants indicated that the EGR cooler is defective in all ~~of the Affected Class~~

~~Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles as the defect lies in the EGR cooler's propensity to crack. The Defendants announced that they would conduct a recall on all ~~Affected Class Vehicles~~ 2014-2019 Dodge Ram 1500 and 1500 Classic vehicles to replace the EGR cooler with a new EGR cooler that was not susceptible to thermal fatigue. However, authorized dealerships were advised by the Defendants, "part supply is extremely limited" and as such, the EGR cooler should only be replaced "if the part has failed".

14. The Defendants seemingly admit that they are making repair determinations based on part scarcity in the following contradictory instruction to their authorized dealerships: "An EGR Cooler should only be replaced if the part has failed. *If the vehicle does not need any repairs* and the customer is still concerned for their safety, please provide the customer with a loaner vehicle *until such time that the remedy for the recall is available*".

15. On November 12, 2020, the Defendant, FCA US LLC, announced a voluntary recall of 28,884 2014-2019 Jeep Grand Cherokee vehicles equipped with a 3.0-L EcoDiesel engine containing the EGR Cooler Defect. Similarly, on November 12, 2020, the Defendant, FCA CANADA INC., announced a voluntary recall for 5,450 2014-2019 Jeep Grand Cherokee vehicles equipped with a 3.0-L EcoDiesel engine containing the EGR Cooler Defect.

~~15.~~16. No reasonable consumer would have purchased and/or leased the Affected Class Vehicles and/or paid the price they paid for these vehicles had they known about the EGR Cooler Defect. The Defendants concealed the EGR Cooler Defect and led owners and/or lessees of the Affected Class Vehicles to believe that a fix or repair was imminent but nevertheless allowed owners and/or lessees to continue to drive the Affected Class Vehicles without a fix or repair.

~~16.~~17. At least from 2014 through 2019, the Defendants have extensively advertised the benefits of the 3.0 litre EcoDiesel engine in the Affected Class Vehicles. At all material times to the cause of action herein, the Defendants omitted and/or concealed the EGR Cooler Defect. At no material time prior to, during and/or after the purchase and/or lease of the Affected Class Vehicles by consumers did the Defendants inform or warn owners and/or lessees of the Affected Class Vehicles that the EGR cooler could crack leading to engine compartment

fire and posing a serious safety hazard. The Defendants represented that the Affected Class Vehicles were free from defect and advertised that they were safe, durable and reliable, all of which was untrue.

~~17.~~18. As such, the Defendants led consumers, including the Plaintiff and proposed class members, to believe that the Affected Class Vehicles would be free from defects that result in engine compartment fire and/or a sudden loss of power.

~~18.~~19. Despite the Defendants' knowledge of the EGR Cooler Defect, they failed to initiate a widespread recall in a timely manner or to develop or institute a sufficient fix or repair for the EGR Cooler Defect in the Affected Class Vehicles.

~~19.~~20. The EGR Cooler Defect endangers drivers, passengers and other persons and property in the vicinity of an Affected Class Vehicle. The EGR Cooler Defect thus renders the Affected Class Vehicles less safe and less valuable than consumers would reasonable expect and it makes them less safe and less valuable than the Affected Class Vehicles would be if the Defendants did not design, manufacture, assemble, distribute, lease and/or sell the Affected Class Vehicles with the EGR Cooler Defect.

~~20.~~21. As a result of the Defendants' unfair, deceptive and/or fraudulent business practices in failing to disclose the EGR Cooler Defect to the Plaintiff and proposed class members, owners and/or lessees of the Affected Class Vehicles have suffered losses in money and/or property. Had the Plaintiff and proposed class members known of the EGR Cooler Defect, they would not have purchased and/or leased the Affected Class Vehicles or would have paid substantially less for them. The EGR Cooler Defect in the Affected Class Vehicles also requires expensive repairs, car rentals, car payments, towing charges, time off work and other miscellaneous costs. Moreover, as a result of the EGR Cooler Defect and the Defendants' concealment thereof, the Affected Class Vehicles have a lower market value, and are inherently worth less than they would be.

~~21.~~22. The Plaintiff seeks relief for all other owners and/or lessees of the Affected Class Vehicles containing the EGR Cooler Defect, including, *inter alia*, recovery of damages and/or repair under various provincial consumer protection legislation, breach of express warranty,

breach of implied warranty of merchantability and reimbursement of all expenses associated with the repair, fix and/or replacement of the Affected Class Vehicles.

B. The Parties

The Representative Plaintiff

~~22.~~23. The Plaintiff, ANDREW KEITH JAQUARD, is a resident of Vancouver, British Columbia, Canada.

~~23.~~24. On or about March 8, 2019 the Plaintiff purchased a new 2018 Dodge Ram 1500 3.0 litre EcoDiesel vehicle (“Dodge Ram 1500"), from Willowbrook Motors Ltd. an authorized dealership of the Defendant, FCA CANADA INC., in Langley, British Columbia, for personal, household and/or family use for the sum of $88,692.60 inclusive of tax. The Plaintiff’s Dodge Ram 1500 is included in the Affected Class Vehicles containing the EGR Cooler Defect.

~~24.~~25. The Plaintiff’s Dodge Ram 1500 was designed, manufactured, assembled and/or tested by the Defendant, FCA US LLC, and imported, marketed, promoted, advertised, distributed, leased and/or sold in Canada by the Defendant, FCA CANADA INC., and their authorized dealerships, sale representatives and/or agents.

~~25.~~26. Unknown to the Plaintiff at the time he purchased his Dodge Ram 1500, it contained an EGR cooler system that was defective and did not function safely, as advertised, or as intended by its design. The Defendants’ unfair, unlawful, and deceptive conduct in designing, manufacturing, assembling, testing, advertising, marketing, distributing, leasing and/or selling the Dodge Ram 1500 with the EGR Cooler Defect has caused the Plaintiff out-of-pocket losses and diminished the value of his Dodge Ram 1500.

~~26.~~27. Prior to purchasing his Dodge Ram 1500, the Plaintiff interacted with a sales representative of Willowbrook Motors Ltd., who failed to disclose the EGR Cooler Defect.

~~27.~~28. Through his exposure and interaction with Willowbrook Motors Ltd., the Plaintiff was aware of the Defendants’ uniform and pervasive marketing message of safety and dependability,

which was a primary reason why he purchased his Dodge Ram 1500. However, despite touting the safety and dependability of the Dodge Ram 1500, at no point did the Defendants disclose to the Plaintiff the EGR Cooler Defect.

~~28.~~29. At the time that the Plaintiff was researching and purchasing his Dodge Ram 1500, the Defendants never advised or informed him about the EGR Cooler Defect so the Plaintiff purchased his Dodge Ram 1500 on the reasonable but mistaken belief that his Dodge Ram 1500 would be reliable, dependable and safe and would retain all of its operating characteristics throughout its useful life. The Plaintiff specifically shopped for a Dodge Ram vehicle because he believed the Defendants' persistent advertising messaging that their vehicles were of high quality, safe and dependable. None of the advertisements reviewed or representations received by the Plaintiff contained any disclosure that his Dodge Ram 1500 had a defect or the fact that the Defendants would be unable and/or unwilling to repair the defect. Had the Defendants disclosed the EGR Cooler Defect, the Plaintiff would have received these disclosures and would not have purchased his Dodge Ram 1500 or would have paid less for it.

~~29.~~30. The Plaintiff never received a recall notice from the Defendant, FCA CANADA INC., indicating that there was a recall on his Dodge Ram 1500 due to a faulty EGR cooler and he should contact an authorised dealership of the Defendant, FCA CANADA INC., to schedule a service appointment to replace the EGR cooler with a new EGR cooler that was not susceptible to thermal fatigue or advising him of the risk of serious injury or harm to occupants and persons outside his Dodge Ram 1500 due to potential fire in the engine compartment arising from the EGR Cooler Defect.

~~30.~~31. In or about October 2020 the Plaintiff learned of the EGR Cooler Defect in his Dodge Ram 1500 and of the serious risk of fire arising therefrom. As a result thereof, the Plaintiff felt extremely unsafe driving his Dodge Ram 1500 due to the fire hazard and the fact that a repair was needed to make his vehicle safe. The Plaintiff purchased a fire extinguisher for his Dodge Ram 1500 in the event of a fire arising from the EGR Cooler Defect.

~~31.~~32. The Plaintiff did not receive the benefit of his bargain. He purchased a vehicle of lesser standard, grade and quality than represented and did not receive a vehicle that met ordinary

and reasonable consumer expectations regarding safe and dependable operation. The EGR Cooler Defect significantly diminished the value of the Plaintiff's Dodge Ram 1500.

The Defendants

~~32.~~33. The Defendant, FCA CANADA INC., is a company duly incorporated pursuant to the laws of Canada, registered within the Province of British Columbia under number A0004330, and has an attorney, Donald M. Dalik, at #2900 - 550 Burrard Street, Vancouver, British Columbia, V6C 0A3, Canada.

~~33.~~34. The Defendant, FCA US LLC, is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, the Corporation Trust Company, at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801, United States of America.

~~34.~~35. At all material times to the cause of action herein, the Defendant, FCA CANADA INC., was and is a wholly owned and controlled subsidiary of the Defendant, FCA US LLC, which, *inter alia*, designs, manufacturers, tests, assembles, markets, distributes, supplies, sells and/or leases Dodge Ram 1500 and Jeep Grand Cherokee 3.0 litre EcoDiesel vehicles, including the Affected Class Vehicles containing the ERG Cooler Defect, in Canada and within the Province of British Columbia.

~~35.~~36. At all material times to the cause of action herein, the Defendant, FCA US LLC, is an American vehicle manufacturer which, *inter alia,* designs, manufactures, tests and/or assembles Dodge Ram 1500 and Jeep Grand Cherokee 3.0 litre EcoDiesel vehicles, including the Affected Class Vehicles containing the EGR Cooler Defect, at automobile plants located, *inter alia*, in the State of Michigan, United States of America and within the Federal Republic of Mexico, for distribution, sale and/or lease in the United States of America and Canada, including the Province of British Columbia.

~~36.~~37. At all material times to the cause of action herein, the Defendants shared the common purpose of, *inter alia*, designing, developing, manufacturing, testing, assembling, marketing, advertising, distributing, supplying, selling and/or leasing the Affected Class Vehicles

containing the EGR Cooler Defect in Canada and within the Province of British Columbia. Further, the business and interests of the Defendants are interwoven with that of the other as to the EGR Cooler Defect in the Affected Class Vehicles, such that each is the agent of the other. Hereinafter the Defendants, FCA CANADA INC. and FCA US LLC, are collectively referred to as the "Defendants", unless referred to individually.

