AMENDED THIS Oct. 9/2019 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☑ RULE/LA RÈGLE 26.02 ("A")
☐ THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE
A. Muller
REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No.: CV-17-567691-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

ROBERT MAGINNIS and MICHAEL MAGNAYE

Plaintiffs

- and -

FCA CANADA INC., FCA US LLC, ROBERT BOSCH INC., ROBERT BOSCH GMBH, ROBERT BOSCH LLC, and SCARSVIEW MOTORS LTD.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED AMENDED FRESH STATEMENT OF CLAIM

Notices of Action issued on January 13, 2017 (Toronto) and January 16, 2017 (Toronto)

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 ~~58~~ 60-67;

(g) "**CARB**" means the California Air Resources Board;

(h) "***CEPA***" means the *Canadian Environmental Protection Act, 1999*, SC 1999, c 33, as amended;

(i) "**CFR**" means the Code of Federal Regulations of the United States, as amended;

(j) "***CJA***" means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;

~~(k) "Class" or "Class Members" means all persons who owned or own, leased or lease one of the Vehicles in Canada except for **Excluded Persons;**~~

~~(l)~~(k) "***Competition Act***" means the *Competition Act*, RSC 1985, c C-34;

~~(m)~~(l) "***Consumer Protection Act***" means the *Consumer Protection Act, 2002*, SO 2002, c 30, Sched A;

~~(n)~~(m) "***CPA***" means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;

~~(o)~~(n) "**Defeat Device**" means one or more **AECDs** that, alone or combined, reduce the effectiveness of the emissions control system under conditions that may reasonably be expected to be encountered in normal 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) "**Defendant Class**" means the proposed defendant class of **FCA Dealers** in Canada that sold or leased any of the **Vehicles**;

(p) **Defendants**" means collectively FCA Canada, FCA US, Bosch GmbH, Bosch LLC ~~and~~, Bosch Inc~~.~~., Scarsview Motors Ltd., and the Defendant Class;

(q) "**EcoDiesel**" means the 3.0 liter diesel engine that is contained in the **Vehicles**;

(r) "**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;

(s) **"EPA"** means the United States Environmental Protection Agency;

(t) **"*EP Act*"** means the *Environmental Protection Act*, RSO 1990, c E.19, as amended, including O Reg 361/98;

(u) "**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**;

(v) "**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;

(w) "**Equivalent Sale of Goods Statutes**" means all legislation enacted in Canadian provinces and territories other than Ontario that creates rights and obligations similar to ***SGA***, including but not limited to: *Sale of Goods Act*, RSS 1978, c S-1; *Sale of Goods Act*, RSBC 1996, c 410; *Sale of Goods Act*, RSA 2000, c S-2; *Sale of Goods Act*, RSNS 1989, c 408; *Sale of Goods Act*, RSNB 2016, c 110; *Sale of Goods Act*, RSNL 1990, c S-6; *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; and *The Sale of Goods Act*, CCSM c S10, all as amended;

~~(w)~~(x) "**Excluded Persons**" means:

~~(i)~~ the **Defendants** and their officers and directors;

~~(ii)~~(i) ~~the authorized motor vehicle dealers of the FCA Defendants~~ and ~~The officers and directors of those dealers; and~~

~~(iii)~~(ii) the heirs, successors and assigns of the persons described in subparagraphs (i) ~~and (ii)~~;

~~(x)~~(y) "**FCA Canada**" means FCA Canada Inc.;

(z) "**FCA Dealers**" means all persons in Canada who sold or leased to **Plaintiff Class Members** one of the **Vehicles** as the authorized motor vehicle dealers of **FCA Canada**;

~~(y)~~(aa) "**FCA Defendants**" means collectively **FCA Canada** and **FCA US**;

~~(z)~~(bb) "**FCA Representations**" means the representations and omissions described at paragraphs ~~50-54~~53-59 and ~~84(a)-(b);~~66-67;

~~(aa)~~(cc) "**FCA US**" means FCA US LLC;

~~(bb)~~(dd) "**NOV**" means a Notice of Violation of the United States Clean Air Act, 42 U.S.C. s. 7401 et seq. (1970) as issued by the **EPA** or a Notice of Violation of the California Code of Regulations, title 13 and California's Health and Safety Code as issued by **CARB**, as the case may be;

~~(cc)~~(ee) "**NOx**" means nitrogen oxides;

(ff) "**Plaintiffs**" ~~means Shane Witham and~~ means Robert Maginnis and Michael B. Magnaye;

