

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BARBARA JOVANOVIC

Plaintiff

- and -

FORD MOTOR COMPANY OF CANADA, LIMITED, FORD MOTOR COMPANY,
ROBERT BOSCH INC., ROBERT BOSCH GMBH and ROBERT BOSCH LLC

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

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

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

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

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

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

AMENDED / MODIFIÉ 20 19
PURSUANT TO / EN CONFORMÉMENT A
RÈGLE 26.02
LOCAL REGISTRAR / GREFFIER LOCAL
SUPERIOR COURT OF JUSTICE (ONTARIO)

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

Date: January 10, 2018 Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
491 Steeles Ave E
Milton, ON L9T 1Y7

TO: FORD MOTOR COMPANY
1 American Road
Dearborn, Michigan 48126, USA

AND TO: FORD MOTOR COMPANY OF CANADA, LIMITED
1 The Canadian Road
Oakville, ON L6J 5E4, Canada

AND TO: ROBERT BOSCH GMBH
Postfach 30 02 20
Stuttgart, Germany 70442

AND TO: ROBERT BOSCH LLC
38000 Hills Tech Drive,
Farmington Hills, Michigan, U.S.A. 48331

AND TO: ROBERT BOSCH INC.
6955 Creditview Road
Mississauga, ON L5N 1R1 Canada

A. DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**Auxiliary Emissions Control Device**” or “**AECD**” means any element of design in a vehicle that senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of an emissions control system;
- (b) “**Bosch Defendants**” means collectively **Bosch GmbH**, **Bosch LLC** and **Bosch Inc.**;
- (c) “**Bosch GmbH**” means Robert Bosch GmbH;
- (d) “**Bosch Inc.**” means Robert Bosch Inc.;
- (e) “**Bosch LLC**” means Robert Bosch LLC;
- (f) “**Bosch Representations**” means the representations and omissions described at paragraphs 32 and 52-53;
- (g) “**CEPA**” means the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33, as amended;
- (h) “**CFR**” means the Code of Federal Regulations of the United States, as amended;
- (i) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;

- (j) “**Class**” or “**Class Members**” means all persons in Canada, except for **Excluded Persons**, who own, owned, lease or leased one of the **Vehicles**;
- (k) “*Competition Act*” means the *Competition Act*, RSC 1985, c C-34;
- (l) “*Consumer Protection Act*” means the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A;
- (m) “*CPA*” means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
- (n) “**Defeat Device**” means one or more **AECDs** that alone or in combination reduce the effectiveness of the emissions control system under conditions that may reasonably be expected to be encountered in common vehicle operation and use, unless:
 - (i) those conditions are substantially included in the emissions test procedures of the United States or Canadian governments;
 - (ii) it is needed to protect the vehicle against damage or accident; and
 - (iii) its use does not go beyond the requirements of engine starting;
- (o) “**Defendants**” means the **Ford Defendants** and the **Bosch Defendants**;
- (p) “**Emissions Standards**” means the regulations on vehicle and engine emissions set out in Title 40, chapter I, subchapter C, part 86, of the **CFR** and made under **CEPA** in the *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2, as amended;
- (q) “**EPA**” means the United States Environmental Protection Agency;

- (r) “**EP Act**” means the *Environmental Protection Act*, RSO 1990, c E.19, as amended, including ON Reg 361/98;
- (s) “**EPA Certificate**” means a certificate of conformity to US federal standards issued by the EPA under Title 40, chapter I, subchapter C, part 86, of the CFR;
- (t) “**Equivalent Consumer Protection Statutes**” means the *Business Practices and Consumer Protection Act*, SBC 2004, c 2, the *Fair Trading Act*, RSA 2000, c F-2, the *Consumer Protection Act*, SS 1996, c C-30.1, the *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, the *Business Practices Act*, CCSM, c B120, the *Consumer Protection Act*, CQLR, c P-40.1, the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, the *Consumer Protection Act*, RSNS 1989, c 92 and the *Business Practices Act*, RSPEI 1988, c B-7, all as amended;
- (u) “**Excluded Persons**” means:
 - (i) the **Defendants** and their officers and directors;
 - (ii) the authorized motor vehicle dealers of the **Ford Defendants** and the officers and directors of those dealers; and
 - (iii) the heirs, successors and assigns of the persons described in subparagraphs (i) and (ii);
- (v) “**Ford Canada**” means Ford Motor Company of Canada, Limited;
- (w) “**Ford Defendants**” means **Ford Canada** and **Ford US**;
- (x) “**Ford Representations**” means the representations and omissions described at paragraphs 46-48 and 58(a)-(b);

- (y) “**Ford US**” means Ford Motor Company;
- (z) “**NOx**” means nitrogen oxides;
- (aa) “**Plaintiff**” means Barbara Jovanovic;
- (bb) “**Power Stroke**” means the 6.7L Power Stroke® Turbo Diesel engine installed in the **Vehicles**;
- (cc) “**Representations**” means the **Bosch Representations** and the **Ford Representations**;
- (dd) “**Software**” means the collection of **Defeat Devices** contained in the **Vehicles** that was designed, manufactured and installed to reduce the effectiveness of the **Vehicles’** emissions control systems under ordinary driving conditions; and
- (ee) “**Vehicles**” means the following Ford F-Series Super Duty trucks equipped with **Power Stroke** engines:

Vehicles	Model	Model Years
Ford F-Series Super Duty trucks	F-250	2011-2017
Ford F-Series Super Duty trucks	F-350	2011-2017
<u>Ford F-Series Super Duty trucks</u>	<u>F-450</u>	<u>2011-2017</u>