C. The Class and Class Period

~~37.~~38. This action is brought on behalf of members of a class consisting of the Plaintiff, all British Columbia residents, and all other persons resident in Canada, ~~excluding the Province of Quebec~~, who own, owned, lease and/or leased a 2014-2019 Dodge Ram 1500, ~~and~~ 1500 Classic and Jeep Grand Cherokee vehicles equipped with a 3.0 litre EcoDiesel engine containing exhaust gas recirculation coolers that may crack and leak coolant leading to engine compartment fire, designed, manufactured, assembled, tested, marketed, advertised, distributed, leased and/or sold by the Defendants in Canada ("Class Members"), and who claim to have suffered damage and/or loss as a result of an exhaust gas recirculation cooler defect in such vehicles, and or such other class definition or class period as the Court may ultimately decide on the application for certification.

D. Factual Allegations

Marketing of EcoDiesel Vehicles

~~38.~~39. Diesel trucks have a loyal following in the North American vehicle market because of their reliability, fuel efficiency and power. Diesel engines produce higher torque, even at low revolutions per minute, making them popular in buses, heavy-duty pick-ups, vans, commercial vehicles, farm trucks and ambulances.

~~39.~~40. The 3.0 litre EcoDiesel engine equipped in the Affected Class Vehicles was developed by VM Motori, an Italian diesel engine manufacturer that has been owned by the Defendants since 2013.

~~40.~~41. The Defendants engaged in a full-court press to market the Affected Class Vehicles and to communicate to consumers the purported benefits of the EcoDiesel engine. These communication efforts included, *inter alia*,:

(a) press releases aimed at generating positive news articles about the EcoDiesel attributes;

(b) comprehensive dealer training materials that taught authorized dealerships how to sell and/or lease the Affected Class Vehicles with false and misleading misrepresentations;

(c) vehicle brochures disseminated at authorized dealerships and elsewhere;

(d) information and interactive features on the Defendants' websites and blogs; and

(e) print and television marketing.

~~41.~~42. As early as 2014, the Defendants' communications to consumers included representations regarding the durability and reliability of the EcoDiesel engine. The Defendants touted the "Aptly branded EcoDiesel, the 3.0-liter powerplant is a turbocharged 60-degree, dual overhead camshaft (DOHC) 24-valve V-6 that produces 240 horsepower and 420 lb.-ft. of torque is more efficient than all V-6 gasoline engines in the half-ton category. This abundant torque from a 3.0-liter engine is the enabler for 9,200 pounds of towing capacity while delivering fuel economy of 28 mpg on the highway".

~~42.~~43. These representations to consumers intended to, and did in fact, result in significant media attention for EcoDiesel vehicles to which the Plaintiff and Class Members were exposed. The representations that resulted were false (because the vehicles contained a defective part) and deceptive (because the vehicles were not durable or reliable, and could not perform as represented due to the fire risk).

The Defendants Knew That the EGR Cooler in the Affected Class Vehicles Was Susceptible to Cracking From Numerous Sources

~~43.~~44. The Affected Class Vehicles contain a defective EGR cooler which was an internal, hidden component part in the Affected Class Vehicles. The Plaintiff and Class Members did not have reason to know at the time of purchase and/or lease until at least October 2019 and November 2020 when the Defendants announced the recalls that this internal component of the Affected Class Vehicles was devastatingly defective to the entire engine system.

~~44.~~45. However, the Defendants knew or ought to have known that the Affected Class Vehicles were compromised and presented an unreasonable safety risk to vehicle occupants due to the risk of fire.

~~45.~~46. By design, EGR coolers are vehicle parts that are put under tremendous pressure from heat and need to reliably manage thermal loads.

~~46.~~47. As a result thereof, the Defendants were aware, at least as early as 2014, if not earlier, that the top concern when designing EGR coolers was thermal fatigue, which can cause EGR coolers to crack and lose coolant and/or result in engine overheating. The Defendants were aware of this tendency because:

(a) they had vehicles presented to them for fixes and fires due to cracked EGR coolers;

(b) thermal fatigue design issues in EGR coolers were well-known within the automobile industry;

(c) cracks in EGR coolers had developed in other vehicles of the Defendants;

(d) there were complaints on Dodge Ram and Jeep Grand Cherokee online forum blogs and to the United States National Highway Transportation Safety Administration ("NHTSA"), an American government regulator, monitored by the Defendants as to the EGR Cooler Defect; and

(e) another vehicle manufacturer had announced an EGR cooler defect recall due to a similar issue.

~~47.~~48. In particular, the Defendants were aware of the following as to EGR coolers:

(a) thermal fatigue was a cause of leaking in EGR coolers induced by the expansion and contraction of the components as the hot exhaust gas flows through the cooler;

(b) coolant leaks were not visible externally;

(c) excessive coolant consumption without external leaks was a strong indicator of an EGR cooler with an internal leak;

(d) corrosion resistant material was considered to improve the performance of EGR coolers and that thermal stress produced by the temperature difference between exhaust gas and coolant was a significant factor from the point of safety operation; and

(e) due to the risk of progressive harm to the engine, including the turbocharger and exhaust after treatment devices, the ability to estimate EGR cooler thermal fatigue prior to production launch was essential so as to meet reliability and customer requirements.

~~48.~~49. The Defendants were also aware since at least 2016 of smoke and engine fire in vehicles caused by the EGR cooler and of vehicles leaking coolant and cracked EGR coolers being presented to their authorized dealerships for service. By 2017 authorized dealerships of the Defendants were diagnosing vehicles with faulty EGR coolers and that parts used at the time to replace the EGR coolers were on a national back order. In 2018, the Defendants were also aware of the EGR Cooler Defect when another vehicle manufacturer, BMW, announced a recall of EGR coolers in certain models of its vehicles due to fire risk. The BMW recall, like the Defendants' recall, was based on the admission that cooling fluid could leak and melt the intake manifold, increasing the risk of engine fire and/or a sudden loss of power.

Investigation and EGR Cooler Recall

~~49.~~50. Despite the Defendants' knowledge as early as 2014 of the tendency of EGR coolers to crack due to thermal fatigue and the need to implement design features to mitigate this risk, it was not until May 22, 2019 that the Defendants' Vehicle Safety and Regulatory Compliance organization opened an investigation into the matter.

~~50~~.51. At the time of the investigation, the Defendants were aware of engine compartment fires in some or all of the Affected Class Vehicles.

~~51.~~52. The Defendants' investigation determined that a number of Affected Class Vehicle fires reported to them had originated in the general vicinity of the center of the engine compartment. ~~The~~ Those Affected Class Vehicles inspected and examined by the Defendants showed holes in the intake manifold.

~~52.~~53. By October 11, 2019, the Defendants were aware of injuries related to EGR cooler failures, of 61 field reports related to EGR cooler failure,1,289 computerized accident incident reports and a total of 8,909 EGR cooler warranty replacements reports.

~~53.~~54. On October 24, 2019, the Defendant~~s~~, FCA US LLC, submitted a Part 573 Safety Recall Report to NHTSA voluntarily recalling 107,979 ~~Affected Class Vehicles~~ Dodge Ram 1500 and 1500 Classic vehicles equipped with the 3.0 litre EcoDiesel engine containing the EGR Cooler Defect, which described the EGR Cooler Defects as follows:

> "Description of the Defect: Thermal fatigue may cause the cooler to crack internally over time. An EGR cooler with an internal crack will introduce pre-heated, vaporized coolant to the EGR system while the engine is running. In certain circumstances, this mixture interacts with other hydrocarbons and air in the system, potentially resulting in combustion within the intake manifold, which may lead to a vehicle fire."

~~54.~~55. The Defendant~~s~~, FCA US LLA, further described the safety risk arising from the EGR Cooler

Defect in the NHTSA Part 573 Safety Recall Report as follows:

> "Description of the Safety Risk: A vehicle fire may increase the risk of injury to occupants and persons outside of the vehicle, as well as property damage."

~~55.~~56. The Defendant~~s~~, FCA US LLA, further indicated in the NHTSA Part 573 Safety Recall Report that a fix or remedy for the EGR Cooler Defect was not available at the time but was under development.

~~56.~~57. On October 25, 2019, a similar Transport Canada recall of 50,259 ~~Affected Class Vehicles~~ Dodge Ram 1500 and 1500 Class vehicles equipped with the 3.0 litre EcoDiesel engine containing the ERG Cooler Defect was initiated in Canada, which stated the following:

> "Issue:
> On certain trucks equipped with a 3.0-L EcoDiesel engine, the exhaust gas recirculation (EGR) cooler could crack internally and leak. If this happens, a driver may notice a low coolant level or heater that does not work properly.
>
> Safety Risk:
> A cracked EGR cooler could create the risk of an engine fire.
>
> Corrective Actions:
> FCA Canada will notify owners by mail and instruct you to take your vehicle to a dealer to replace the EGR cooler. Dealers will also inspect intake manifold and replace it as necessary."

~~57.~~58. The Defendant~~s~~, FCA US LLC, updated the NHTSA Part 573 Safety Recall Report on October 31 and November 14, 2019, February 25, April 2, April 21and June 11, 2020 pertaining to the EGR Cooler Defect and possible fix. Similarly, the Defendant~~s~~, FCA CANADA INC., updated the Transport Canada recall on February 25, 2020.

59. On November 12, 2020, a similar Transport Canada recall of 5,450 Jeep Grand Cherokee vehicles equipped with the engine containing the EGR Cooler Defect was initiated in Canada, which stated the following:

> "Issue:
>
> On certain vehicles equipped with a 3.0-L EcoDiesel engine, the exhaust gas recirculation (EGR) cooler could crack internally and leak. If this happens, a driver may notice a low coolant or a heater that does not work properly.
>
> Safety Risk:
>
> A cracked EGR cooler could create the risk of an engine fire.
>
> Corrective Actions:
>
> FCA Canada will notify owners by mail and instruct you to take you vehicle to a dealer to replace the EGR cooler. Dealers will also inspect intake manifold and replace it as necessary.

60. The Defendant, FCA CANADA INC., updated the Transport Canada Jeep Grand Cherokee recall on November 18, 2020.

The Defendants Fail to Provide a Timely Fix for the EGR Cooler Defect

~~58.~~61. At the time of the October 2019 and November 2020 recalls, the Defendants represented that all owners and/or lessees of the Affected Class Vehicles would have the EGR cooler replaced with a new EGR cooler that was not susceptible to thermal fatigue.

~~59.~~62. While some impacted owners and/or lessees of the Affected Class Vehicles received a fix, a significant number of owners and/or lessees of the Affected Class Vehicles have been

left with no recourse for the EGR Cooler Defect which renders their vehicles unsafe and presents an unreasonable risk to vehicle occupant safety, and no option for returning their vehicles.