~~(dd)~~(gg) "**Plaintiff Class**" or "**Plaintiff Class Members**" means all persons who owned or own, leased or lease one of the **Vehicles** in Canada except for **Excluded Persons**;

~~(ee)~~(hh) "**Representations**" means collectively the **FCA Representations** and the **Bosch Representations**;

(ii) "***SGA***" means the *Sale of Goods Act*, RSO 1990, c S.1;

~~(ff)~~(jj) "**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~~

~~(gg)~~(kk) "**Vehicles**" means the following vehicles equipped with **EcoDiesel** engines:

MODEL	MODEL YEARS (INCLUSIVE)
Dodge RAM 1500	2014 - 2016
Jeep Grand Cherokee	2014 - 2016

B. RELIEF SOUGHT

2. The Plaintiffs, on their own behalf and on behalf of all Plaintiff Class Members, seek:

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

(b) an order certifying this action as a defendant class proceeding and appointing Scarsview Motors Ltd. as the representative defendant;

~~(b)~~(c) a declaration that the FCA Defendants and the Bosch 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)~~(d) a declaration that the FCA Defendants violated *CEPA* by importing the Vehicles into Canada;

~~(d)~~(e) a declaration that the Vehicles emit NOx at levels exceeding Emissions Standards;

~~(e)~~(f) a declaration that the FCA Defendants and the Bosch Defendants were negligent in the engineering, design, development, research, manufacture, regulatory compliance, marketing, distribution, and sale or lease of the Vehicles and the Vehicles' diesel and emission components;

~~(f)~~(g) a declaration that the Defendants made certain representations regarding the Vehicles that were false, and that these representations were made negligently;

~~(g)~~(h) a declaration that the FCA Defendants and the FCA Dealers breached the express and implied warranties in relation to the Vehicles;

~~(h)~~(i) a declaration that the Defendants breached their obligations owed under the *Civil Code of Québec*;

~~(i)~~(j) a declaration that the Defendants engaged in conduct contrary to Part VI of the *Competition Act*;

~~(j)~~(k) a declaration that the ~~FCA~~ Defendants engaged in unfair practices contrary to Part III of the *Consumer Protection Act* and the equivalent provisions in the Equivalent Consumer Protection Statutes;

~~(k)~~(l) 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;

~~(l)~~(m) an order rescinding the purchases of the Vehicles and any financing, lease or other agreements related to the Vehicles;

~~(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 and statutory damages for negligence, negligent misrepresentation, breach of warranty, conduct that is contrary to the *Consumer Protection Act* and Equivalent Consumer Protection Statutes, and conduct that is contrary to the *Civil Code of Québec*, *CEPA*, and 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) a reference to decide any issues not decided at the trial of the common issues;

(r) pre-judgment interest compounded and post-judgment interest pursuant to the *CJA*;

(s) investigative costs pursuant to section 40 of *CEPA* and section 36 of the *Competition Act*;

(t) costs of this action pursuant to the *CPA*, alternatively, on a full or substantial indemnity basis plus the cost of administration and notice pursuant to section 26(9) of the *CPA* and applicable taxes; and

(u) such further and other relief as this Honourable Court may deem just.

C. NATURE OF THE ACTION

3. The FCA Defendants designed, manufactured, distributed, and sold the Vehicles through the FCA Dealers. The Bosch Defendants supplied the Vehicles' diesel components, engine control and emission control mechanism. ~~The~~The FCA Defendants and the Bosch Defendants conspired to create and install illegal software devices 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. The Bosch ~~defendants supplied the Defeat Devices~~Defendants and the FCA Defendants created and implemented the Defeat Devices in the Vehicles before ~~importing~~the Vehicles were imported into Canada to be marketed to Plaintiff Class Members by the Defendants.

4. The Defeat Devices permitted the Vehicles to pass regulatory emission tests in that the Defeat Devices detected laboratory testing conditions and falsely showed the Vehicles' emissions to be low during testing. In reality, the Vehicles emit unlawful quantities of noxious gases and particulate matter during their normal operation and use. But for the

Defeat Devices, the Vehicles' excessive emissions would have prevented them from obtaining regulatory approval.

5. The Vehicles' emissions go far beyond the levels allowed in the Emission Standards.

~~5.~~6. The Defendants promoted the Vehicles' diesel engines, which the Defendants misleadingly marketed as fuel-efficient and powerful, "clean diesel", "ultra clean", "emissions compliant", with "no NOx" exiting the tailpipe. The Defendants knew that these attributes enhanced the value of the Vehicles in the minds of customers. Regulatory authorities in various jurisdictions have now revealed that the Defendants' representations were untrue.