B. RELIEF SOUGHT

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

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

- (b) a declaration that the Defendants conspired and agreed with each other and with other unknown co-conspirators to develop and install illegal Defeat Devices in the Vehicles to mislead Canadian consumers, regulators, purchasers and lessees of the Vehicles;
- (c) a declaration that the Ford Defendants violated *CEPA* by importing the Vehicles into Canada;
- (d) a declaration that the Vehicles emit NOx at levels exceeding the Emissions Standards;
- (e) a declaration that the Defendants were negligent in the engineering, design, development, research, manufacture, regulatory compliance, marketing, distribution, sale or lease of the Vehicles and the Vehicles' diesel and emission components;
- (f) a declaration that the Defendants made certain Representations regarding the Vehicles that were false, and that these Representations were made negligently;
- (g) a declaration that the Ford Defendants breached the express and implied warranties in relation to the Vehicles;
- (h) a declaration that the Defendants engaged in conduct contrary to Part VI of the *Competition Act*;

- (i) a declaration that the Ford Defendants engaged in unfair practices contrary to Part III of the *Consumer Protection Act* and the equivalent provisions in the Equivalent Consumer Protection Statutes;
- (j) a declaration that it is not in the interests of justice to require notice be given pursuant to section 18(15) of the *Consumer Protection Act* (and pursuant to any parallel provisions of the Equivalent Consumer Protection Statutes) and waiving any such notice requirements;
- (k) an order rescinding the purchases of the Vehicles and any financing, lease or other agreements related to the Vehicles;
- (l) a reference to decide any issues not decided at the trial of the common issues;
- (m) statutory damages pursuant to *CEPA*, the *Competition Act*, the *Consumer Protection Act* and the Equivalent Consumer Protection Statutes in an amount to be determined by this Honourable Court;
- (n) restitution for unjust enrichment in an amount equivalent to the purchase price of the Vehicles;
- (o) general damages for negligence, negligent misrepresentation, unjust enrichment, breach of warranty, conduct that is contrary to the *Consumer Protection Act* and Equivalent Consumer Protection Statutes, and conduct that is contrary to Part VI of the *Competition Act*, in the amount of \$100,000,000;
- (p) punitive damages and/or aggravated damages in the amount of \$20,000,000;

- (q) pre-judgment interest compounded and post-judgment interest pursuant to the *CJA*;
- (r) investigative costs pursuant to section 40 of *CEPA* and section 36 of the *Competition Act*; and
- (s) costs of this action pursuant to the *CPA*, or alternatively, on a full or substantial indemnity basis plus the cost of administration and notice pursuant to section 26(9) of the *CPA* plus applicable taxes; and
- (t) such further and other relief as this Honourable Court may deem just.

C. NATURE OF THE ACTION

3. The Defendants conspired to create and install illegal emissions software in the Vehicles. These devices render the emission control systems of the Vehicles ineffective and constitute one or more Defeat Devices, which are banned under Canadian and US law.

4. The Defeat Devices permitted the Vehicles to pass regulatory emission tests in that the Defeat Devices can detect laboratory testing conditions and, when tested, falsely showed the Vehicles' emissions to be at lawful levels. In reality, the Vehicles emit unlawful quantities of noxious gases and particulate matter during their common operation and use. But for the Defeat Devices, the Vehicles' excessive emissions would have prevented them from obtaining regulatory approval.

5. The Ford Defendants designed, manufactured and distributed the Vehicles. The Bosch defendants supplied the Defeat Devices. The Ford Defendants implemented the Defeat Devices in the Vehicles before importing the Vehicles into Canada to be marketed, sold and leased to Class Members.

6. The Defendants promoted the Vehicles' trademarked "Power Stroke" engine, which the Defendants misleadingly marketed as fuel-efficient and powerful, with superior towing capabilities, clean, and environmentally friendly. These representations were not true. The Defendants knew that these attributes enhanced the value of the Vehicles in the minds of customers. As a result, the Vehicles were sold at significant markups to Class Members.

7. The Defendants were negligent in designing, manufacturing and installing the Defeat Devices in the Vehicles. They negligently made misrepresentations to Class Members and violated Canadian environmental, competition and consumer protection statutes.

8. The Defendants' unlawful conduct caused the Plaintiffs and Class Members to suffer damages for which the Defendants are liable.

D. THE PLAINTIFF AND THE CLASS

4. The Plaintiff, Barbara Jovanovic, is an individual residing in London, Ontario. As of the date of the issuance of this Statement of Claim, she owned one of the Vehicles, namely a 2017 Ford F-350 Super Duty truck with a Power Stroke diesel engine.

5. The Plaintiff seeks to represent the Class, which is comprised of all persons in Canada, except for Excluded Persons, who own, owned, lease or leased one of the Vehicles, or such other definition that the court finds favourable.

E. THE DEFENDANTS

a. Ford Defendants

6. Ford Canada is a company incorporated under Ontario's *Business Corporations Act* with its head office in Oakville, Ontario.

7. Ford Canada is a subsidiary of Ford US. Ford Canada is involved with, has responsibilities and provides direction for the research, design, development, engineering, manufacture, regulatory compliance, marketing, distribution, sale and lease of the Vehicles throughout Canada.

8. At all material times, Ford Canada was the sole distributor of the Vehicles in Canada. It sold the Vehicles through its dealer and retailer network, which were controlled by the Ford Defendants and were their agents.

9. Ford US is a corporation incorporated under the laws of the State of Delaware with its head office in Dearborn, Michigan.

10. Ford US, either directly or through its subsidiaries, including Ford Canada, engages in the research, design, development, engineering, manufacture, regulatory compliance, marketing, distribution, sale and lease of the Vehicles.

11. The emissions testing of the Vehicles in the United States was facilitated by Ford US and Ford Canada and such testing was relied upon by Canadian regulatory authorities, Class Members and the general public.

12. The business of each of Ford Canada and Ford US are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the research, design, development, engineering, manufacture, regulatory compliance, marketing, distribution, sale and lease of the Vehicles and for the purposes of the claims described herein.

b. Bosch Defendants

13. Bosch GmbH is a company incorporated pursuant to the laws of Germany with its head office in Gerlingen, Germany. Bosch GmbH is the parent company of Bosch LLC and Bosch Inc.