~~60.~~63. The Defendants notified their authorized dealerships that a fix was available for the 2014–2016 model year ~~Affected Class Vehicles~~ Dodge Ram 1500 and 1500 Classic vehicles and notified owners and/or lessees of ~~the Affected Class Vehicles~~ those vehicles that "it is extremely important to take steps to repair your vehicle to ensure the safety of you and your passengers." Despite a phased notice mail campaign for the fix, owners and/or lessees of these model year Affected Class Vehicles are still routinely being told a fix is not available as set forth in the following sample complaints found on the NHTSA website, http~~hhtp~~://www-odi.nhtsa.dot.gov/complaints, (spelling and grammar mistakes remain as found in the original complaint):

> NHTSA ID Number: 11331819
> Incident Date June 30, 2020
> Consumer Location HARLINGEN, TX
> Vehicle Identification Number 1C6RR6LM7GS****
>
> TL* THE CONTACT OWNS A 2016 RAM 1500. THE CONTACT RECEIVED NOTIFICATION OF NHTSA CAMPAIGN NUMBER: 19V757000 (ENGINE AND ENGINE COOLING) HOWEVER, THE PART TO DO THE RECALL REPAIR WAS UNAVAILABLE. THE CONTACT STATED THAT THE MANUFACTURER EXCEEDED A REASONABLE AMOUNT OF TIME FOR THE RECALL REPAIR. BERT OGDEN CHRYSLER DODGE JEEP RAM (8421 W. EXPY 83, HARLINGEN, TX 78552, (956) 335-3018) WAS CONTACTED AND CONFIRMED THAT PARTS WERE NOT AVAILABLE FOR THE RECALL REPAIR. THE MANUFACTURER WAS NOT

NOTIFIED OF THE ISSUE. THE CONTACT HAD NOT EXPERIENCED A FAILURE. VIN TOOL CONFIRMS PARTS NOT AVAILABLE.

NHTSA ID Number: 11330406
Incident Date June 22, 2020
Consumer Location SAN JOSE, CA
Vehicle Identification Number 3C6JR7DM3EG****

RECEIVED RECALL NOTICE VB1 TO REPLACE EGR COOLER THAT MAY CAUSE ENGINE FIRE. THE RECALL SAYS THAT PARTS ARE AVAILABLE. I CONTACTED 2 DEALER AND HAD CHAT WITH FCA DIRECTLY. ALL OF THEM TOLD ME THAT PARTS ARE NOT AVAILABLE. NEITHER DEALER WOULD GIVE ME AN APPOINTMENT DATE AND SAID THAT THERE WERE MANY AHEAD OF ME. FCA SAID THAT PARTS ARE ALLOCATED AT 1 SET OF PARTS PER DEALER PER WEEK.
THE BOTTOM LINE IS THAT THESE TRUCKS ARE AT RISK FOR FIRE THAT COULD RESULT IN INJURY, BUT FCA IS NOT RESPONSIVE BY THE FACT THAT THE PARTS ARE NOT AVAILABLE.
NHTSA ID Number: 11329574
Incident Date May 1, 2020
Consumer Location SYLACAUGA, AL
Vehicle Identification Number 1C6RR7PM9GS****

TL* THE CONTACT OWNS A 2016 RAM 1500. THE CONTACT RECEIVED NOTIFICATION OF NHTSA CAMPAIGN NUMBER: 19V757000 (ENGINE AND ENGINE COOLING) HOWEVER, THE PART TO DO

THE RECALL REPAIR WAS UNAVAILABLE. THE CONTACT CALLED TO MCSWEENEY CHRYSLER DODGE JEEP RAM (2605 DR JOHN HAYNES DR, PELL CITY, AL 35125; (205) 813-7020) WHERE IT WAS CONFIRMED THAT THE PART WAS NOT AVAILABLE. THE CONTACT STATED THAT THE MANUFACTURER EXCEEDED A REASONABLE AMOUNT OF TIME FOR THE RECALL REPAIR. THE MANUFACTURER HAD NOT BEEN MADE AWARE OF THE ISSUE. THE CONTACT HAD NOT EXPERIENCED A FAILURE. PARTS DISTRIBUTION DISCONNECT.

NHTSA ID Number: 11340956
Incident Date October 24, 2019
Consumer Location SEQUIM, WA
Vehicle Identification Number 1C6RR7NM5HS****

TL* THE CONTACT OWNS A 2017 RAM 1500. THE CONTACT RECEIVED NOTIFICATION OF NHTSA CAMPAIGN NUMBER: 19V757000 (ENGINE AND ENGINE COOLING). THE CONTACT CALLED THE WILDER CHRYSLER JEEP DODGE RAM DEALER LOCATED AT 53 JETTA WAY, PORT ANGELES, WA 98362, AND IT WAS CONFIRMED THAT THE PARTS WERE NOT YET AVAILABLE. THE CONTACT STATED THAT THE MANUFACTURER EXCEEDED A REASONABLE AMOUNT OF TIME FOR THE RECALL REPAIR. THE MANUFACTURER WAS MADE AWARE OF THE ISSUE. THE CONTACT HAD NOT EXPERIENCED A FAILURE. PARTS DISTRIBUTION DISCONNECT.

NHTSA ID Number: 11340466
Incident Date July 20, 2020
Consumer Location MURRAY, KY
Vehicle Identification Number 1C6RR7NM7HS****

TL* THE CONTACT OWNS A 2017 RAM 1500. THE CONTACT RECEIVED NOTIFICATION OF NHTSA CAMPAIGN NUMBER: 19V757000 (ENGINE AND ENGINE COOLING) HOWEVER, THE PART TO DO THE RECALL REPAIR WAS UNAVAILABLE. THE CONTACT STATED THAT THE MANUFACTURER EXCEEDED A REASONABLE AMOUNT OF TIME FOR THE RECALL REPAIR. THE DEALER DAVID TAYLOR CHRYSLER-DODGE-JEEP-RAM-FIAT (2052 US-641, MURRAY, KY 42071) WAS CONTACTED AND CONFIRMED THAT PARTS WERE NOT YET AVAILABLE. THE MANUFACTURER WAS NOT MADE AWARE OF THE ISSUE. THE CONTACT HAD NOT EXPERIENCED A FAILURE. VIN TOOL CONFIRMS PARTS NOT AVAILABLE.

NHTSA ID Number: 11338371
Incident Date June 12, 2020
Consumer Location EAGLE, WI
Vehicle Identification Number 1C6RR7NM9HS****

TL* THE CONTACT OWNS 2017 RAM 1500. THE CONTACT RECEIVED RECALL NOTIFICATION FOR NHTSA CAMPAIGN NUMBER: 19V757000 (ENGINE AND ENGINE COOLING). HOWEVER, THE PARTS TO DO THE REPAIR WERE AVAILABLE. THE CONTACT STATED THAT THE

MANUFACTURER EXCEEDED A REASONABLE AMOUNT OF TIME FOR THE RECALL REPAIR. THE DEALER LYNCH CHEVROLET OF MUKWONAGO (280 E WOLF RUN, MUKWONAGO, WI 53149) WAS CONTACTED AND STATED THE PARTS WERE ON BACKORDER FOR THE RECALL REMEDY. THE MANUFACTURER WAS NOT NOTIFIED OF THE ISSUE. THE CONTACT STATED THAT SEVERAL MONTHS AFTER HE RECEIVED THE RECALL NOTIFICATION, THE VEHICLE STALLED WHILE DRIVING AT AN UNKNOWN SPEED. THE CONTACT WAS ABLE TO PULL TO THE SIDE OF THE ROAD AND TURN THE VEHICLE OFF. AN UPON OPENING THE HOOD THE CONTACT NOTICED FLAMES AROUND THE ENGINE CORDS AND WIRE. THE CONTACT STATED HE WAS ABLE TO EXTINGUISH THE FIRE HIMSELF WITH WATER. THE VEHICLE WAS TOWED TO LYNCH CHEVROLET OF MUKWONAGO FOR DIAGNOSTIC TESTING AND REPAIRS. THE FAILURE MILEAGE WAS APPROXIMATELY 58,000. PART DISTRIBUTION DISCONNECT.

The EGR Cooler Defect Poses an Inherent Risk to Vehicle Occupant Safety and Renders the Affected Class Vehicles Defective

~~61.~~64. Vehicle safety acts and regulations in both Canada (*Motor Vehicle Safety Act,* S.C. 1993, c.16; *Motor Vehicle Safety Regulations* C.R.C., c. 1038) and the United States of America (49 U.S.C.§ 30166) require vehicle manufacturers to provide, *inter alia*, “early warning reporting” data to government regulators including, *inter alia*, claims relating to property damage received by a vehicle manufacturer, warranty claims paid by the vehicle manufacturer, consumer complaints, incidents involving injury or death and field reports

prepared by the vehicle manufacturers' employees or representatives concerning failure, malfunction, lack of durability or other performance issues.

~~62.~~65. These acts and regulations require immediate action when a vehicle manufacturer determines or should determine that a safety defect exists. A safety defect includes, *inter alia*, any defect that creates an unreasonable risk of accidents occurring because of the design, construction or performance of a motor vehicle or unreasonable risk of death or injury in an accident. Upon learning of a safety defect, a vehicle manufacturer must notify government regulators and provide a description of the vehicles potentially containing the defect including, *inter alia*, the make, line, model year, dates of manufacture, a description of how these vehicles differ from similar vehicles not included in a recall, a summary of all warranty claims, field or service reports and other information that formed the basis of the determination that the defect was safety related. Then, within a reasonable time after deciding that a safety issue exists, a vehicle manufacturer must notify the owners and/or lessees of the defective vehicles. Violating these notification requirements can result in civil penalties.

~~63.~~66. Based on their duty to monitor safety-related complaints or concerns, the Defendants knew or ought to have known of the numerous consumer complaints regarding the EGR cooler failure in the Affected Class Vehicles. Further, the Defendants had notice of the EGR Cooler Defect via replacement part sales, warranty repair requests, indirect complaints from customers through online forms, NHTSA complaints, from other vehicle manufacturers, industry sources including articles, white papers, testing and investigations.

The Defendants Concealed the EGR Cooler Defect Through Misrepresentations and/or Omissions

~~64.~~67. From 2014 through 2019, the Defendants extensively advertised the benefits of the 3.0 litre EcoDiesel engine equipped in the Affected Class Vehicles. At all material times to the cause of action herein, the Defendants omitted and/or concealed the EGR Cooler Defect. At no point during the period relevant to this action did the Defendants inform owners and/or lessees of the Affected Class Vehicles that the EGR cooler could crack and lead to an

engine fire. The Defendants represented that the Affected Class Vehicles were free from defect and advertised that they were durable and reliable, all of which was false.