~~6.~~7. The FCA Defendants were negligent in designing, manufacturing and installing the Defeat Devices in the Vehicles. The~~y~~ Defendants negligently made misrepresentations to Plaintiff Class Members and violated Canadian environmental, competition and consumer protection statutes and the *Civil Code of Québec*.

~~7.~~8. The Defendants' unlawful conduct caused the ~~Plaintiffs and~~Plaintiff Class ~~Members~~harm for which the Defendants are liable.

D. THE PLAINTIFFS AND THE PLAINTIFF CLASS

~~8.~~9. ~~The plaintiff, Shane Witham,~~Michael B. Magnaye is an individual residing in ~~Petrolia~~Toronto, Ontario. As of ~~January 12, 2017~~November 11, 2015, he owned one of the Vehicles, namely a 2015 ~~Dodge RAM 1500~~Jeep Grand Cherokee with a 3.0 liter "EcoDiesel" engine.

~~9.~~10. ~~The plaintiff,~~ Robert Maginnis~~,~~ is an individual residing in London, Ontario. As of January 12, 2017, he owned one of the Vehicles, namely a 2014 Jeep Grand Cherokee with a 3.0 liter "EcoDiesel" engine.

~~10.~~11. The Plaintiffs seek to represent the Plaintiff 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

FCA DEFENDANTS

~~11.~~12. FCA US is a limited liability corporation organized and existing under the laws of Delaware and is headquartered in Auburn Hills, Michigan. FCA US engages in the engineering, design, development, research, manufacture, regulatory compliance, marketing, and distribution of the Vehicles. The emissions testing of the Vehicles in the United States was facilitated by FCA US and such testing was relied upon by Canadian regulatory authorities, Plaintiff Class Members and the general public.

~~12.~~13. FCA Canada is a corporation incorporated pursuant to the laws of Canada and is headquartered in Windsor, Ontario. FCA Canada is a wholly-owned subsidiary of FCA US. FCA Canada is involved with, has responsibilities for and provides direction for the research, development, design, engineering, manufacture, regulatory compliance, marketing and distribution of the Vehicles throughout Canada.

~~13.~~14. 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 FCA Dealers, which were controlled by the FCA Defendants and were their agents.

~~14.~~15. The business of each of FCA US and FCA Canada are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of the Vehicles and for the purposes of the claims described herein.

FCA DEALER DEFENDANT CLASS

16. Scarsview Motors Ltd. is a federally incorporated company operating as Scarsview Chrysler Dodge Jeep, an FCA dealership in Scarborough, Ontario. Scarsview Motors Ltd. sold the Vehicle to Mr. Magnaye, and sold or leased one or more of the Vehicles to the Plaintiff Class Members.

17. The Plaintiffs seek an order appointing Scarsview Motors Ltd. as representative defendant of the Defendant Class comprised of the FCA Dealers who sold or leased the Vehicles to Plaintiff Class Members.

BOSCH DEFENDANTS

~~15.~~18. 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.

~~16.~~19. Bosch LLC is a Delaware limited company with its head office in Farmington Hills, Michigan. Bosch LLC is a subsidiary of Bosch GmbH.

~~17.~~20. Bosch Inc. is a Canadian corporation with its head office in Mississauga, Ontario. Bosch Inc. is a subsidiary of Bosch GmbH.

~~18.~~21. Bosch GmbH, directly and/or through its North American subsidiaries Bosch LLC and Bosch Inc., at all material times, designed, manufactured, and supplied elements of the Defeat Devices to the FCA Defendants for use in the Vehicles.

~~19.~~22. 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 manufacture, 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

~~20.~~23. 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.

~~21.~~24. Responding to these changing economic and regulatory trends, some automakers, including the FCA Defendants, sought to compete by developing automobiles with purportedly "clean" and fuel-efficient diesel engines.

~~22.~~25. 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.

~~23.~~26. 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 NOx and other pollutants, as compared to the levels in gasoline engine exhaust. NOx emissions are dangerous air pollutants that are harmful to humans and the environment. The release of NOx emissions contributes to, among other things, the formation of acid rain and ground level ozone. Exposure to NOx 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.

~~24.~~27. Due to the potentially significant impacts of diesel emissions on human health and the environment, 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 NOx emissions.