14. Bosch LLC is a Delaware limited company with its head office in Farmington Hills, Michigan. Bosch LLC is a subsidiary of Bosch GmbH.

15. Bosch Inc. is a Canadian corporation with its head office in Mississauga, Ontario. Bosch Inc. is a subsidiary of Bosch GmbH.

16. Bosch GmbH, directly and/or through its North American subsidiaries, Bosch LLC and Bosch Inc., at all material times, researched, designed, manufactured, engineered and supplied elements of the Defeat Devices to the Ford Defendants for use in the Vehicles.

17. The business of each of Bosch GmbH, Bosch LLC and Bosch Inc. are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the research, design, manufacture, engineering, marketing, sale and/or distribution of the Software and the components that enabled its use, and for the purposes of the claims described herein.

F. DIESEL EMISSIONS

18. Over the past several decades, consumer preferences and tightening regulations have created a strong demand in the consumer automotive market for vehicles that offer superior performance and fuel-efficiency, and are better for the environment.

19. Responding to these changing economic and regulatory trends, some automakers, including the Ford Defendants, sought to compete by developing automobiles with purportedly “clean” and fuel-efficient diesel engines.

20. Diesel-powered engines differ from gasoline-powered engines in that they use highly compressed hot air to ignite the fuel rather than a spark plug. As a result of a different combustion process, diesel exhaust is materially different from the exhaust produced by gasoline engines.

21. Among other things, the lean-burning nature of diesel engines and the high temperatures and pressures of the combustion process result in vastly increased levels of NO_x and other pollutants, as compared to the levels in gasoline engine exhaust. NO_x emissions are dangerous air pollutants that are harmful to humans and the environment. The release of NO_x emissions contributes to, among other things, the formation of acid rain and ground level ozone. Exposure to NO_x causes or contributes to, among other health issues, serious forms of respiratory illness, and poses a particular threat to the elderly, children, and people with asthma.

22. Due to the potentially significant impacts to human health and the environment posed by diesel emissions, there are strict Emissions Standards in place that automakers are required to comply with, as further set out herein. In order to comply with these regulatory standards, manufacturers of diesel vehicles employ a number of systems (including engine control software and emissions hardware systems) in order to reduce NO_x emissions.

23. While these emissions control systems are essential to keeping emissions at compliant levels, when operative they can have the corresponding effect of limiting acceleration and torque and reducing fuel efficiency.

G. CANADIAN EMISSION LAWS AND REGULATIONS

24. The purpose of *CEPA* is to contribute to sustainable development through pollution prevention. To further this objective, Canada enacted the Emissions Standards pursuant to section 160 of *CEPA*.

25. The Vehicles and their engines are required to meet the Emissions Standards in order to be sold, used or licensed in Canada. The Emissions Standards are closely aligned with those of the United States to ensure that common, safe environmental outcomes are achieved. To these ends,

the Emissions Standards prescribe exhaust and evaporative emission standards for the Vehicles, specifying that the Vehicles must conform to standards prescribed by the US CFR.

26. An important aspect of the harmonization of Canadian and US standards is the recognition of certificates issued by the EPA. Under *CEPA* and the Emissions Standards, vehicles and engines that are granted an EPA certificate and sold concurrently in Canada and the US do not require further approvals under Canadian law.

27. The EPA granted certificates in relation to the Vehicles which indicated that the Vehicles complied with emissions legislation in the US, and therefore Canada, under the harmonized regime, and enabled Ford Canada to sell or lease the Vehicles to Class Members.

28. Canadian and US emissions regulations prohibit equipping a vehicle or engine with a Defeat Device subject to limited exceptions that are not applicable to this proceeding. Additionally, as part of the certification process, automakers are required to disclose and explain any AECs that can alter how a vehicle emits air pollution.

29. At all material times, the Defendants were required to comply with Canadian law, the Vehicles were required to comply with Canadian law and the Defendants knew or should have known that the Vehicles were required to comply with Canadian law, regulations and policy in respect of Emissions Standards, including those imposed pursuant to *CEPA* and the regulations thereto, and to Provincial and Territorial emissions legislation and regulations. All persons, including the Defendants, are prohibited from assembling, manufacturing, importing and/or selling into Canada vehicles, engines or equipment unless the Emissions Standards are met.

30. In addition to, and separate from, the Defeat Devices, the Vehicles generally emit pollutants, including NOx, in amounts that exceed the limits set out in Emissions Standards during real-world operation in many circumstances.

31. The emissions from the Vehicles during common driving conditions exceed Canadian and American laws and regulations and allow emissions (including NOx) and pollution at dangerous levels, which affect the health and safety of Canadians. Among other failures, the Defendants failed to warn the Class Members of the foregoing, notwithstanding that the Defendants knew or ought to have known that the Vehicles and their emissions systems did not comply with Emissions Standards and defeated the common, safe environmental outcomes contemplated by Federal, Provincial and Territorial laws and regulations.

32. As a result of the acts of the Defendants, each owner or lessee of a Vehicle is or may be in violation of Federal, Provincial and Territorial environmental laws, regulations and policies, including the *CEPA* and its regulations and the *EP Act*.

H. ROLE OF THE BOSCH DEFENDANTS

33. The Bosch Defendants form one of the leading automotive suppliers globally, and were so throughout the period relevant to this proceeding. They heavily campaigned and lobbied for diesel vehicles and were the *sine qua non* of the rapid expansion of diesel engine vehicles in Europe and later in North America. They held themselves out as “the world’s leading manufacturer of diesel injection systems” and played a “decisive” role in the expansion of the diesel vehicle market, supplying the diesel control components, as specified below, of numerous cars and trucks including the Vehicles.