~~65.~~68. As such, the Defendants led consumers, including the Plaintiff and Class Members, to believe that the Affected Class Vehicles would be free from defects that result in engine compartment fire and/or a sudden loss of power.

~~66.~~69. The Defendants claimed that their 2014 Dodge Ram 3.0 litre EcoDiesel vehicles were durable, touting that "the available 3.0L EcoDiesel V6 utilizes dual-filtration technology for greater...durability". In their EcoDiesel advertising, the Defendants specifically target consumers "who want to drive an efficient, environmentally friendly truck without sacrificing capability or performance." The Defendants further claim that the 3.0 litre EcoDiesel engine has best-in-class torque: "The EcoDiesel engine delivers best-in-class 420 lb-ft of torque. Paired with an impressive 240 horsepower, this engine has serious muscle".

~~67.~~70. Other online advertisements of the Defendants proclaim that the Dodge Ram 1500 3.0 litre EcoDiesel is "expected to deliver an outstanding combination of best-in-class fuel efficiency, best-in-class torque and impressive capability. This new EcoDiesel is among today's most advanced diesel engines. Has emissions that are 60% lower than those produced by diesel powertrains 25 years ago. The impressive combination of torque and fuel economy marks a new level of performance".

~~68.~~71. Not only did the Defendants conceal the EGR Cooler Defect, they denied warranty claims relating to leaking coolant and cracked hoses, claimed that they were not responsible for vehicle fires, informed owners and/or lessees of the Affected Class Vehicles that a fix was available when it was not, denied requests for loaner vehicles pending a fix, misrepresented that loaner vehicles would be provided for all concerned owners and/or lessees of the Affected Class Vehicles and continued to sell and/or lease vehicles containing the subject EGR cooler after the announcement of the recall.

Agency Relationship Between the Defendants and Their Authorized Dealerships.

~~69.~~72. Fiat Chrysler Automobiles ("FCA") ~~FCA~~-authorized dealerships are sales agents of the

Defendants as the vehicle manufacturer. The dealerships have accepted that undertaking. The Defendants have the ability to control authorized FCA dealers, and act as the principal in that relationship, as is shown by the following:

(a) the Defendants can terminate the relationship with their dealers at will;

(b) the relationships are indefinite;

(c) the Defendants are in the business of selling vehicles as are their dealers;

(d) the Defendants provide tools and resources for FCA dealers to sell vehicles;

(e) the Defendants supervise their dealers regularly;

(f) without the Defendants, the relevant FCA dealers would not exist;

(g) the Defendants require the following of their dealers:

(i) reporting of sales;

(ii) computer network connection with the Defendants;

(iii) training of dealers' sales and technical personnel;

(iv) use of the Defendants' computer software system;

(v) participation in the Defendants' training programs;

(vi) establishment and maintenance of service departments in FCA dealerships;

(vii) certify FCA pre-owned vehicles;

(viii) reporting to the Defendants with respect to the vehicle delivery including

reporting customer names, addresses, preferred titles, primary and business phone numbers, e-mail addresses, vehicle VIN numbers, delivery date, type of sale, lease/finance terms, factory incentive coding, if applicable, vehicles' odometer readings, extended service contract sale designations, if any, and names of delivering dealership employees; and

(iv) displaying the Defendants' logos on signs, literature, products and brochures within FCA dealerships.

(h) dealerships bind the Defendants with respect to:

(i) warranty repairs on the vehicles the dealers sell; and

(ii) issuing service contracts administered by the Defendants.

(i) the Defendants further exercise control over their dealers with respect to:

(i) financial incentives given to FCA dealer employees;

(ii) locations of dealers;

(iii) testing and certification of dealership personnel to ensure compliance with the Defendants' policies and procedures; and

(iv) customer satisfaction surveys, pursuant to which the Defendants allocate the number of FCA cars to each dealer, thereby directly controlling dealership profits;

(j) FCA dealers sell FCA vehicles on behalf of the Defendants pursuant to a "floor plan," and the Defendants do not receive payment for their vehicles until the dealerships sell them;

(k) dealerships bear the Defendants' brand names, use their logos in advertising and

on warranty repair orders, post FCA-brand signs for the public to see and enjoy a franchise to sell the Defendants' products, including the Affected Class Vehicles;

(l) the Defendants require FCA dealers to follow their rules and policies in conducting all aspects of dealer business including the delivery of their warranties described above and the servicing of defective vehicles such as the Affected Class Vehicles;

(m) the Defendants require their dealers to post their brand names, logos, and signs at dealer locations, including dealer service departments, and to identify themselves and to the public as authorized FCA dealers and servicing outlets for the Defendants' vehicles;

(n) the Defendants require their dealers to use service and repair forms containing their brand names and logos;

(o) the Defendants require FCA dealers to perform their warranty diagnoses and repairs and to do the diagnoses and repairs according to the procedures and policies set forth in writing by them;

(p) the Defendants require FCA dealers to use parts and tools either provided by them, or approved by them, and to inform the Defendants when dealers discover that unauthorized parts have been installed on one of their vehicles;

(q) the Defendants require dealers' service and repair employees to be trained by them in the methods of repair of FCA-brand vehicles;

(r) the Defendants audit FCA dealerships' sales and service departments and directly contact the customers of said dealers to determine their level of satisfaction with the sale and repair services provided by the dealers, who are then granted financial incentives or reprimanded depending on the level of satisfaction;

(s) the Defendants require their dealers to provide them with monthly statements and records pertaining, in part, to dealers' sales and servicing of their vehicles;

(t) the Defendants provide technical service bulletins and messages to their dealers detailing chronic defects present in product lines, and repair procedures to be followed for chronic defects;

(u) the Defendants provide their dealers with specially trained service and repair consultants with whom dealers are required by the Defendants to consult when dealers are unable to correct a vehicle defect on their own;

(v) the Defendants require FCA-brand vehicle owners and/or lessees to go to authorized FCA dealers to obtain servicing under FCA warranties; and

(w) FCA dealers are required to notify the Defendants whenever a FCA vehicle is sold or put into warranty service.

Part 2: RELIEF SOUGHT

1. The Plaintiff, on his own behalf and on behalf of the Class Members, claims against each of the Defendants, jointly or severally, as follows:

(a) an order certifying this action as a class proceeding and appointing the Plaintiff as the named representative;

(b) a declaration that the Affected Class Vehicles contain the EGR Cooler Defect;

(c) a declaration that the Defendants were negligent in the design and/or manufacturing of the EGR Cooler contained in the Affected Class Vehicles causing the Plaintiff and Class Members to suffer damages;

(d) a declaration that the Defendants:

(i) breached their duty of care to the Plaintiff and Class Members;

(ii) fraudulently concealed material information from the Plaintiff and Class

Members as to the Affected Class Vehicles;

(iii) breached their express warranties as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages;

~~(iii)~~(iv) breached ~~express and~~ implied warranties or conditions of merchantability as to the Affected Class Vehicles and are consequently liable to the Plaintiff and Class Members for damages pursuant to sections 18 and 56 of the *Sale of Goods Act*, R.S.B.C. 1996, c.410 ("*SGA*"), and equivalent legislative provisions in the rest of Canada; and

~~(iv) breached the *Business Practices and Consumer Protection Act*, SBC 2004, c.2 ("*BPCPA*"), and equivalent legislative provisions in the rest of Canada, and are consequently liable to the Plaintiff and Class Members for damages;~~

(v) engaged in unfair practices contrary to sections 4 and 5 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004; Sections 5 and 6 of the *Consumer Protection Act*, RSA 2000, c. C-26.3; Sections 6 and 7 of *The Consumer Protection and Business Practices Act*, SS, 2014, c C-30.2; Sections 2 and 3 of *The Business Practices Act*, CCSM c B120; Sections 14(1) and (2) of the *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A; Section 4 (1) of the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1; Section 2(a) of the *Business Practices Act*, RSPEI. 1988, c. C-19; Section 7 of the *Consumer Protection and Business Practices Act* SNL 2009, c C-31.1; and *Consumer Protection Act*, CQLR c P-40.1, and are consequently liable to the Plaintiffs and Class Members for damages;

(e) a declaration that it is not in the interests of justice to require that notice be given, where applicable, under the *Business Practices and Consumer Protection Act*, S.B.C. 2004; *Consumer Protection Act*, RSA 2000, c. C-26.3; *The Consumer Protection and Business Practices Act*, SS, 2014, c C-30.2; *The Business Practices Act*, CCSM c B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*,

SNB 1978, c C-18.1; *Business Practices Act*, RSPEI. 1988, c. C-19; *Consumer Protection and Business Practices Act* SNL 2009, c C-31.1; and *Consumer Protection Act,* CQLR c P-40.1, and waiving any such applicable notice provisons;

(f) an order for the statutory remedies available under the the *Business Practices and Consumer Protection Act*, S.B.C. 2004; *Consumer Protection Act*, RSA 2000, c. C-26.3*;The Consumer Protection and Business Practices Act,* SS, 2014, c C-30.2;*The Business Practices Act*, CCSM c B120; *Consumer Protection Act,* 2002, SO 2002, c 30, Sch A*; Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1; *Business Practices Act*, RSPEI. 1988, c. C-19; *Consumer Protection and Business Practices Act* SNL 2009, c C-31.1; and *Consumer Protection Act,* CQLR c P-40.1, including damages, cancellation and/or rescission of the purchase and/or lease of the Affected Class Vehicles;

(g) an order directing the Defendants to advertise any adverse findings against them pursuant to section 172(3)(c) of the *Business Practices and Consumer Protection Act*, S.B.C. 2004; Section 19 *of the Consumer Protection Act*, RSA 2000, c. C-26.3;Section 93(1)(f) *of The Consumer Protection and Business Practices Act,* SS, 2014, c C-30.2; Section 23(2)(f) of *The Business Practices Act*, CCSM c B120; Section 18(11) of the *Consumer Protection Act,* 2002, SO 2002, c 30, Sch A*;* Section 15 of the *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1; Section 4(1) of the *Business Practices Act*, RSPEI. 1988, c. C-19; Section 10(2)(f) of the *Consumer Protection and Business Practices Act* SNL 2009, c C-31.1; and *Consumer Protection Act*, CQLR c P-40.1;

(h) ~~(v)~~ a declaration that the Defendants breached the *Competition Act,* R.S.C 1985, c. C-34 and are consequently liable to the Plaintiff and Class Members for damages; ~~and~~

(i) ~~(vi)~~ a declaration that the Defendants were unjustly enriched at the expense of

the Plaintiff and Class Members;

~~(e)~~ (j) an order enjoining the Defendants from continuing their unlawful, unfair and fraudulent business practices as alleged herein;

~~(f)~~ (k) injunctive and/or declaratory relief requiring the Defendants to recall, repair, replace and/or buy back all Affected Class Vehicles and to fully reimburse and make whole all Class Members for all costs and economic losses associated therewith;

~~(g)~~ (l) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("*CPA*") directing an aggregate assessment of damages;

~~(h)~~ (m) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;

~~(i)~~ (n) general damages, including actual, compensatory, incidental, statutory and consequential damages;

~~(j)~~ (o) special damages;

~~(k)~~ (p) punitive damages;

~~(l)~~ (q) costs of investigation pursuant to section 36 of the *Competition Act*;

~~(m)~~ (r) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and

~~(n)~~ (s) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

Jurisdiction

1. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and 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 the 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 (e)(i), (e)(iii)(a)(b), (f), (g), (h) and (I) of the *CJPTA* because this proceeding:

   (e)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia;

   (e)(iii)(a)(b) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;

   (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; and

   (I) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Causes of Action

Negligence

2. The Plaintiff and Class Members hereby incorporate by reference the allegations contained

in the preceding paragraphs of this Further Amended Notice of Civil Claim.