~~25.~~28. 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

~~26.~~29. The purpose of *CEPA* is to contribute to sustainable development through pollution prevention. To further this objective, Canada enacted Emissions Standards pursuant to section 160 of *CEPA*.

~~27.~~30. The Vehicles are required to meet Emissions Standards in order to be sold, used or licensed in Canada. Canadian Emissions Standards are closely aligned with those of the United States to ensure that common, safe environmental outcomes are achieved. To these ends, Emissions Standards prescribe exhaust and evaporative emission standards for the Vehicles, specifying that the Vehicles must conform to standards prescribed by the CFR.

~~28.~~31. An important aspect of the harmonization of Canadian and US standards is the recognition of EPA Certificates. Under *CEPA* and 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.

~~29.~~32. The EPA granted EPA 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 FCA Canada to sell or lease the Vehicles to Plaintiff Class Members.

~~30.~~33. 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 Emissions Standards are met.

~~31.~~34. 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 AECDs that can alter how a vehicle emits air pollution.

~~32.~~35. The FCA Defendants and the Bosch 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 FCA Defendants and the FCA Dealers 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 AECDs 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.

~~33.~~36. As referred to above, the Defeat Device allows the Vehicles to meet Emissions Standards during emissions tests, while permitting far higher emissions during the normal operation of the Vehicles.

~~34.~~37. 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.

~~35.~~38. 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*.

~~36.~~39. The emissions from the Vehicles during normal 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 Plaintiff 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.

~~37.~~40. The fact that the Vehicles do not satisfy Emissions Standards subjects the Plaintiff Class Members to potential penalties, sanctions and the denial of the right to use the Vehicles.

H. ROLE OF THE BOSCH DEFENDANTS

~~38.~~41. 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 including the Vehicles.

~~39.~~42. The Bosch Defendants researched, designed, developed, tested, configured, manufactured and supplied the Vehicles' diesel fuel injection system, the system's high-pressure pump, sensors and engine control unit, and emission system, which itself includes the diesel particulate filter and selective catalytic reduction system.

~~40.~~43. The diesel engine control unit for the Vehicles was the Electronic Diesel Control Unit 17 ("**Bosch EDC17**"). Bosch EDC17 controls the Vehicles' emissions; it is the computer that manages the emission components of the Plaintiffs' Vehicles and of the Vehicles of all Plaintiff Class Members.

I. DEFENDANTS CONSPIRED TO CREATE AND USE DEFEAT DEVICES

~~41.~~44. The Bosch Defendants embedded sales and engineering personnel at customer offices and facilities throughout the world, including with the FCA Defendants, to work directly on the design, sale, calibration, and configuration of the parts that they supplied. Additionally, the FCA Defendants frequently engaged in discussions with the Bosch Defendants regarding calibrations of the emission control technology of the Vehicles.

~~42.~~45. 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 emit up to 20 or more times the legal limits of NOx.

~~43.~~46. The Bosch Defendants were aware that the FCA 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.

J. US AGENCIES UNCOVER ~~THE~~ DEFEAT DEVICES

~~44.~~47. Scrutiny over diesel emissions increased after the 2015 scandal involving diesel vehicles manufactured by the German automaker Volkswagen Group. There too, the defendants Bosch GmbH and Bosch LLC had supplied Bosch EDC17 and the software that controlled the vehicles' emissions. Volkswagen admitted to using a Defeat Device.

~~45.~~48. Following the Volkswagen scandal, on January 12, 2017, the EPA issued a NOV against FCA US for failing to disclose the existence of at least eight AECDs in the Vehicles. The EPA determined that the undisclosed AECDs, either alone or in combination with each other, reduced the effectiveness of the Vehicles' emissions control systems, resulting in increased levels of NOx emissions. Despite having the opportunity to do so, FCA US failed to justify to the EPA that the AECDs were not prohibited Defeat Devices.

~~46.~~49. Also on January 12, 2017, CARB, working in coordination with the EPA, issued the State of California's NOV against FCA US for failing to disclose the AECDs in the Vehicles. CARB's NOV alleged that the failure to disclose the AECDs made it possible to obtain CARB certification so that the Vehicles could be sold in California. CARB stated that the failure to comply with test and certification procedures together with the failure to comply with on-board diagnostic requirements, including invalid labeling and violations of emission warranty provisions, were significant violations that "must be addressed expeditiously".