34. The Bosch Defendants researched, designed, developed, tested, configured, manufactured, engineered and supplied the Vehicles' diesel engine control unit. This diesel engine control unit is the Bosch Defendants' Electronic Diesel Control Unit 17 ("**Bosch EDC17**"). Bosch EDC17 controls the Vehicles' emissions; it is the computer that manages the emission components of the Plaintiff's Vehicle and of the Vehicles of all Class Members.

I. DEFENDANTS CONSPIRED TO CREATE AND USE DEFEAT DEVICES

35. The Ford F-Series Super Duty exhaust treatment system consists of four components: the Exhaust Gas Recirculation System (the "EGR"), the Diesel Oxidation Catalyst (the "DOC"), the Selective Catalytic Reduction (the "SCR"), and the Diesel Particulate Filter (the "DPF"). The DPF traps particulate pollutants (like soot) but must regenerate regularly to maintain low exhaust backpressure. There are two ways the DPF can regenerate: passively, through catalysts built into the components (Passive Regeneration) that use nitrogen dioxide as the primary oxidizer, and actively, where the engine and HCl generate temperatures high enough to oxidize trapped carbon through direct (*i.e.*, non-catalytic) oxidation (Active Regeneration). Active Regeneration generally, though not always, requires the vehicle to be driven at highway speeds for a continuous period. Active Regeneration reduces fuel economy, decreasing miles per gallon and engine efficiency. Thus, manufacturers like Ford seek to minimize Active Regeneration cycles. Active Regeneration also leads to excessive NO_x and reduces the life span of the SCR catalyst as the high temperatures drive hydrothermal aging and deactivation of the SCR catalyst.

36. Passive Regeneration relies on the presence of NO_x (specifically nitrogen dioxide) to catalytically oxidize captured soot. The catalyst oxidizes nitric oxide to nitrogen dioxide, which then reacts at relatively low temperatures to oxidize and remove captured soot. Passive Regeneration works best when the exhaust passing through the DPF still contains high levels of

NOx pollutants that trigger the catalyst to regenerate the filter. As a result, most diesel engine manufacturers put the DOC upstream of the SCR system where NOx concentrations are still relatively high and the DPF is more likely to regenerate via the passive regeneration mechanism.

37. While the SCR is very effective at reducing NOx emissions, it requires hot exhaust for the urea catalyst to function properly. Thus, when it is placed downstream of the DPF, so as to increase Passive Regeneration and decrease the need for Active Regeneration, the system takes some time to warm up and does not work well when the engine system is cold. The DPF absorbs much of the heat during exhaust warmup and delays the time for the SCR catalyst to reach its light-off temperature.

38. But emissions testing to allow the Vehicles to be sold in the United States and Canada requires a “cold start” emissions measurement. That is, they must emit low levels of NOx even when they have just started and are not yet operating at high exhaust temperatures. To avoid increasing Engine Gas Recirculation (EGR) or using other inefficient methods to reduce “cold start” emissions, the Ford Defendants departed from the DOC–DPF–SCR order that many other manufacturers use and designed its engines with the SCR system closer to the engine than the DPF.

39. This configuration allows the SCR system to warm up sooner, allowing sufficiently reduced NOx emissions to pass the cold start test required for EPA certification. However, because the NOx is reduced before the exhaust reaches the DPF filter, there is little Passive Regeneration in the DPF. Without relatively high NOx levels going into the DPF, more Active Regeneration is required, resulting in reduced fuel economy, reduced lifetime of the SCR catalysts, and a significant increase in overall NOx emissions.

40. To solve this problem, the Ford Defendants used Defeat Devices, which increase engine power and efficiency, increase NOx levels into the DPF, and decrease the need for Active Regeneration. These Defeat Devices caused the Vehicles to emit up to 30 to 50 times the permissible limit for NOx pollutants during common driving conditions. The Ford Defendants could not meet the Emissions Standards without these Defeat Devices.

41. The Bosch Defendants embedded sales and engineering personnel at customer offices and facilities throughout the world, including with the Ford Defendants, to work directly on the design, sale, calibration, and configuration of the parts that they supplied. Additionally, the Ford Defendants frequently engaged in discussions with the Bosch Defendants regarding calibrations of the emission control technology of the Vehicles.

42. The Bosch Defendants created the Defeat Devices by writing all the computer code for Bosch EDC17 and by customizing Bosch EDC17 so as to allow the Vehicles to simulate passing regulatory emission tests. Bosch EDC17 enabled the Vehicles to detect test scenarios by monitoring factors such as vehicle speed, acceleration, engine operation, air pressure and the position of the steering wheel. Unlike test scenarios, during real-world driving conditions the Software fully or partially disables the Vehicles' emission controls. When the emission controls are disabled on the road, the Vehicles can emit up to 30 to 50 times the legal limits of NOx.

43. The Bosch Defendants were aware that the Ford Defendants used their emission control technology as a defeat mechanism. The Bosch Defendants knew and intended that the Vehicles be marketed, distributed, warranted, sold and leased throughout Canada.

44. The Defendants knowingly, intentionally or negligently incorporated into the Vehicles certain AECDs that were not disclosed to regulators. These AECDs were, or amounted to one or

more Defeat Devices. Alternatively, the Ford Defendants sold and distributed the Vehicles when the Defendants knew or should have known of the Defeat Devices in the Vehicles. The purpose of including these undisclosed AECs was to evade Emissions Standards and other US, Canadian Federal, Provincial and Territorial laws, regulations and policies about emissions standards and to mislead regulators and consumers about the performance of the Vehicles.

45. The fact that the Vehicles do not satisfy Emissions Standards subjects the Class Members to potential penalties, sanctions and the denial of the right to use the Vehicles.

J. REPRESENTATIONS

46. The Ford Defendants' marketing efforts focused on highlighting the Vehicles' purported towing capacity, fuel efficiency and clean emissions benefits.