3. At all material times to the cause of action herein, the Plaintiff and Class Members were using the Affected Class Vehicles for the purposes and manner for which they were intended.

4. The Plaintiff and Class Members had no knowledge of the EGR Cooler Defect in the Affected Class Vehicles and had no reason to suspect the EGR Cooler Defect.

5. The Defendants knew or ought to have known that the Affected Class Vehicles contained an EGR cooler defect which, in the absence of reasonable care in the design, manufacture and/or assembly of the Affected Class Vehicles, presented a serious safety hazard, which could cause an engine compartment fire and/or a sudden loss of power in the Affected Class Vehicles.

6. The defective condition of the Affected Class Vehicles consisted of a defect in the design and/or manufacture of the EGR cooler.

7. At all material times, the Defendants owed a duty of care to the Plaintiff and Class Members to ensure that the Affected Class Vehicles were engineered, designed, developed, tested and/or manufactured free from dangerous defects, like the EGR Cooler Defect, and were reasonably safe for use. The Defendants breached this duty by knowingly designing, engineering, manufacturing, marketing and/or distributing vehicles containing the EGR Cooler Defect.

8. The Defendants owed a duty of care to the Plaintiff and Class Members to carefully monitor the safety and post-market performance of the Affected Class Vehicles. Moreover, the Defendants owed the Plaintiff and Class Members a duty to warn that the EGR Cooler Defect was, and is, unsafe.The Defendants have failed to notify the Plaintiff and Class Members of the EGR Cooler Defect, and/or failed to initiate a timely recall of the Affected Class Vehicles to undergo repair or replacement of the EGR Cooler Defect.

9. The Defendants are in the business of designing, manufacturing and placing vehicles (and

their component parts, like the EGR cooler) into the Canadian stream of commerce. As such, the Defendants are in a position of legal proximity to Class Members.

10. 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 engineering, designing, developing, testing, manufacturing and/or importing the Affected Class Vehicles. The Defendants through their employees, officers and directors failed to meet the reasonable standard of care.

11. It was reasonably foreseeable that a failure by the Defendants to design, manufacture, and/or install a reasonably safe EGR cooler in the Affected Class Vehicles, and thereafter to monitor the performance of and notify regulators and the Plaintiff and Class Members of defects to the EGR cooler (and take prompt corrective measures to repair any defects), would cause harm to the Plaintiff and Class Members.

12. The Defendants knew, and it was reasonably foreseeable that the Plaintiff and Class Members would trust and rely upon their skill and integrity in utilizing components for the Affected Class Vehicles. The Defendants knew and it was reasonably foreseeable that if the Affected Class Vehicles contained dangerous defects, like the EGR Cooler Defect, and the true condition of the vehicles was disclosed at the time of the purchase and/or/lease of each of the Affected Class Vehicles, that the value and/or purchase price of the Affected Class Vehicles would be reduced.

13. The Plaintiff and Class Members had no knowledge of the EGR Cooler Defect in the Affected Class Vehicles and had no reason to suspect such. The EGR Cooler Defect is latent such that it was not reasonably discoverable by the Plaintiff or other purchasers and/or lessees of the Affected Class Vehicles.

14 . The Defendants knew, or ought to have known, about the EGR Cooler Defect in the Affected Class Vehicles and could have reasonably foreseen that the Plaintiff and Class Members would suffer personal injury and/or damages as a result of the EGR Cooler Defect.

~~7.~~15. In the alternative, the Defendants failed to meet the reasonable standard of care expected of a vehicle manufacturer in the circumstances in that:

(a) they knew or ought to have known about the EGR Cooler Defect in the Affected Class Vehicles and should have timely informed or warned the Plaintiff and Class Members;

(b) they designed, developed, tested, manufactured, assembled, marketed, advertised, distributed, leased and/or sold vehicles with a defective EGR cooler;

(c) they failed to timely warn the Plaintiff, Class Members and/or consumers about the EGR Cooler Defect in the Affected Class Vehicles, which presented a serious safety hazard to vehicle occupants and persons outside the vehicle;

(d) they failed to change the design, manufacture and/or assembly of the defective EGR cooler in the Affected Class Vehicles in a reasonable and timely manner;

(e) they failed to properly test the EGR cooler in the Affected Class Vehicles;

(f) they knew or ought to have known about the EGR Cooler Defect in the Affected Class Vehicles but kept it a secret and concealed it;

(g) they failed to timely issue and implement safety, repair and/or replacement recalls of the Affected Class Vehicles;

(h) the EGR Cooler Defect presented a serious safety hazard to vehicle occupants and persons outside the vehicle which could cause an engine compartment fire and/or a sudden loss of power in the Affected Class Vehicles; and

(i) they failed to exercise reasonable care and judgment in matters of design, materials, workmanship and/or quality of product which would reasonably be expected of them as an automobile manufacturer.

~~8.~~16. As a result of the EGR Cooler Defect in the Affected Class Vehicles by reason of the Defendants' negligence and their failure to disclose and/or adequately warn of the EGR Cooler Defect, the Plaintiff and the Class Members have suffered damages and will continue to suffer damages. The value of each of the Affected Class Vehicles is reduced. The Plaintiff and each Class Member must expend the time to have his/her vehicle repaired and be without their vehicle. The Defendants should compensate the Plaintiff and each Class Member for their incurred out-of-pocket expenses for, among other things, alternative transportation, tow charges, loss of use of vehicle, costs for fire extinguishers, vehicle payments and prior repairs to the Affected Class Vehicles as a result of the EGR Cooler Defect.

Fraud by Concealment

~~9.~~17. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Further Amended Notice of Civil Claim.

~~10.~~18. The Defendants intentionally concealed, suppressed and failed to disclose the material fact that the Affected Class Vehicles had a design and/or manufacturing defect as to the EGR cooler that could result in engine compartment fire and/or a sudden loss of power. The Defendants knew or should have known the true facts due to their involvement in the design, installation, manufacture, durability testing and warranty service of the EGR cooler in the Affected Class Vehicles. At no time did the Defendants reveal the truth to the Plaintiff and Class Members. To the contrary, the Defendants concealed the truth, intending for the Plaintiff and Class Members to rely on these omissions. The Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles believing, in reliance on the Defendants' statements and/or omissions, them to be safe and free from major fundamental defects such as the EGR Cooler Defect.

~~11.~~19. The Defendants further affirmatively misrepresented to Plaintiff and Class Members in advertising and other forms of communication, including standard and uniform material provided with each Affected Class Vehicle and on their website, that the Affected Class Vehicles they were leasing and/or selling had no significant defects, that the Affected Class Vehicles were safe, reliable and of high quality and would perform and operate in a safe

manner.

~~12.~~20. The Defendants knew about the EGR Cooler Defect in the Affected Class Vehicles when the representations were made.

~~13.~~21. The Affected Class Vehicles purchased and/or leased by the Plaintiff and Class Members contained a defective EGR cooler, which posed a serious safety risk to vehicle occupants.

~~14.~~22. The Defendants had a duty to disclose that the Affected Class Vehicles contained a fundamental defect as alleged herein, because the Plaintiff and Class Members relied on the Defendants' material representations.

~~15.~~23. At all relevant times, the Defendants held out the Affected Class Vehicles to be free from defects such as the EGR Cooler Defect. The Defendants touted and continue to tout the many benefits and advantages of the Affected Class Vehicles, but nonetheless failed to disclose important facts related to the EGR Cooler Defect. This made the Defendants' other disclosures about the Affected Class Vehicles deceptive.

~~16.~~24. A reasonable consumer would not know that the Affected Class Vehicles contained the EGR Cooler Defect, which could result in an engine compartment fire and/or a sudden loss of power and which posed a serious safety risk of harm or injury to vehicle occupants. The Plaintiff and Class Members did not know of the facts which were concealed from them by Defendants. Moreover, as ordinary consumers, the Plaintiff and Class Members did not, and could not, unravel the deception on their own. The Plaintiff and Class Members reasonably relied upon the Defendants' deception to their detriment.

~~17.~~25. The Defendants had a duty to disclose the EGR Cooler Defect in the Affected Class Vehicles as the true facts were known and/or accessible only to them and because they knew these facts were not known to or reasonably discoverable by the Plaintiff and Class Members unless and until the defect manifested in their vehicle. As alleged herein, the Defendants denied and concealed the EGR Cooler Defect in the face of consumer complaints.

~~18.~~26. The Defendants' false representations and omissions were material to consumers because they concerned the safety of the Affected Class Vehicles, which played a significant role in the value of the Affected Class Vehicles.

~~19.~~27. The Defendants also had a duty to disclose because they made general affirmative representations about the safety and dependability of Affected Class Vehicles without informing or warning consumers that the Affected Class Vehicles had a fundamental system defect that would affect the safety, quality and reliability of the Affected Class Vehicles.

~~20.~~28. The Defendants' disclosures were misleading, deceptive and incomplete because they failed to inform or warn consumers of the additional facts regarding the EGR Cooler Defect, as set forth herein. These omitted and concealed facts were material because they directly impact the safety and value of the Affected Class Vehicles purchased by Plaintiff and Class Members.

~~21.~~29. The Defendants have still not made full and adequate disclosure and continue to defraud the Plaintiff and Class Members by concealing material information regarding the EGR Cooler Defect in the Affected Class Vehicles.

~~22.~~30. The Plaintiff and Class Members were unaware of the omitted material facts referenced herein and would not have acted as they did if they had known of the concealed and/or suppressed facts, in that they would not have purchased or paid as much for Affected Class Vehicles with the EGR Cooler Defect, and/or would have taken other affirmative steps in light of the information concealed from them. The Plaintiff's and Class Members' actions were justified. The Defendants were in exclusive control of the material facts and such facts were not generally known to the public, the Plaintiff or Class Members.