K. US GOVERNMENT LAWSUIT AND EU INFRINGEMENT PROCEDURE

~~47.~~50. On May 23, 2017, the United States of America commenced a civil action in the District Court of Michigan against FCA US and some of its affiliates (the "**Complaint**").

~~48.~~51. The Complaint alleged that the EPA had continued its investigation into the operation of the undisclosed AECDs after the issuance of its NOV. Based on that investigation, the Complaint alleged that one or more of the undisclosed AECDs, alone or in combination with the others, constituted a Defeat Device.

~~49.~~52. In Europe, Germany's Transport Ministry conducted emissions tests on certain diesel vehicles manufactured by the FCA Defendants and found a Defeat Device. Germany reported the findings to the European Commission, which launched an infringement procedure against Italy for its failure to fulfil its obligations under EU law to penalize the use of a Defeat Device. The European Commission stated in a press release on May 17, 2017: "The Commission decided today to send a letter of formal notice asking Italy to respond to concerns about insufficient action taken regarding the emission control

strategies employed by Fiat Chrysler Automobiles group". French prosecutors have also opened an investigation into this matter.

L. FCA RECALL IN CANADA

53. On or about January 18, 2019, the FCA Defendants settled the lawsuits brought against them and related persons in the United States regarding the same Vehicles and the same allegations as this proposed class action. The US court approved the settlement on May 3, 2019 ("**US Settlement**"). The US Settlement had three components:

(a) A reprogramming of the Vehicles' emissions control software ("**Software Reprogramming**");

(b) An extended warranty for the Vehicles that receive the Software Reprogramming; and

(c) Cash compensation for past and present owners ranging from US$990 to US$3,075.

54. The US Settlement excluded the Plaintiff Class.

55. On or about May 8, 2019, FCA Canada implemented a mandatory recall, titled Campaign V16, of the Vehicles throughout Canada to receive the Software Reprogramming without the cash compensation or extended warranty provided to the American Vehicle owners ("**Recall**").

56. The Vehicles of the Plaintiff Class Members who complied with FCA Canada's mandatory Recall and received the Software Reprogramming were adversely impacted by the Software Reprogramming in areas including, but not limited to, fuel efficiency,

responsiveness, power and torque. The losses caused to those Vehicles, including loss of fuel efficiency, responsiveness, power and torque, were caused by the Software Reprogramming performed on those Vehicles as part of the Recall.

~~L.~~M. REPRESENTATIONS

~~50.53.~~57. The FCA Defendants' marketing efforts focused on highlighting the Vehicles' purported fuel efficiency and clean emissions benefits. The FCA Defendants trademarked and branded these Vehicles as "EcoDiesels".

~~51.54.~~58. The FCA Defendants and the FCA Dealers 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 FCA Defendants and the FCA Dealers 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 NOx and those NOx ratings had been accurately reported to regulators;

(d) the Vehicles were environmentally friendly;

(e) the Vehicles provided a superior driving experience, including by virtue of their fuel economy and emissions; and

(f) 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.

~~52.55~~.59. For example, the FCA Defendants and/or the FCA Dealers advertised the Vehicles as "ultra-clean", "emissions-compliant", with the "best fuel economy of any full-size pick-up" such that the Vehicles provide greater fuel economy "30% better than a comparable gasoline engine", etc. The FCA Defendants represented to the Plaintiff Class that "virtually no particulates and minimal oxides of nitrogen (NOx) exit the tailpipe".

~~53.56~~.60. In addition, the FCA Defendants and the FCA Dealers consistently failed to state any or all of the following fact

(a) the Vehicles were not free from defects;

(b) the Defeat Devices in the Vehicles created inaccurate emissions testing results;

(c) the Defeat Devices in the Vehicles were designed to create false emissions testing results; and

(d) the Defeat Devices in the Vehicles misled persons who tested emissions in the Vehicles.

~~54.~~57.61. In addition to, and separate from, factual omissions regarding the Defeat Device, the FCA Defendants and the FCA Dealers 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 Defendants had publicly stated; and

(c) the Vehicles were not an environmentally friendly, clean or "green" purchasing option that would be beneficial to the environment due to their low fuel consumption or low emissions.

~~55.~~58.62. These Representations, which include the omissions, were made by the FCA Defendants and the FCA Dealers to the Plaintiffs~~and~~, the Plaintiff Class Members~~directly or through their dealer agents.~~, and to the public.

~~56.~~59.63. These Representations were false.

~~57.~~60.64. Similar to the FCA Defendants and the FCA Dealers, the Bosch Defendants' marketing efforts focused on highlighting the purported fuel efficiency and clean emissions benefits of the Vehicles' diesel technology.

