



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 20-Aug-2019
Délivré par voie électronique : 20-Aug-2019
Toronto

GORDON ARTHUR SIMMONS

Plaintiff

- and -

FORD MOTOR COMPANY OF CANADA, LIMITED and FORD MOTOR COMPANY

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS:

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

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

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

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

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

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

Date: August 20, 2019

Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 7th Floor
Toronto ON M5G 1R7

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

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) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;
- (b) “**Class**” or “**Class Members**” means all persons in Canada, except for **Excluded Persons**, who own, owned, lease or leased one of the **Vehicles**;
- (c) “**Coastdown**” is a test for each specific **Vehicle** model to simulate the level of aerodynamic, tire rolling, and driveline and powertrain mechanical resistance, amongst others, that the **Vehicle** would encounter if operated on the road;
- (d) “**Competition Act**” means the *Competition Act*, RSC 1985, c C-34;
- (e) “**Consumer Protection Act**” means the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A;
- (f) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
- (g) “**EnerGuide**” means the official Government of Canada mark for rating and labelling the energy consumption or energy efficiency of products, including the **Vehicles**;
- (h) “**EPA**” means the United States Environmental Protection Agency;
- (i) “**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 and Business Practices Act*, SS 2014, c C-30.2, the *Business Practices Act*, CCSM, c B120, 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, the *Consumer Protection Act*, CQLR, c P-40.1, all as amended;

- (j) “**Excluded Persons**” means:
- (i) the **Defendants** and their officers and directors;
 - (ii) the authorized motor vehicle dealers of the **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);
- (k) “**Ford Canada**” means Ford Motor Company of Canada, Limited;
- (l) “**Ford US**” means Ford Motor Company;
- (m) “**Ford**” or “**Defendants**” means **Ford Canada** and **Ford US**, collectively and interchangeably;
- (n) “**Fuel Consumption Guide**” means a guide created annually by **NRC** that gives information about the fuel consumption of vehicles to Canadians in order to enable them to compare different vehicles’ fuel economy;
- (o) “**NRC**” means Natural Resources Canada;
- (p) “**NRC Search Tool**” means the fuel consumption ratings search tool and its French language equivalent *Outil de recherche pour les cotes de consommation de*

carburant, which is **NRC**'s online database intended to help Canadians identify the most fuel-efficient vehicle that meets their everyday needs by comparing the fuel consumption information of different models;

- (q) “**Plaintiff**” means Gordon Arthur Simmons;
- (r) “**Representations**” means the representations described at paragraphs 22-26;
- (s) “**Vehicles**” means the following vehicles:

Vehicles	Model Year(s)
Ford Ranger	2019
Ford F-150	2018-2019

B. RELIEF SOUGHT

2. The Plaintiff, on his 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 made certain Representations regarding the Vehicles that were false, and that these Representations were made negligently;
- (c) a declaration that the Defendants engaged in conduct contrary to Part VI of the *Competition Act*;
- (d) a declaration that the Defendants engaged in unfair practices contrary to Part III of the *Consumer Protection Act* and the equivalent parts and provisions in the Equivalent Consumer Protection Statutes;

- (e) a declaration that it is not in the interests of justice to require that 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;
- (f) an order rescinding the purchases of the Vehicles and any financing, lease or other agreements related to the Vehicles;
- (g) a reference to decide any issues not decided at the trial of the common issues;
- (h) statutory damages pursuant to the *Competition Act*, the *Consumer Protection Act* and the Equivalent Consumer Protection Statutes in an amount to be determined by this Honourable Court;
- (i) restitution for unjust enrichment in an amount equivalent to the purchase price of the Vehicles;
- (j) general damages for negligent misrepresentation, unjust enrichment, conduct that is contrary to the *Consumer Protection Act* and Equivalent Consumer Protection Statutes, and contrary to Part VI of the *Competition Act*, in the amount of \$400,000,000;
- (k) punitive damages and/or aggravated damages in the amount of \$20,000,000;
- (l) pre-judgment interest compounded and post-judgment interest pursuant to the *CJA*;
- (m) full investigative costs pursuant to section 36 of the *Competition Act*; and

- (n) 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
- (o) such further and other relief as this Honourable Court may deem just.