47. The Ford Defendants made, approved or authorized a number of consistent, common and uniform representations in, among other things, their written warranties, vehicle manuals, television and radio, media releases, internet, social media and print media advertising, website(s), sales brochures, posters, dealership displays and other marketing materials in relation to the Vehicles. The Ford Defendants represented, among other things, that:

- (a) the Vehicles met or exceeded all relevant Federal, Provincial and Territorial emissions regulations;
- (b) the Vehicles met certain specified fuel economy ratings and that those ratings had been accurately reported to regulators;
- (c) the Vehicles produced a certain specified amount of NO_x and those NO_x ratings had been accurately reported to regulators;

- (d) the Vehicles were “environmentally friendly”, “greener”, environmentally compliant and were the “[c]leanest Super Duty diesel ever”; for example, the Ford Defendants represented to Class Members: “Effective new emissions control system [in the Power Stroke engine] ... Virtually eliminates soot and greenhouse gases”;
- (e) the Vehicles provided a superior driving experience, including by virtue of their fuel economy and emissions; for example, the Ford Defendants represented to Class Members: “Best-in-class diesel fuel economy is maintained with the help of high-pressure fuel injectors that achieve a clean, efficient burn”;
- (f) the Vehicles provided superior towing capacity; for example, the Ford Defendants represented to Class Members: “class leading fuel economy, and towing capacity”;
and
- (g) the Vehicles would live up to high performance standards and specifications and a particular level of fuel economy, while emitting a low level of pollutants and emissions.

48. In addition, the Ford Defendants consistently failed to state any or all of the following facts:

- (a) the Vehicles were not free from dangerous defects;
- (b) the Defeat Device(s) in the Vehicles created inaccurate emissions testing results;
- (c) the Defeat Device(s) in the Vehicles was designed to create false emissions testing results; and

- (d) the Defeat Device(s) in the Vehicles did mislead those persons who tested emissions in the Vehicles.

49. In addition to, and separate from, factual omissions regarding the Defeat Device(s), the Ford Defendants failed to state any or all of the following facts:

- (a) the Vehicles emitted more pollutants than the testing of the Vehicles indicated;
- (b) the Vehicles emitted more pollutants than the Ford Defendants had publicly stated;
- (c) the Vehicles' towing capabilities were only possible if the emissions controls were turned down or deactivated; and
- (d) the fuel consumption and fuel economy represented by the Ford Defendants was not in fact accurate.

50. These representations, which include the omissions, were made by the Ford Defendants to the Plaintiff and the Class Members directly or through their dealer-agents.

51. These representations were false.

52. Similar to the Ford Defendants, the Bosch Defendants' marketing efforts focused on highlighting the purported fuel efficiency and clean emissions benefits of the Vehicles' diesel technology.

53. The Bosch Defendants made, approved or authorized a number of consistent, common and uniform representations in television and radio, media releases, internet, social media and print media advertising, website(s), sales brochures, posters and other marketing materials in relation to their diesel technology. The Bosch Defendants represented, among other things, that:

- (a) Bosch EDC17 “controls every parameter that is important for effective, low-emission combustion”;
- (b) Bosch EDC17 “offers a large number of options such as the control of particulate filters or systems for reducing nitrogen oxides”;
- (c) vehicles equipped with the Bosch Defendants’ diesel technology met or exceeded the “strictest” emissions regulations;
- (d) vehicles equipped with the Bosch Defendants’ diesel technology had “low fuel consumption” and “more efficient fuel combustion”;
- (e) “[i]n comparison to a typical diesel made in 1990, the particulate output [of vehicles equipped with the Bosch Defendants’ diesel technology] today is around 98 percent lower. In the case of nitrogen-oxide, the reduction quota of 96 percent is at a similarly high level”; and
- (f) vehicles equipped with the Bosch Defendants’ diesel technology were environmentally friendly, environmentally compliant, “clean”, “conserve our natural resources and thus contribute toward saving the planet.”

54. In addition, the Bosch Defendants failed to state that the components that they supplied in the Vehicles were not free from defects, failed to comply with Emissions Standards, contained one or more Defeat Devices and were not as clean as the Bosch Defendants represented.

55. The Bosch Defendants made these representations and omissions to the Plaintiffs and the Class Members directly or through their agents and co-conspirators including the Ford Defendants.

56. These representations were false.

57. Instead of delivering on their promise that the diesel-powered Vehicles would provide superior fuel-efficiency, towing capacity and performance coupled with clean emissions, the Defendants decided to create the appearance of low emissions by installing the Software in the Vehicles. By installing the Software, the Vehicles' emissions only complied with Emissions Standards in testing conditions, but exceeded Emissions Standards under common driving conditions.

K. BREACH OF EXPRESS AND IMPLIED WARRANTIES

58. The Ford Defendants expressly or impliedly warranted to the Plaintiff and the Class Members that the Vehicles would be reasonably fit for the purposes of driving on roads in Canada, that the Vehicles were of merchantable quality, that the Vehicles were free from defects and/or that the Vehicles were of acceptable quality, when in fact the Vehicles were not.

59. Without limiting the generality of the foregoing, Ford Canada provided the Class Members with a uniform written warranty that covered any repair connected to a manufacturer's defect in material or workmanship and, among other things:

- (a) specifically warranted that the Vehicles' emission control systems were designed, built and equipped to conform with all relevant Federal, Provincial and Territorial regulatory emissions requirements;
- (b) warranted that the Vehicles' emission control systems were free from defects in materials and workmanship that would cause the Vehicles to fail to conform with relevant emissions requirements or otherwise;

- (c) specifically noted that any failure of a warranted regulated emission part could cause a Vehicle to fail to conform with Federal emissions requirements; and
- (d) warranted (to original purchasers and lessees as well as subsequent purchasers) that Ford Canada would remedy any non-conformity that resulted in a Vehicle failing a Federal, Provincial, or Territorial emissions control test.

