

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



JACK ROMBOUTS

Plaintiffs

and

**FCA CANADA INC., FIAT CHRYSLER AUTOMOBILES N.V.
and FCA US LLC**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

NOTICE OF ACTION

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the Statement of Claim served with this Notice of Action.

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 Notice of Action is served on you, if you are served in Ontario.

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

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

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

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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

Date

January 16, 2017

Issued by



Local Registrar

Address of
court office:

Superior Court of Justice
393 University Avenue, 10th Floor
Toronto ON M5G 1E6

TO: FIAT CHRYSLER AUTOMOBILES N.V.
25 St. James's Street
London SW1A 1H1
United Kingdom

AND TO: FCA US LLC
1000 Chrysler Drive
Auburn Hills, Michigan
48326-2766
U.S.A.

AND TO: FCA CANADA INC.
One Riverside Drive West
Windsor, Ontario
N9A 5K3

CLAIM

1. The plaintiff's claim is for:

- (a) An order certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff;
- (b) Damages or compensation in an amount not exceeding \$250,000,000 for:
 - (i) Loss and damage suffered as a result of conduct contrary to part III of the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A ("***Consumer Protection Act***"), and its equivalent acts in all other Canadian provinces;
 - (ii) Loss and damage suffered as a result of conduct contrary to section 52 of the *Competition Act*, RSC 1985, c C-34 ("***Competition Act***");
 - (iii) Civil conspiracy; and
 - (iv) Negligence.
- (c) Punitive, exemplary and aggravated damages in the amount of \$10,000,000;
- (d) An equitable rate of interest on all sums found due and owing to the plaintiff and other class members or, in the alternative, pre- and post-judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c C43 ("***Courts of Justice Act***");
- (e) Investigative costs pursuant to section 36 of the *Competition Act* and costs of this proceeding on a full-indemnity basis pursuant to section 36 of the *Competition Act* and the *Courts of Justice Act*; and

- (f) Such further and other relief as this Honourable Court deems just.

The Nature of the Action

2. This action arises from the intentional or negligent and dangerous design, manufacture and installation of software in vehicles which suppressed the true measure of emissions or pollutant levels, including nitrogen oxide, in the following diesel light-duty vehicles that were manufactured and/or distributed by FCA Canada Inc. (“**FCA Canada**”): model year 2014-2016 Jeep Grand Cherokees and model year 2014-2016 Dodge Ram 1500 trucks (collectively, the “**Vehicles**”).

The Plaintiff and the Class

3. Jack Rombouts resides in Watford, Ontario. As of January 12, 2017, he owned one of the Vehicles, namely, a 2015 Dodge Ram 1500 EcoDiesel.

4. The plaintiff seeks to represent a proposed class (the “**Class**” or the “**Class members**”) comprised of all persons in Canada who purchased and/or leased one of the Vehicles.

The Defendants

5. Fiat Chrysler Automobiles N.V. (“**FCA NV**”) is an Italian corporation headquartered in London, United Kingdom. It is the world’s seventh largest auto maker. Fiat and its wholly owned subsidiaries are responsible for the engineering, design, development, research and manufacture of the Vehicles.

6. FCA US LLC (“**FCA US**”) is an American corporation headquartered in Auburn Hills, Michigan. FCA US is an indirect wholly-owned subsidiary of FCA NV.

7. FCA Canada is a Canadian corporation headquartered in Windsor, Ontario. While FCA Canada does not manufacture the Vehicles in Canada, it does manufacture a number of other models in Canada and it is also involved with the engineering, design, development, research, manufacture and distribution of the Vehicles. FCA Canada is a wholly-owned subsidiary of FCA US, a member of the Fiat family of companies.

8. At all material times, FCA Canada was the sole distributor of the vehicles in Canada. It sold the Vehicles through its dealer and retailer network.

The Engine Management Software

9. The emissions and pollutants, including nitrogen oxide, from the diesel engines in the Vehicles are measurable.

10. On January 12, 2017, the U.S. Environmental Protection Agency (“EPA”) issued a notice of violation to FCA NV and FCA US for alleged violations of the Clean Air Act for installing and failing to disclose engine management software in the Vehicles that result in increased emissions of nitrogen oxides from the Vehicles.

11. The Enforcement Division of the California Air Resources Board (“CARB”) also issued a notice of violation to FCA NV, FCA US and Chrysler Group LLC on January 12, 2016 for alleged violations of California law for failing to disclose emissions control devices that shut off portions of the emissions control system under select conditions, leading to substantial excess nitrogen oxide emissions, and are not triggered during certification cycles.

12. FCA Canada notified the public through Automotive News Canada that Vehicles in Canada carried the same diesel emissions control equipment that the EPA found was used illegally on Vehicles in the U.S.

Breach of the Consumer Protection Act

13. The plaintiff and the Class were deceived by the defendants' failure to disclose, *inter alia*, the presence of engine management software in the Vehicles that resulted in increased emissions and pollutants. As a result, the Class is entitled to damages under the Ontario *Consumer Protection Act* (and its equivalent acts in all other Canadian Provinces).

Breach of the Competition Act

14. The defendants breached section 52 of the *Competition Act* by failing to disclose, *inter alia*, that the engine management software in the Vehicles results in increased emissions and pollutants, because the representation:

- (a) Was made for the purpose of promoting the business interests of the defendants;
- (b) Was made to the public;
- (c) Was false and misleading in a materials respect; and
- (d) Stated that the Vehicles emitted less emissions or pollutants than they actually did.

Civil Conspiracy

15. FCA Canada, FCA NV, FCA US and others, including their officers, directors and agents, conspired to intentionally create a manipulative software to defeat or suppress the true nature of

dangerous emissions and pollutants, including nitrogen oxide, for diesel engines in the Vehicles when being examined for emission standards and failed to disclose to the EPA.

Negligence

16. FCA Canada, FCA NV and FCA US, through their employees, officers, directors and agents, failed to meet the reasonable standard of care expected in the circumstances when manufacturing and/or distributing the Vehicles and the diesel engines in the Vehicles.

Punitive, Exemplary and Aggravated Damages

17. As a result of the dangerous and harmful defects in the Vehicles, and the failure by the defendants to disclose the extent of the Vehicles' emissions and pollutants, the Class has suffered damages. Accordingly, the plaintiff requests substantial punitive, exemplary and aggravated damages.

January 16, 2017

SOTOS LLP
180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSUC # 36274J)
Louis Sokolov (LSUC # 34483L)
Sabrina Callaway (LSUC # 65387O)

Tel: 416-977-0007
Fax: 416-977-0717

Lawyers for the Plaintiff

CV-17-56773-DOCP

ROMBOUTS
Plaintiff

-and-

FCA CANADA INC. et al.
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

NOTICE OF ACTION

SOTOS LLP
180 Dundas Street West, Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSUC # 36274J)
Louis Sokolov (LSUC # 34483L)
Sabrina Callaway (LSUC # 65387O)

Tel: 416-977-0007
Fax: 416-977-0717

Lawyers for the Plaintiff