C. NATURE OF THE ACTION

3. This is an action by a lessee of a Ford Vehicle on behalf of himself and other owners and lessees of the Vehicles in Canada.

4. Determining a Vehicle's fuel economy occurs by performing tests on the Vehicle in a laboratory setting and in "real world" road testing. The road tests include performing a Coastdown test, a test that measures a Vehicle's rolling resistance and drag, in order to calculate how much drag, rolling and other resistance to apply to the Vehicle in the laboratory setting to simulate the road and to calculate the Vehicle's fuel economy and emissions.

5. The Defendants in this case misrepresented the Coastdown test results by using inaccurate draft and resistance figures to boost the Vehicles' purported fuel economy.

4. The Defendants misrepresented fuel economy values of the Vehicles to the Plaintiff and the Class. The Vehicles consume more fuel than the Defendants represented. The Defendants' misrepresentations caused the Plaintiff and the Class to overpay for the Vehicles, reduced the market value of the Vehicles and caused the Plaintiff and the Class to pay more in fuel costs than represented.

D. THE PLAINTIFF AND THE CLASS

6. The Plaintiff is an individual residing in Windsor, Ontario. He leased a 2019 Ford F-150 truck on March 6, 2019 from Twin Hills Ford Lincoln Limited, an authorized Ford dealer in Richmond Hill, Ontario.

7. 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

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

9. Ford Canada is involved with, has responsibilities and provides direction for the research, design, development, engineering, manufacture, regulatory compliance, fuel economy and emissions testing, marketing, distribution, sale, and lease of the Vehicles throughout Canada.

10. 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 Defendants and were their agents.

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

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

13. The Coastdown testing of the Vehicles was facilitated by Ford US and Ford Canada.

14. 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, fuel economy and emissions testing, marketing, distribution, sale and lease of the Vehicles and for the purposes of the claims described herein.

F. METHODOLOGY FOR FUEL ECONOMY TESTING IN CANADA AND THE UNITED STATES

15. Canada and the United States have similar fuel economy testing standards. Fuel economy ratings are regulated in the United States pursuant to 40 CFR § 600.115-11 - *Criteria for determining the fuel economy label calculation method*, which requires manufacturers to undertake a 5-cycle testing method for determining fuel economy label values (“**the 5-Cycle Test**”). The 5-Cycle Test tests for city and highway conditions as well as operating a vehicle in cold weather, the use of air conditioners, and driving at higher speeds with more rapid acceleration and braking. In Canada, manufacturers use the identical 5-Cycle Test as the United States.

16. The 5-Cycle Test is conducted on a dynamometer (*i.e.*, a treadmill for cars) with certain resistance applied to simulate real road driving conditions. The level of resistance on the dynamometer is adjusted based on the Coastdown testing for each specific vehicle model to simulate the level of resistance that the vehicle would encounter if operated on the road. Coastdown

tests are governed by standard government-approved procedures and standards. The Defendants were required to follow these standards.

17. The manufacturer conducts a Coastdown test by driving a Vehicle on the road up to a certain speed, typically around 128 kilometres, after which the Vehicle is put into neutral and allowed to “coast” until its speed drops below 14 kilometres per hour. Special devices in the Vehicle measure environmental conditions (ambient temperature, humidity and barometric pressure), performance data, and speed and distance travelled during the Vehicle’s deceleration. These figures are used to determine the appropriate resistance levels (also referred to as “road load”) to use on the dynamometer for a given Vehicle model.

18. Once the Coastdown tests are complete, the road load calculated is used on the dynamometer for a given Vehicle model to calculate the Vehicle’s fuel consumption values.

19. Ford used the same Coastdown and dynamometer tests in both the United States and Canada to estimate the Vehicles’ fuel economy and emissions.

G. FORD’S FALSIFIED COASTDOWN AND FUEL ECONOMY TESTING

20. The Defendants conducted the 5-Cycle Tests on the Vehicles to determine their fuel economy. During this process, the Defendants deliberately misrepresented the Coastdown tests used to calculate “road load” in order to misrepresent the Vehicles’ fuel consumption values.