60. Despite and contrary to the foregoing warranties and representations, the Vehicles were sold or leased when they were intentionally or negligently manufactured, designed, tested, assembled, built and equipped not to comply with Federal, Provincial, and Territorial regulatory requirements, and the Ford Defendants concealed from or failed to disclose that non-compliance to Class Members and regulators.

61. The Vehicles' engine, emissions system, Software and Defeat Device(s) are warranted parts under the warranty. The Vehicles are defective under the terms of the warranty and any similar or related extended warranties.

62. As a result of the installation of the Defeat Device(s) and the high NOx emissions and other pollutants from the Vehicles, they are not reasonably fit, of a merchantable quality or of a reasonably acceptable quality for the purposes of driving on roads in Canada and contain defects.

63. The Ford Defendants have breached their warranties to the Plaintiff and Class Members, and as a result the Plaintiff and Class Members have suffered damages for which the Ford Defendants are liable.

L. NEGLIGENT MISREPRESENTATION

64. The Defendants were in a proximate and special relationship with the Plaintiff and the Class Members by virtue of, among other things:

- (a) their design and manufacture of the Vehicles as well as the Power Stroke engines, Bosch EDC17, the engine control units, emission control mechanism and other parts contained in the Vehicles;
- (b) their skill, experience and expertise in the design and manufacturing of automotive diesel engines and vehicles generally;
- (c) the fact that Class Members had no means of knowing or investigating the existence or use of the Defeat Device(s); and
- (d) the Defendants' complete control of the promotion and marketing of the Vehicles, and the need for Class Members to rely on the Representations and integrity of the Defendants in respect of the Vehicles and their attributes.

65. The Defendants owed a duty of care to the Plaintiff and the Class Members. It was intended by the Defendants and reasonably foreseeable that the Class Members would reasonably rely, to their detriment, upon the Representations when purchasing or leasing the Vehicles and would suffer loss.

66. The Plaintiff and Class Members reasonably relied on the Representations in deciding whether to purchase or lease the Vehicles. Their reliance can be inferred on a class-wide basis from the purchase or lease of the Vehicles. Had the Representations not been made, the Vehicles would not have been permitted for sale in Canada, the Class Members could not have made the

purchase or lease and would not have paid the higher price charged for Vehicles equipped with the Power Stroke diesel engine.

67. The Representations were false and were made negligently.

68. The Plaintiff and the Class Members suffered loss as a result of relying on the Representations. The Defendants are liable to pay damages to the Class Members.

M. NEGLIGENCE

69. The Defendants owed a duty of care to the Plaintiff and the Class Members to ensure that the Vehicles were engineered, designed, developed, tested and manufactured free of dangerous defects, without a Defeat Device, that the Vehicles were in compliance with Emissions Standards, and that the Vehicles were lawfully imported into Canada. Moreover, the Defendants owed the Class Members a duty to warn that the Vehicles incorporated and used a Defeat Device, and, independent of the Defeat Device(s), that the Vehicles contained dangerous defects.

70. The Defendants knew and it was reasonably foreseeable that the Class Members would trust and rely on the Defendants' skill and integrity in purchasing or leasing the Vehicles. The Defendants also knew and it was reasonably foreseeable that, if the Vehicles contained defects or were not compliant with Emissions Standards, the value of the Vehicles would diminish and the Vehicles could be subject to recalls, which would cause the Class Members to suffer loss.

71. The standard of care reasonably expected in the circumstances required the Defendants to act fairly, reasonably, honestly, candidly and with due care in the course of researching, designing, developing, engineering, testing and manufacturing the Vehicles and having them certified,

imported, distributed, marketed and sold or leased. The Defendants, through their employees, officers, directors and agents, failed to meet the required standard of care.

72. The Defendants' negligence proximately caused damage to the Plaintiff and the other Class Members. Had the Defendants complied with the required standard of care, the Vehicles would have been sold without dangerous defects and without the Defeat Device(s) or would not have been imported into or sold and leased in Canada at all, or, alternatively, they would have been offered and/or acquired at reduced prices that represented their true value.

73. As a result of the Defendants' failure to disclose the true specifications of the Vehicles, the Plaintiff and Class Members suffered damages.

N. UNLAWFUL MEANS CIVIL CONSPIRACY

74. The Defendants and other unknown co-conspirators unlawfully agreed and conspired to research, design, develop, manufacture and install the Defeat Devices, to market, distribute, sell and lease the Vehicles containing the Defeat Devices, and to deceptively conceal their existence in the Vehicles.

75. The Defendants' conduct was unlawful, as contrary to US and Canadian laws.

76. The Defendants' conduct was directed towards the Plaintiffs and the Class. The Defendants knew or should have known that harm to the Plaintiffs and the Class was likely.

O. STATUTORY RIGHTS OF ACTION

a. CEPA

77. The Ford Defendants imported and/or sold the Vehicles into Canada in violation of *CEPA* and the Emissions Standards. Had the Ford Defendants not violated *CEPA* and the Emissions

Standards, the Class Members either would not have bought the Vehicles or the Vehicles would have been free from dangerous defects that caused a diminution of their value. The Class Members have therefore suffered damages as a result of the Ford Defendants' contravention of *CEPA* and the Emissions Standards.

78. Pursuant to section 40 of *CEPA*, the Ford Defendants are liable to pay the Class Members an amount equal to their loss or damage arising from the Ford Defendants' contraventions of *CEPA* and Emissions Standards, plus investigative costs.

b. *COMPETITION ACT*

79. The Defendants made the Representations to the public and in so doing breached section 52 of the *Competition Act* because the Representations:

- (a) were made for the purpose of promoting the supply or use of the Vehicles and the diesel technology contained therein for the business interests of the Defendants;
- (b) were made to the public; and
- (c) were false and misleading in a material respect.