~~23.~~31. As a result of the concealment and/or suppression of facts, the Plaintiff and Class Members sustained damage because they own Affected Class Vehicles that are diminished in value because of the Defendants' concealment of the true safety and quality of the Affected Class Vehicles. Had the Plaintiff and Class Members been aware of the EGR Cooler Defect and the Defendants' disregard for the truth, the Plaintiff and Class Members would have paid less for their Affected Class Vehicles or would not have purchased and/or leased them at

all.

~~24.~~32. The value of the Plaintiff's and Class Members' Affected Class Vehicles has diminished as a result of Defendants' fraudulent concealment of the EGR Cooler Defect, which has made any reasonable consumer reluctant to purchase and/or lease an Affected Class Vehicle, let alone pay what otherwise would have been fair market value for the Affected Class Vehicles.

~~25.~~33. The Plaintiff makes the following specific fraudulent concealment/omission-based allegations with as much specificity as possible absent access to the information necessarily available only to the Defendants:

(a) Who: The Defendants actively concealed and omitted the EGR Cooler Defect from the Plaintiff and Class Members while simultaneously touting the safety and dependability of the Affected Class Vehicles, as alleged herein. The Plaintiff is unaware of and, therefore, unable to identify the true names and identities of those specific individuals at the Defendants responsible for such decisions;

(b) What: The Defendants knew or were reckless or negligent in not knowing that the Affected Class Vehicles contained the EGR Cooler Defect as alleged herein. The Defendants concealed and omitted the EGR Cooler Defect while making representations about the safety, dependability and other attributes of the Affected Class Vehicles as alleged herein;

(c) When: The Defendants concealed and omitted material information regarding the EGR Cooler Defect at all times while making representations about the safety and dependability of the Affected Class Vehicles on an ongoing basis and continuing to this day as alleged herein. The Defendants still have not disclosed the truth about the full scope of the EGR Cooler Defect in the Affected Class Vehicles. The Defendants have never taken any action to inform consumers about the true nature of the EGR Cooler Defect in the Affected Class Vehicles. When consumers brought their Affected Class Vehicles to the Defendants complaining of the EGR cooler failure, the Defendants denied any knowledge of or repair for the EGR Cooler

Defect;

(d) Where: The Defendants concealed and omitted material information regarding the true nature of the EGR Cooler Defect in every communication they had with the Plaintiff and Class Members and made representations about the quality, safety and dependability of the Affected Class Vehicles. The Plaintiff is aware of no document, communication or other place or thing in which the Defendants disclosed the truth about the full scope of the EGR Cooler Defect in the Affected Class Vehicles. Such information is not adequately disclosed in any sales documents, displays, advertisements, warranties, owner's manuals or on the Defendants' website. There are channels through which the Defendants could have disclosed the EGR Cooler Defect including, but not limited to:

(i) point of sale communications;

(ii) the owner's manual; and/or

(iii) direct communication to Class Members through means such as Provincial vehicle registry lists or Transport Canada Recall Notices prior to the October 2019 and November 2020 recalls;

(e) How: The Defendants concealed and omitted the EGR Cooler Defect from Plaintiff and Class Members and made representations about the quality, safety and dependability of their Affected Class Vehicles. The Defendants actively concealed and omitted the truth about the existence, scope and nature of the EGR Cooler Defect from the Plaintiff and Class Members at all times even though they knew about the EGR Cooler Defect and knew that information about the EGR Cooler Defect would be important to a reasonable consumer, and the Defendants promised in their marketing materials that Affected Class Vehicles have qualities that they do not have; and

(f) Why: The Defendants actively concealed and omitted material information about the EGR Cooler Defect in the Affected Class Vehicles for the purpose of inducing

the Plaintiff and Class Members to purchase and/or lease the Affected Class Vehicles, rather than purchasing or leasing competitors' vehicles, and made representations about the quality, safety and dependability of the Affected Class Vehicles. Had the Defendants disclosed the truth for example, in their advertisements or other materials or communications, the Plaintiff and Class Members would have been aware of it and would not have purchased and/or leased the Affected Class Vehicles or would not have paid as much to do so.

~~26.~~34. As such, the Defendants' acts were done wantonly, maliciously, oppressively, deliberately, with intent to defraud and in reckless disregard of the Plaintiff's and Class Members' rights and the representations that the Defendants made to them, in order to enrich themselves. The Defendants' conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

Breach of Express Warranty

~~27.~~35. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Further Amended Notice of Civil Claim.

~~28.~~36. As an express warrantor, manufacturer, merchant and/or seller, the Defendants had certain obligations ~~under the *SGA*, and to equivalent legislative provisions in the rest of Canada, as described in Schedule "A",~~ to conform the Affected Class Vehicles to their express warranties.

~~29.~~37. The Defendants designed, manufactured, tested, assembled, marketed, distributed, leased and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through their authorized dealerships. Such representations formed the basis of the bargain in the Plaintiff's and Class Members' decisions to purchase and/or lease the Affected Class Vehicles.

~~30.~~38. In connection with the purchase and/or lease of each of the Affected Class Vehicles, the Defendants provided powertrain warranty coverage for the Affected Class Vehicles for 5

years or 100,000 kilometers, which obliges them to repair or replace any part that is defective under normal use under the powertrain warranty.

~~31.~~39. The Defendants' warranty formed a basis of the bargain that was reached when the Plaintiff and Class Members purchased and/or leased their Affected Class Vehicles.

~~32.~~40. The Plaintiff and Class Members owned and/or leased Affected Class Vehicles with the EGR Cooler Defect within the warranty period but had no knowledge of the existence of the EGR Cooler Defect, which was known and concealed by the Defendants.

~~33.~~41. Despite the existence of the warranty, the Defendants failed to inform or warn the Plaintiff and Class Members that the Affected Class Vehicles contained the EGR Cooler Defect during the warranty periods and thus, wrongfully transferred the costs of repair or replacement to the Plaintiff and Class Members.

~~34.~~42. The Defendants breached their express warranty promising to repair and correct a design and/or manufacturing defect or defect in materials or workmanship of any parts they supplied as to the Affected Class Vehicles.

~~35.~~43. The Defendants knew about the EGR Cooler Defect in the Affected Class Vehicles, allowing them to cure their breach of warranty if they chose to do so. However, the Defendants concealed the EGR Cooler Defect and have neglected, failed and/or refused to repair or fix the EGR Cooler Defect outside of the warranty periods despite the existence of the EGR Cooler Defect at the time of sale and/or lease of the Affected Class Vehicles.

~~36.~~44. The Defendants breached their express warranty to repair defective parts in their Affected Class Vehicles. The Defendant have not fixed or repaired the EGR Cooler Defect in it's Affected Class Vehicles.

~~37.~~45. The Defendants were provided notice of the EGR Cooler Defect through numerous complaints filed with NHTSA, to them directly and through their dealers as well as their own internal engineering knowledge. The Defendants have not remedied their breach.

~~38.~~46. Further, the Defendants have refused to provide an adequate and timely warranty repair for the EGR Cooler Defect, thus rendering the satisfaction of any notice requirement futile. Owners and/or lessees that have presented their Affected Class Vehicles for warranty repair due to EGR cooler failure have been denied adequate repairs.

~~39.~~47. Any attempt by the Defendants to disclaim or limit recovery to the terms of the express warranties is unconscionable and unenforceable. Specifically, the Defendants' warranty limitation is unenforceable because they knowingly sold and/or leased a defective product without informing the Plaintiff, Class Members and/or consumers about the EGR Cooler Defect in the Affected Class Vehicles. The time limits contained in the Defendants' warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class Members. Among other things, the Plaintiff and Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendants. A gross disparity in bargaining power existed between the Defendants and Class Members, and the Defendants knew that the Affected Class Vehicles were defective at the time of sale and/or lease.

~~40.~~48. Further, the limited warranty promising to repair and/or correct a design and/or manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make the Plaintiff and Class Members whole because any replacement of the EGR cooler by the Defendants contains the same defect. Affording the Defendants a reasonable opportunity to cure the breach of written warranties, therefore, would be unnecessary and futile.

~~41.~~49. As a direct and proximate result of the Defendants' breach of their express warranties, the Plaintiff and Class Members have suffered damage and/or loss in an amount to be determined at trial.

Breach of the Implied Warranty or Condition of Merchantability pursuant ~~*SGA*~~ Provincial Sale of Goods Legislation

~~42.~~50. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Further Amended Notice of Civil Claim.

~~43.~~51. The Defendants are a "seller" with respect to motor vehicles within the meaning of section 18 of the *SGA,* and to equivalent legislative provisions in the rest of Canada, as described in Schedule "A".

~~44.~~52. A warranty that the Affected Class Vehicles were in merchantable condition was implied by law pursuant to section 18 of the *SGA,* and to equivalent legislative provisions in the rest of Canada, as described in Schedule "A".

~~45.~~53. The Defendants marketed, distributed, leased and/or sold the Affected Class Vehicles in Canada, including the Province of British Columbia, as safe and reliable vehicles through their authorized dealerships. Such representations formed the basis of the bargain in the Plaintiff's and Class Members' decisions to purchase and/or lease the Affected Class Vehicles.

~~46.~~54. The Plaintiff and Class Members purchased and/or leased the Affected Class Vehicles from the Defendants through their subsidiaries, authorized agents for retail sales, through private sellers or were otherwise expected to be the eventual purchasers and/or lessees of the Affected Class Vehicles when bought or leased from a third party. At all relevant times, the Defendants were the manufacturer, distributor, warrantor and/or seller of the Affected Class Vehicles. As such, there existed contractual privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendants as to their Affected Class Vehicles. Alternatively, privity of contract need not be established nor is it required because the Plaintiff and Class Members are intended third-party beneficiaries of contracts between the Defendant and their resellers, authorized dealers and, specifically, of the Defendants' implied warranties.

~~47.~~55. The Defendants' resellers, dealers and distributors are intermediaries between the Defendants and consumers. These intermediaries sell the Affected Class Vehicles to consumers and are not, themselves, consumers of the Affected Class Vehicles and, therefore, have no rights against the Defendants with respect to the Plaintiff's and Class Members' acquisition of the Affected Class Vehicles. The Defendants' warranties were designed to influence consumers who purchased and/or leased the Affected Class Vehicles.

~~48.~~56. The Defendants knew or had reason to know of the specific use for which the Affected Class Vehicles were purchased and/or leased.

~~49.~~57. As a result of the EGR Cooler Defect, the Affected Class Vehicles were not in merchantable condition when sold and/or leased and are not fit for the ordinary purpose of providing safe and reliable transportation.

~~50.~~58. The Defendants knew about the EGR Cooler Defect in the Affected Class Vehicles, allowing them to cure their breach of warranty if they chose to do so.