21. The road load measure of forces acting against the Vehicles during real-world driving was material to the simulation of actual driving when the Vehicles were tested on the dynamometer in the laboratory. Ford’s internal lab tests misrepresented road load forces. Consequently, the Defendants’ fuel economy testing on the Vehicles showed better, but entirely inaccurate, fuel

economy results. A corollary of the better fuel economy for the Vehicles represented by the Defendants was that the Vehicles emitted less pollutants than they did in reality.

H. INACCURATE FUEL ECONOMY RATINGS MISREPRESENTED TO CANADIANS

22. The Defendants directly and/or indirectly through their dealer network 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 Defendants specifically represented that the Vehicles met specified fuel economy ratings.

23. The Defendants used fuel economy as an incentive to attract Class Members to purchase the Vehicles. For example, the Defendants touted the Ford F-150's "Best-In-Class ... EPA-estimated highway fuel economy rating", "optimized performance and fuel efficiency", and "best-in-class fuel efficiency". The Defendants promoted the 2019 Ford Ranger as having "the best-in-class EPA-estimated city fuel economy rating of any gasoline-powered four-wheel-drive midsize pickup and it is an unsurpassed EPA estimated combined fuel economy rating".

24. In addition, the Defendants communicated and misrepresented the inaccurate fuel economy ratings to the Class by disclosing the fuel economy on the Canadian government-sponsored website of NRC, including the EnerGuide, NRC Search Tool and the NRC Consumption Guide, as well as on the Government of Canada's EnerGuide label for rating energy consumption and fuel efficiency affixed to new Vehicles.

25. The Defendants promoted understated fuel consumption ratings compared to the results that would have achieved if the Coastdown tests were accurately performed.

26. The Defendants failed to disclose material facts regarding the nature of the represented fuel consumption ratings, omitting that such ratings were based on inaccurate Coastdown testing and road load calculations, and, as a result, produced fuel consumption ratings that were misleading and lower than the fuel consumption ratings correctly calculated.

27. As a result of the Defendants' misrepresentations, all Class members pay between 10-15% greater fuel costs than the reported fuel mileage figures.

**I. FORD'S ADMISSIONS AND U.S. DEPARTMENT OF JUSTICE
INVESTIGATION**

28. Ford publicly admitted that in September of 2018 several of its employees acted in a whistle-blowing capacity to question and raise concerns about inaccuracies used to determine fuel economy ratings, arising out of inaccurate Coastdown and road load calculations. In February 2019, Ford disclosed the results of this investigation to the EPA and the California Air Resources Board. Ford also announced on February 21, 2019, that it would investigate its process for certifying vehicles to meet fuel economy standards.

29. Subsequently, Ford US disclosed in its quarterly report Form 10-Q dated March 31, 2019 that the U.S. Department of Justice had opened a criminal investigation into Ford's fuel-efficiency testing.

J. NEGLIGENT MISREPRESENTATION

30. 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 and their testing of the Vehicles for fuel economy and emissions;
- (b) their skill, experience and expertise in the design and manufacturing of Vehicles; and
- (c) the fact that Class Members had no means of conducting their own Coastdown or road load tests to confirm the accuracy of the fuel economy ratings.

31. The Defendants owed a duty of care to the Plaintiff and the Class Members.

32. The Defendants intended that the Plaintiff and the Class rely on the Representations. It was reasonably foreseeable that the Class Members would rely, to their detriment, upon the Representations when purchasing or leasing the Vehicles and would suffer loss. The Plaintiff and Class Members reasonably relied on the Representations in deciding whether to purchase or lease the Vehicles. Had the Representations not been made, the Class Members would not have made the purchase or lease and would not have paid the higher price charged for Vehicles marketed for their fuel efficiency.

33. The Representations were false and were made negligently.

34. 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 Plaintiff and the Class.

K. STATUTORY RIGHTS OF ACTION

a. COMPETITION ACT

35. The Defendants knowingly or recklessly 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 for the business interests of the Defendants;
- (b) were made to the public; and
- (c) were false and misleading in a material respect.

36. 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.