80. The Plaintiff and the Class Members relied on the Representations in purchasing or leasing the Vehicles to their detriment. The Plaintiff and the Class Members would not have purchased or leased the Vehicles without the Representations made in breach of section 52.

81. The Defendants' breach of section 52 of the *Competition Act* caused loss and damage to the Plaintiff and the Class Members. Pursuant to section 36 of the *Competition Act*, the Defendants are liable to pay these damages plus investigative costs resulting from this breach.

**c. CONSUMER PROTECTION ACT AND EQUIVALENT CONSUMER
PROTECTION STATUTES**

82. The Ford Defendants are located in Ontario for the purposes of the *Consumer Protection Act*.

83. Class Members in Ontario who purchased or leased the Vehicles for personal, family or household purposes are consumers for the purposes of the *Consumer Protection Act*.

84. Class Members resident in British Columbia, Alberta, Saskatchewan, Manitoba, Prince Edward Island and Newfoundland and Labrador and Québec, who purchased or leased the Vehicles for personal, family or household purposes and/or not for resale or for the purpose of carrying on business (as those concepts apply in the various Provinces), are consumers located in those provinces for the purposes of the Equivalent Consumer Protection Statutes. The Ford Defendants carried on business in those Provinces and were, among other things, suppliers for the purposes of the Equivalent Consumer Protection Statutes.

85. The Ford Representations constituted unfair, unconscionable and/or otherwise prohibited practices under the *Consumer Protection Act* and Equivalent Consumer Protection Statutes, given that, among other things, the Ford Defendants knew, or ought to have known, that:

- (a) the Ford Representations were false, misleading and deceptive;
- (b) the Vehicles did not have the performance characteristics, uses, benefits or qualities as set out in the Ford Representations;
- (c) the Vehicles were not of the particular standard, quality or grade as set out in the Ford Representations;

- (d) the Vehicles did not provide the specific price advantage as set out in the Ford Representations;
- (e) the Ford Representations used exaggeration, innuendo and/or ambiguity as to a material fact and failed to state a material fact in respect of the Vehicles;
- (f) the price for the Vehicles grossly exceeded the price at which similar goods or services were readily available to like consumers;
- (g) the Class Members were unable to receive all expected benefits from the Vehicles;
- (h) the consumer transactions were excessively one-sided in favour of the Ford Defendants;
- (i) the terms of the consumer transactions were so adverse to the Class Members as to be inequitable; and/or
- (j) because of such further conduct concealed by the Ford Defendants and unknown to the Plaintiff.

86. The Ford Representations were made on or before the Plaintiff and other Class Members entered into the agreements to purchase the Vehicles.

87. The Plaintiff and other Class Members are entitled to rescission of the purchase, lease or other related agreements as well as damages pursuant to section 18 of the *Consumer Protection Act* and equivalent provisions of the Equivalent Consumer Protection Statutes.

88. The Class Members are entitled, to the extent necessary, to a waiver of any notice requirements under the *Consumer Protection Act* or of the Equivalent Consumer Protection

Statutes, particularly as the Ford Defendants have concealed the actual state of affairs from the Class Members.

P. UNJUST ENRICHMENT

89. The Ford Defendants caused the Class Members to pay money for a dangerous and illegal product, which contrary to *CEPA*, the *Competition Act*, the *Consumer Protection Act* and Equivalent Consumer Protection Statutes, they should not have paid for or, in the alternative, for which they should have paid less than they did.

90. As a result of their conduct, the Ford Defendants were enriched by the payment or overpayment.

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

92. There is no juristic reason for the Ford Defendants' enrichment and the Class Members' corresponding deprivation. The Class Members are entitled to restitution and/or a disgorgement of profits as a result of the Ford Defendants' unjust enrichment.

Q. DAMAGES

93. As a result of the conduct pleaded above, the Plaintiffs and Class Members have suffered damages corresponding to the reduced value of the Vehicles, the premium paid for "clean" diesel engine technology, and the repair or replacement of the Vehicles' components.

94. For those Class Members who purchased Vehicles, new or used, for resale, they have suffered loss corresponding to the reduction in the sale or resale value of the Vehicles. In addition, some or all of the Vehicles are not saleable in the circumstances outlined above. In order for the

Vehicles to be brought in line with Provincial and Federal emissions rules, regulations and laws, the Vehicles' performance standards will have to be lowered and reduced. The Vehicles will suffer a decrease in performance, towing capacity, and efficiency and increased wear and tear on their engines. As a result, the value of each of the Vehicles will be irreparably diminished.

95. Each Class Member paid a premium of at least \$10,000 on their Vehicle, as Ford Canada charged more for its diesel-powered vehicles than comparable gasoline-powered vehicles. As a result of the Defendants' unfair and deceptive business practices, and their failure to disclose that under common operating conditions the Vehicles are not "clean" diesels, Class Members have suffered losses.

96. Each Class Member must expend the time to have their Vehicles repaired, and be without their Vehicles. The Class Members cannot have their Vehicles repaired immediately. The Defeat Device(s) will impact Class Members' ability to get a renewal of their license plate for each of the Vehicles and will need to have a complete replacement of their engines.

97. If Ford Canada recalls the Vehicles and degrades their engine performance and fuel efficiency in order to make the Vehicles compliant with Emissions Standards, Class Members will be required to spend additional sums on fuel and will not obtain the performance characteristics of their Vehicles when they were purchased.