~~51.~~59. Further, the Defendants have refused to provide an adequate warranty repair or fix for the EGR Cooler Defect, thus rendering the satisfaction of any notice requirement futile. As stated above, owners and/or lessees that have presented their Affected Class Vehicles for warranty repair due to EGR cooler failure have been denied adequate repair.

~~52.~~60. The Plaintiff and Class Members suffered loss or damage due to the defective nature of the Affected Class Vehicles and the Defendants' breach of the warranty of merchantability arising from the EGR Cooler Defect.

~~53.~~61. At all times that the Defendants warranted and sold their Affected Class Vehicles, they knew or should have known that their warranties were false and yet they did not disclose the truth or stop manufacturing or selling their Affected Class Vehicles and, instead, continued to issue false warranties and continued to insist the products were safe. The Affected Class Vehicles were defective when the Defendants delivered them to their resellers, dealers and distributors which sold the Affected Class Vehicles and the Affected Class Vehicles were, therefore, still defective when they reached Plaintiff and Class Members.

~~54.~~62. The Defendants' attempt to disclaim or limit the implied warranty of merchantability vis-à-vis the Plaintiff, Class Members and/or consumers is unconscionable and unenforceable here. Specifically, the Defendants' warranty limitation is unenforceable because they knowingly sold or leased a defective product without informing the Plaintiff, Class Members and/or consumers about the EGR Cooler Defect. The time limits contained in the Defendants' warranty periods were also unconscionable and inadequate to protect the Plaintiff and Class

Members. Among other things, the Plaintiff and Class Members had no meaningful choice in determining these time limitations, the terms of which unreasonably favored the Defendants. A gross disparity in bargaining power existed between the Defendants and the Plaintiff and Class Members, and the Defendants knew of the EGR Cooler Defect at the time of sale and/or lease of the Affected Class Vehicles.

~~55.~~63. The Plaintiff and Class Members have complied with all obligations under the warranty or otherwise have been excused from performance of said obligations as a result of the Defendants' conduct as alleged herein. Affording the Defendants a reasonable opportunity to cure their breach of written warranties, therefore, would be unnecessary and futile.

~~56.~~64. As a direct and proximate result of the Defendants' breach of implied warranties of merchantability, the Plaintiff and Class Members have suffered loss and/or damage pursuant to section 56 of the *SGA*, and to equivalent legislative provisions in the rest of Canada, as described in Schedule "A".

Violation of ~~the *BPCPA*~~ Provincial Consumer Protection Legislation

~~57.~~65. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Further Amended Notice of Civil Claim.

~~58.~~66. The Affected Class Vehicles are consumer "goods" within the meaning of section 1(1) of the *BPCPA,* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".

~~59.~~67. The Plaintiff and Class Members who purchased, acquired, and/or leased the Affected Class Vehicles primarily for personal, family or household purposes, and not for resale of fpor the purpses of carrying on business, are "consumers" within the meaning of section 1(1) of the *BPCPA,* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".

~~60.~~68. The Defendants are a "supplier" within the meaning of section 1 (1) of the *BPCPA,* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as

described in Schedule "B". At all relevant times, the Defendants were the seller of the Affected Class Vehicles as their authorized dealerships and/or retail distributors were acting as the agents of the Defendants. As such, there existed privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendants as to their Affected Class Vehicles.

~~61.~~69. The purchase and/or lease of the Affected Class Vehicles by the Plaintiff and Class Members constitutes a "consumer transaction" within the meaning of section 1(1) of the *BPCPA*, and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".

~~62.~~70. By failing to disclose and actively concealing the EGR Cooler Defect, the Defendants engaged in unfair and deceptive trade practices prohibited by sections 4 and 5 of the *BPCPA,* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".

~~63.~~71. As alleged herein, the Defendants made misleading representations and/or omissions concerning the benefits, performance and safety of the Affected Class Vehicles.

~~64.~~72. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and Class Members were deceived by the Defendants' failure to disclose their knowledge of the EGR Cooler Defect.

~~65.~~73. The Defendants' conduct, as alleged herein, was, and is, in violation of the *BPCPA* and to equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B"*,* in particular by:

(a) representing that goods have sponsorship, approval, characteristics, uses, benefits or quantities that they do not have;

(b) representing that goods are of a particular standard, quality or grade if they are of another;

(c) advertising goods with intent not to sell them as advertised; and

(d) representing that goods have been supplied in accordance with a previous representation when they have not.

~~66.~~74. The Defendants intentionally and knowingly misrepresented and/or omitted material facts regarding their Affected Class Vehicles, specifically regarding the EGR Cooler Defect, with an intent to mislead the Plaintiff and Class Members.

~~67.~~75. In purchasing and/or leasing the Affected Class Vehicles, the Plaintiff and Class Members were deceived by the Defendants' failure to disclose their knowledge of the EGR Cooler Defect.

~~68.~~76. The Plaintiff and Class Members had no way of knowing of the Defendants' representations were false, misleading and incomplete or knowing the true nature of the EGR Cooler Defect in the Affected Class Vehicles. As alleged herein, the Defendants engaged in a pattern of deception in the face of a known EGR Cooler Defect in the Affected Class Vehicles. The Plaintiff and Class Members did not, and could not, unravel the Defendants' deception on their own.

~~69.~~77. The Defendants knew or should have known that their conduct violated the *BPCPA,* and equivalent provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".

~~70.~~78. The Defendants owed the Plaintiff and Class Members a duty to disclose the truth about the EGR Cooler Defect in the Affected Class Vehicles as it created a serious safety risk on injury or harm and the Defendants:

(a) possessed exclusive knowledge of the EGR Cooler Defect in the Affected Class Vehicles;

(b) intentionally concealed the foregoing from the Plaintiff and Class Members; and/or

(c) failed to warn consumers or to publicly admit that the Affected Class Vehicles had a EGR Cooler Defect.

~~71.~~79. The Defendants had a duty to disclose that the EGR cooler in the Affected Class Vehicles was fundamentally flawed, as described herein, because it created a serious safety hazard and the Plaintiff and Class Members relied on the Defendants' material misrepresentations and/or omissions regarding the Affected Class Vehicles and the EGR Cooler Defect to their detriment.

~~72.~~80. The Defendants' conduct proximately caused loss and/or damage to the Plaintiff and Class Members that purchased and/or leased the Affected Class Vehicles and suffered harm as alleged herein.

~~73.~~81. The Plaintiff and Class Members were damaged and suffered ascertainable loss and/or actual damage as a proximate result of the Defendants' conduct in that the Plaintiff and Class Members incurred costs related the EGR Cooler Defect, including future repair, service and/or replacement costs, rental car costs, towing charges and overpaid for their Affected Class Vehicles that have suffered a diminution in value.

~~74.~~82. The Defendants' violations cause continuing loss and/or damage to the Plaintiff and Class Members. The Defendants' unlawful acts and practices complained of herein affect the public interest.

~~75.~~83. The Defendants knew of the defective EGR cooler and that the Affected Class Vehicles were materially compromised by the EGR Cooler Defect.

~~76.~~84. The facts concealed and/or omitted by the Defendants from the Plaintiff and Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase an Affected Class Vehicle or pay a lower price. Had the Plaintiff and Class Members known about the defective nature of the Affected Class Vehicles, they would not have purchased and/or leased the Affected Class Vehicles or would not have paid the prices they paid.

~~77.~~85. The Plaintiff's and Class Members' losses and/or damages were directly or proximately caused by the Defendants' unlawful and deceptive business practices. As such, the Plaintiff and Class Members are entitled to a declaration under section 172(1)(a) of the *BPCPA* that an act or practice engaged in by the Defendants in respect to the purchase and/or lease of the Affected Class Vehicles contravenes the *BPCPA*, an injunction under section 172(1)(b) of the *BPCPA* to restrain such conduct and/or damages under section 171 of the *BPCPA*, and to all such equivalent applicable provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B".

86. The Plaintiff and Class Members are entitled, to the extent necessary, to a waiver of any notice requirements under section 173(1) of the *BPCPA*, and to all such equivalent applicable provisions of the consumer protection legislation in the rest of Canada, as described in Schedule "B", as a result of the Defendants failure to disclose and/or actively conceal the EGR Cooler Defect from the Plaintiff and Class Members and their misrepresentations as to the safety, reliability, performance and quality of the Affected Class Vehicles.

Breach of the *Competition Act*

~~78.~~87. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Further Amended Notice of Civil Claim.

~~79.~~88. By making representations to the public as to the quality, character, reliability, durability and safety of their Affected Class Vehicles, the Defendants breached sections 36 and/or 52 of the *Competition Act*, in that their representations:

(a) were made to the public in the form of advertising brochures, statements and/or other standardized statements claiming the safety and dependability of the Affected Class Vehicles;

(b) were made to promote the supply or use of a product or for the purpose of promoting their business interests;

(c) stated a level of performance and safety of the Affected Class Vehicles; and

(d) were false and misleading in a material respect.

~~80.~~89. At all relevant times, the Defendants were the seller and/or supplier of the Affected Class Vehicles. As such, there existed contractual privity and/or vertical privity of contract between the Plaintiff and Class Members and the Defendants as to their Affected Class Vehicles, as their authorized dealerships and/or retail distributors at all material times were acting as their agents.

~~81.~~90. The Defendants engaged in unfair competition and unfair, unlawful or fraudulent business practices through the conduct, statements and omissions described herein and by knowingly and intentionally concealing the EGR Cooler Defect in their Affected Class Vehicles from the Plaintiff and Class Members, along with concealing the risks, costs and monetary damage resulting from the EGR Cooler Defect. The Defendants should have disclosed this information because they were in a superior position to know the true facts related to the EGR Cooler Defect and the Plaintiff and Class Members could not reasonably be expected to learn or discover the true facts related to the EGR Cooler Defect.

~~82.~~91. The EGR Cooler Defect led to engine compartment fires and/or a sudden loss of power in the Affected Class Vehicles, which posed a serious safety issue that triggered Defendants' duty to disclose the safety issue to consumers.

~~83.~~92. These acts and practices have deceived the Plaintiff and Class Members. In failing to disclose the EGR Cooler Defect and suppressing other material facts from the Plaintiff and Class Members, the Defendants breached their duties to disclose these facts, violated the *Competition Act* and caused loss and/or damage to the Plaintiff and Class Members. The Defendants' omissions and concealment pertained to information that was material to the Plaintiff and Class Members as it would have been to all reasonable consumers.

~~84.~~93. Further, the Plaintiff and Class Members relied upon the Defendants' misrepresentations as to the safety and dependability of the Affected Class Vehicles to their detriment in purchasing and/or leasing the Affected Class Vehicles so as to cause loss and/or damage

to the Plaintiff and Class Members.