37. The Defendants' breach of section 52 of the *Competition Act* caused loss 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 the breach.

b. CONSUMER PROTECTION ACT AND EQUIVALENT CONSUMER PROTECTION STATUTES

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

39. 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*.

40. Class Members resident in British Columbia, Alberta, Saskatchewan, Manitoba, Prince Edward Island, Newfoundland and Labrador, Nova Scotia, 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 Defendants carried on business in those Provinces and were, among other things, suppliers for the purposes of the Equivalent Consumer Protection Statutes.

41. The 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 Defendants knew, or ought to have known, that:

- (a) the Representations were false, misleading, and deceptive;
- (b) the Vehicles did not have the fuel economy, performance characteristics, uses, benefits or qualities set out in the Representations;
- (c) the Vehicles were not of the particular standard, quality or grade set out in the Representations;
- (d) the Vehicles did not provide the specific price advantage set out in the Representations;
- (e) the 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 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 Defendants and unknown to the Plaintiff.

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

43. 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.

44. 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 Defendants concealed the actual state of affairs from the Class Members.

L. UNJUST ENRICHMENT

45. The Defendants caused the Class Members to pay money for a product, which contrary to 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.

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

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

48. There is no juristic reason for the 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 Defendants' unjust enrichment.

M. DAMAGES

49. As a result of the conduct pleaded above, the Plaintiff and Class Members have suffered loss corresponding to the added fuel costs of the Vehicles. During its life span, each of the Vehicles will cost the Class Members approximately 10-15% more in fuel costs than represented by the Defendants.

50. In addition, the Plaintiff and Class Members paid more for their Vehicles than they should have if the Defendants had properly represented the true fuel economy of the Vehicles. The Defendants' misrepresentations also caused a reduction in the resale value of the Vehicles.

51. Due to the egregious nature of the Defendants' conduct, including, without limiting the generality of the foregoing, secretly deceiving the marketplace as to the fuel efficiency and

environmental friendliness of the Defendants and their Vehicles, 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.

N. WAIVER OF TORT

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

53. 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 at their prices nor would the Defendants have received the same revenue for them in Canada.

O. RELEVANT STATUTES

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

- (a) *Business Practices Act*, CCSM c B120, as amended, sections 2, 3, 4, 5, 6, 8, and 23, and the regulations thereto;

- (b) *Business Practices Act*, RSPEI 1988, c B-7, as amended, sections 1, 2, 3 and 4, and the regulations thereto;
- (c) *Business Practices and Consumer Protection Act*, SBC 2004, c 2, as amended, sections 4, 5, 8, 9, 10, 171, and 172, and the regulations thereto;
- (d) *Civil Code of Québec*, CQLR c CCQ-1991, as amended, and the regulations thereto;
- (e) *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
- (f) *Competition Act*, RSC 1985, c C-34, as amended, sections 36(1) and 52(1), and the regulations thereto;
- (g) *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A, as amended, sections 2, 5, 9(1), 9(2), 14, 15, 16, 17, 18, and 19, and the regulations thereto;
- (h) *Consumer Protection Act*, CQLR c P-40.1, as amended, sections 215, 218, 219, 220, 221, 222, 228, 239, 252, 253, 271, and 272, and the regulations thereto;
- (i) *Consumer Protection Act*, RSNS 1989, c 92, as amended, section 28, and the regulations thereto;
- (j) *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, as amended, sections 7, 8, 9, and 10, and the regulations thereto;
- (k) *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, sections 2, 4, 6-16, 19-22, 24-33, 36, 37, 39, 91 and 93, and the regulations thereto;
- (l) *Energy Efficiency Act*, SC 1992, c 36, as amended, and the regulations thereto; and

- (m) *Fair Trading Act*, RSA 2000, c F-2, as amended, sections 5, 6, 7, 7.2, 7.3, and 13, and the regulations thereto.

P. SERVICE

55. 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 a tort committed in Ontario (Rule 17.02(g)); and
- (c) brought against a person ordinarily resident or carrying on business in Ontario (Rule 17.02 (p)).

August 20, 2019

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SIMMONS
Plaintiff

and

et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

SOTOS LLP

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