98. The Class Members' damages were sustained in Ontario and in the rest of Canada.

99. The Plaintiff pleads that, due to the egregious nature of the Defendants' conduct, including, without limiting the generality of the foregoing, deceiving the marketplace as to the environmental friendliness of the Defendants and their Vehicles, manipulating environmentally-conscious

customers into purchasing Vehicles that emit a higher volume of pollutants than comparable vehicles, manipulating price-conscious customers into purchasing Vehicles that consume more fuel than comparable vehicles, designing, developing and equipping the Vehicles with defective engines for the illegal purpose of circumventing emissions tests purely for economic gain at the sacrifice of Class Members and the environment, the Plaintiff and Class Members are entitled to recover aggravated, punitive and exemplary damages. The Defendants' conduct offends the moral standards of the community and warrants the condemnation of this Court.

R. WAIVER OF TORT

100. In the alternative to damages, the Plaintiff claims waiver of tort and thereby an accounting or other such restitutionary remedy for disgorgement of the revenues generated by the Defendants as a result of their unlawful conduct.

101. This remedy is appropriate for the following reasons, among others:

- (a) revenue was acquired in such a manner that the Defendants cannot in good conscience retain it;
- (b) the integrity of the marketplace would be undermined if an accounting was not required; and
- (c) absent the Defendants' tortious conduct the Vehicles could not have been marketed nor would the Defendants have received any revenue for them in Canada.

S. RELEVANT STATUTES

102. The Plaintiff pleads and relies upon the following statutes:

- (a) *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
- (b) *Competition Act*, RSC 1985, c C-34, as amended, and the regulations thereto, sections 36(1) and 52(1);
- (c) *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A, as amended, and the regulations thereto, sections 2, 5, 9(1), 9(2), 14, 15, 16, 17, 18, and 19;
- (d) *Fair Trading Act*, RSA 2000, c F-2, as amended, and the regulations thereto, sections 5, 6, 7, 7.2, 7.3, and 13;
- (e) *Business Practices and Consumer Protection Act*, SBC 2004, c 2, as amended, and the regulations thereto, sections 4, 5, 8, 9, 10, 171, and 172;
- (f) *Business Practices Act*, CCSM c B120, as amended, and the regulations thereto, sections 2, 3, 4, 5, 6, 8, and 23;
- (g) *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, as amended, and the regulations thereto, sections 7, 8, 9, and 10;
- (h) *Consumer Protection Act*, CQLR c P-40.1, as amended, and the regulations thereto, sections 215, 218, 219, 220, 221, 222, 228, 239, 252, 253, 271, and 272;
- (i) *Consumer Protection Act*, SS 1996, c C-30.1, as amended, and the regulations thereto, sections 5, 6, 7, 8, 14, and 16;
- (j) *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, as amended, and the regulations thereto, sections 2, 4, 6-16, 19-22, 24-33, 36, 37, 39, 91 and 93;

- (k) *Business Practices Act*, RSPEI 1988, c B-7, as amended, and the regulations thereto, sections 1, 2, 3 and 4;
- (l) *Consumer Protection Act*, RSNS 1989, c 92, as amended, and the regulations thereto, section 28;
- (m) *Civil Code of Québec*, CQLR c CCQ-1991, as amended, and the regulations thereto;
- (n) *Canadian Environmental Protection Act, 1999*, SC 1999, c 33, as amended, and the regulations thereto;
- (o) *Environmental Protection Act*, RSO 1990, c E.19, as amended, and the regulations thereto, sections 21, 22, and 23;
- (p) *Climate Change and Emissions Management Act*, SA 2003, c C-16.7, as amended, and the regulations thereto, section 60;
- (q) *Motor Vehicle Act*, RSBC 1996, c 318, as amended, and the regulations thereto, sections 47, 48, 49, and 50;
- (r) *The Climate Change and Emissions Reductions Act*, CCSM, c C135, as amended, and the regulations thereto, sections 13 and 14;
- (s) *The Environmental Management and Protection Act, 2010*, SS 2010, c E-10.22, as amended, and the regulations thereto, sections 51, 52, 53, and 54;
- (t) *Environmental Quality Act*, CQLR c Q-2, as amended, and the regulations thereto, sections 51, 52, and 53;

- (u) *Clean Air Act*, SNB 1997, c C-5.2, as amended, and the regulations thereto, section 46;
- (v) *Environment Act*, SNS 1994-95, c 1, as amended, and the regulations thereto, sections 111 and 112;
- (w) *Environmental Protection Act*, RSPEI 1988, c E-9, as amended, and the regulations thereto, section 25;
- (x) *Environmental Protection Act*, SNL 2002, c E-14.2, as amended, and the regulations thereto, section 22;
- (y) *Environmental Protection Act*, RSNWT (Nu) 1988, c E-7, as amended, and the regulations thereto, section 34;
- (z) *Environment Act*, RSY 2002, c 76, as amended, and the regulations thereto, section 145; and
- (aa) *Negligence Act*, RSO 1990, c N.1, as amended and the equivalent Provincial and Territorial legislation.

T. SERVICE

103. This originating process may be served without court order outside Ontario in that the claim is:

- (a) in respect of real or personal property in Ontario (Rule 17.02(a));
- (b) in respect of the interpretation or enforcement of a deed, will, contract or other instrument in respect of real or personal property in Ontario (Rule 17.02(c));

- (c) in respect of a contract where the contract was made in Ontario, the contract provides that it is to be governed by or interpreted in accordance with the law of Ontario, and a breach of contract has been committed in Ontario (Rule 17.02(f));
- (d) in respect of a tort committed in Ontario (Rule 17.02(g));
- (e) authorized by statute to be made against a person outside Ontario by a proceeding commenced in Ontario (Rule 17.02(n)); and
- (f) brought against a person ordinarily resident or carrying on business in Ontario (Rule 17.02 (p)).

January 10, 2018 (amended September 17, 2019)

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BARBARA
JOVANOVIC
Plaintiff

and

FORD MOTOR COMPANY OF CANADA, LIMITED, et
al.
Defendants

Court File No.: 5081/18

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at MILTON

Proceeding under the *Class Proceedings Act, 1992*

AMENDED STATEMENT OF CLAIM

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