~~85.~~94. The Plaintiff and Class Members have therefore suffered damages and are entitled to recover such damages pursuant to sections 36(1) and/or 52 of the *Competition Act*.

Unjust Enrichment

~~86.~~95. The Plaintiff and Class Members hereby incorporate by reference the allegations contained in the preceding paragraphs of this Further Amended Notice of Civil Claim.

~~87.~~96. The Defendants have unjustly profited from the EGR Cooler Defect in the Affected Class Vehicles whose value was inflated by their active concealment and the Plaintiff and Class Members have overpaid for the Affected Class Vehicles.

~~88.~~97. The Defendants have received and retained unjust benefits from the Plaintiff and Class Members and an inequity has resulted. It is inequitable and unconscionable for the Defendants to retain these benefits.

~~89.~~98. As a result of the Defendants' fraud and/or deception, the Plaintiff and Class Members were not aware of the true facts concerning the EGR Cooler Defect in the Affected Class Vehicles and did not benefit from Defendants' misconduct.

~~90.~~99. The Defendants knowingly accepted the unjust benefits of their fraudulent conduct. There is no juristic reason why the amount of their unjust enrichment should not be disgorged and returned to the Plaintiff and Class Members in an amount to be proven at trial.

~~91.~~100. Further, the purchase and/or lease of both new and/or used Affected Class Vehicles from authorized or affiliated dealerships of the Defendants or third party sellers will confer a benefit on the Defendants as such vehicles will require use of their EGR cooler replacement parts so as to fix, repair and/or replace the defective EGR cooler.

Tolling of ~~the *Limitation Act*, S.B.C. 2012, c. 13~~ Provincial Limitation Acts

~~92.~~101. The Plaintiff and Class Members had no way of knowing about the EGR Cooler Defect in the Affected Class Vehicles. The Defendants concealed their knowledge of the EGR Cooler Defect while continuing to market and sell their Affected Class Vehicles.

~~93.~~102. Within the *Limitation Act*, S.B.C. 2012 (*"Limitation Act"*) and equivalent legislative provisions in the rest of Canada as described in Schedule "C", the Plaintiff and Class Members could not have discovered through the exercise of reasonable diligence that the Defendants were concealing the conduct complained of herein and misrepresenting the true qualities of their Affected Class Vehicles.

~~94.~~103. The Plaintiff and Class Members did not know facts that would have caused a reasonable person to suspect or appreciate that there was a defect in the EGR cooler in the Affected Class Vehicles.

~~95.~~104. For these reasons, the *Limitation Act*, and equivalent legislative provisions in the rest of Canada as described in Schedule "C", have been tolled by operation of the discovery rule with respect to the claims in this proposed class proceeding.

~~96.~~105. Further, due to the Defendants' knowing and active concealment of the EGR Cooler Defect throughout the time period relevant to this proposed class proceeding, the *Limitation Act*, and equivalent legislative provisions in the rest of Canada as described in Schedule "C", have been tolled.

~~97.~~106. Instead of publicly disclosing the EGR Cooler Defect in the Affected Class Vehicles, the Defendants kept the Plaintiff and Class Members in the dark as to the EGR Cooler Defect and the safety risk of bodily injury or harm it presented to vehicle occupants.

~~98.~~107. The Defendants were under a continuous duty to disclose to the Plaintiff and Class Members the existence of the EGR Cooler Defect in the Affected Class Vehicles.

~~99.~~108. The Defendants knowingly, affirmatively and actively concealed or recklessly disregarded

the true nature, quality and character of their Affected Class Vehicles.

~~100.~~109. As such, the Defendants are estopped from relying on the *Limitation Act,* and equivalent legislative provisions in the rest of Canada as described in Schedule "C", in defence of this proposed class proceeding.

Plaintiff's(s') address for service:

Garcha & Company
Barristers & Solicitors
#405 - 4603 Kingsway
Burnaby, BC V5H 4M4
Canada

Fax number address for service (if any):

604-435-4944

E-mail address for service (if any):

none

Place of trial:

Vancouver, BC
Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: October 19, 2020

Signature of K.S. Garcha
lawyer for plaintiff(s)

Schedule "A"
Sale of Goods Legislation Across Canada

Province or Territory	Legislation
Alberta	*Sale of Goods Act*, RSA 2000, c. S-2
Saskatchewan	*Sale of Goods Act*, RSS 1978, c. S-1
Manitoba	*The Sale of Goods Act*, CCSM 2000, c. S10
Ontario	*Sale of Goods Act*, RSO 1990, c. S.1
Newfoundland and Labrador	*Sale of Goods Act*, RSNL 1990, c. S-6
Nova Scotia	*Sale of Goods Act*, RSNS 1989, c. 408
New Brunswick	*Sale of Goods* Act, RSNB 2016, c. 110
Prince Edward Island	*Sale of Goods Act*, RSPEI 1988, c. S-1
Yukon	*Sale of Goods Act*, RSY 2002, c. 198
Northwest Territories	*Sale of Goods Act*, RSNWT 1988, c. S-2
Nunavut	*Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2
Quebec	*Civil Code of Quebec,* CQLR c CCQ-1991

Schedule "B"
Consumer Protection Legislation Across Canada

Province or Territory	Legislation
Alberta	*Consumer Protection Act,* RSA 2000, c. C-26.3
Saskatchewan	*The Consumer Protection and Business Practices Act*, SS 2014, c. C-30.2
Manitoba	*Consumer Protection Act*, CCSM c. C200
Ontario	*Consumer Protection Act*, 2002, SO 2002, c. 30, Sch. A
Newfoundland and Labrador	*Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1
~~Nova Scotia~~	~~*Consumer Protection Act*, RSNS 1989, c. 92~~
New Brunswick	*Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1
Prince Edward Island	*Consumer Protection Act,* RSPEI 1988, c. C-19
~~Yukon~~	~~*Consumers Protection Act*, RSY 2002, c. 40~~
~~Northwest Territories~~	~~*Consumer Protection Act*, RSNWT 1988, c. C-17~~
~~Nunavut~~	~~*Consumer Protection Act*, RSNWT (Nu) 1988, c. C-17~~
Quebec	*Consumer Protection Act,* CQLR c P-40.1

Schedule "C"
Limitation Act Legislation Across Canada

Province or Territory	Legislation
Alberta	*Limitations Act*, RSA 2000, c. L-12
Saskatchewan	*The Limitations Act,* SS 2004, c. L-16.1
Manitoba	*The Limitation of Actions Act*, CCSM c. L150
Ontario	*Limitations Act,* 2002, SO 2002, c. 24, Sch. B
Newfoundland and Labrador	*Limitations Act*, SNL 1995, c. L-16.1
Nova Scotia	*Limitation of Actions Act,* SNS 2014, c. 35
New Brunswick	*Limitation of Actions Act*, SNB 2009, c. L-8.5
Prince Edward Island	*Statute of Limitations,* RSPEI 1988, c. S-7
Yukon	*Limitation of Actions Act,* RSY 2002, c. 139
Northwest Territories	*Limitation of Actions Act*, RSNWT 1988, c. L-8
Nunavut	*Limitation of Actions Act,* RSNWT (Nu) 1988, c. L-8
Quebec	*Civil Code of Quebec,* CQLR c CCQ-1991

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the 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(e)(i), (iii)(a) & (b), (f), (g), (h) and (I) of the *CJPTA* because this proceeding:

> (e)(i) concerns contractual obligations to a substantial extent, were to be performed in British Columbia:
>
> (e) (iii)(a) & (b) the contract is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and resulted from a solicitation of business in British Columbia by or on behalf of the seller;
>
> (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;
>
> (i) is a claim for an injunction ordering a party to do or refrain from doing anything 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 serious defects of design and/or manufacturing with respect to the exhaust gas recirculation coolers in their 2014- 2019 Dodge Ram 1500 3.0 litre EcoDiesel and Jeep Grand Cherokee vehicles that are susceptible to thermal fatigue, leading the coolers to crack over time, which can cause combustion within the intake manifold and lead to engine compartment fire and/or a sudden loss of power, all of which poses a serious safety risk to vehicle occupants and persons outside the vehicle.

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
[x] a matter not listed here

Part 3: THIS CLAIM INVOLVES:
[x] 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. *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c. 28
3. *Business Practices and Consumer Protection Act,* S.B.C. 2004 ; *Consumer Protection Act*, RSA 2000, c. C-26.3; *The Consumer Protection and Business Practices Act,* SS, 2014, c C-30.2; *The Business Practices Act*, CCSM c B120; *Consumer Protection Act*, 2002, SO 2002, c 30, Sch A; *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1; *Business Practices Act*, RSPEI. 1988, c. C-19; *Consumer Protection and Business Practices Act* SNL 2009, c C-31.1;and *Consumer Protection Act,* CQLR c P-40.1
4. *Sale of Goods Act*, R.S.B.C 1996, c. 410; *Sale of Goods Act*, RSA 2000, c. S-2; *Sale of Goods Act*, RSS 1978, c. S-1; *The Sale of Goods Act*, CCSM 2000, c. S10; *Sale of Goods Act*, RSO 1990, c. S.1; *Sale of Goods Act*, RSNL 1990, c. S-6 ; *Sale of Goods Act*, RSNS 1989, c. 408; *Sale of Goods* Act, RSNB 2016, c. 110; *Sale of Goods Act*, RSPEI 1988, c. S-1; *Sale of Goods Act*, RSY

2002, c. 198; *Sale of Goods Act*, RSNWT 1988, c. S-2; *Sale of Goods Act*, RSNWT (Nu) 1988, c. S-2; and Quebec *Civil Code of Quebec,* CQLR c CCQ-1991

5. *Motor Vehicle Safety Act* , R.S.C. 1993, c.16

6. *Motor Vehicle Safety Regulations*, C.R.C., c.1038

7. *Court Order Interest Act*, R.S.B.C., c. 79

8. *Competition Act*, R.S.C 1985, c. C-34

9. *Limitation Act*, S.B.C. 2012, c.13; *Limitations Act*, RSA 2000, c. L-12; *The Limitations Act*, SS 2004, c. L-16.1; *The Limitation of Actions Act*, CCSM c. L150; *Limitations Act*, 2002, SO 2002, c. 24, Sch. B; *Limitations Act*, SNL 1995, c. L-16.1; *Limitation of Actions Act,* SNS 2014, c. 35; *Limitation of Actions Act*, SNB 2009, c. L-8.5; *Statute of Limitations*, RSPEI 1988, c. S-7; *Limitation of Actions Act*, RSY 2002, c. 139; *Limitation of Actions Act*, RSNWT 1988, c. L-8; *Limitation of Actions Act*, RSNWT (Nu) 1988, c. L-8;and Quebec *Civil Code of Quebec,* CQLR c CCQ-1991