~~58.~~61.65. 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) vehicles equipped with the Bosch Defendants' diesel technology met or exceeded the "strictest" emissions regulations;

(b) vehicles equipped with the Bosch Defendants' diesel technology had "low fuel consumption" and "more efficient fuel combustion";

(c) "[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";

(d) 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"; and

(e) the Vehicles provided a superior driving experience, including by virtue of their fuel economy, torque and low emissions.

~~59.~~62.66. For example, in announcing the incorporation of the Bosch Defendants' diesel technology in the 2014 Jeep Grand Cherokee, one of the Vehicles, in a press release on January 24, 2013, the defendant Bosch LLC stated that the Vehicle "features a Bosch emission system compliant with the most stringent emission regulations in the world. From fuel tank to tailpipe, Bosch is pleased to equip this vehicle with top technologies to give consumers a great driving experience requiring fewer stops at the pump".

~~60.63~~.67. 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.

~~61.64~~.68. The Bosch Defendants made these representations and omissions to the Plaintiffs, ~~and~~, the Plaintiff Class Members, and the public directly or through their agents and/or co-conspirators including the FCA Defendants and the FCA Dealers.

~~62.65~~.69. These Representations were false.

~~66~~.70. The Defendants knew that the Representations were false. From as early as 2010, the Defendants knew that the Vehicles would contain undisclosed devices that reduced or disabled the emissions control systems in real-world driving conditions, and they knew that without those undisclosed devices, the Vehicles could not deliver the fuel economy and performance that the Defendants promised in their Representations.

~~67~~.71. For example, the FCA Defendants and FCA Dealers consistently promised fuel economy of between 8.4L and 9.9L/100 km for the Vehicles (the Ram and the Jeep Grand Cherokee, respectively). The Defendants knew that it was impossible for the Vehicles to achieve that fuel efficiency without Defeat Devices. One of the eight AECDs that the EPA has discovered in the Vehicles operates by detecting laboratory testing circumstances and only reducing exhaust temperature during testing. (The higher the exhaust temperature, the more fuel efficient the Vehicle will be but also the more NOx the Vehicle will emit.) The FCA Defendants, the Bosch Defendants and their associates and co-conspirators called this AECD "T_Eng", amongst other names. From at least 2010, various persons

expressed concerns that the T_Eng was an AECD or a Defeat Device that had not been declared to regulators. The FCA Defendants and the Bosch Defendants nevertheless installed same in the Vehicles.

~~M.~~N. NEGLIGENT MISREPRESENTATION

~~63.68.~~72. The Defendants were in a proximate and special relationship with the ~~Plaintiffs and the~~Plaintiff Class Members by virtue of, among other things:

(a) their design ~~and~~, manufacture and sale of the Vehicles as well as the EcoDiesel 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 and sale of automotive diesel emission components and vehicles generally;

(c) the fact that Plaintiff Class Members had no means of knowing or investigating the existence or use of the Defeat Device; and

(d) the Defendants' complete control of the promotion and marketing of the Vehicles and their diesel technology.

~~64.69.~~73. The Defendants owed a duty of care to the ~~Plaintiffs and the~~Plaintiff Class Members. It was intended by the Defendants and reasonably foreseeable that the Plaintiff Class Members would reasonably rely, to their detriment, upon the Representations when purchasing or leasing the Vehicles and would suffer the damages described below as a result.

~~65.70.~~74. The Plaintiffs and the Plaintiff 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 Plaintiff Class Members could not have made the purchase or lease and would not have paid the higher price for the EcoDiesel engines as set out above.

~~66.71.~~75. The Representations were false and were made negligently.

~~67.72.~~76. The Plaintiffs and the Plaintiff Class Members suffered damages as a result of relying on the Representations. The Defendants are liable to pay damages to the Plaintiff Class Members.

~~N.~~O. BREACH OF THE *CIVIL CODE OF QUÉBEC*

~~68.73.~~77. The Defendants failed to comply with their general obligations under the *Civil Code of Québec* and, more specifically, those related to their duty of good faith and duty to avoid causing harm to others.

~~69.74.~~78. The Defendants knew, or ought to have known, that their conduct was unlawful and likely to cause prejudice to the ~~Plaintiffs and~~Plaintiff Class Members.

~~70.75.~~79. The Defendants' unlawful conduct was hidden, which prevented its discovery by the ~~Plaintiffs and~~Plaintiff Class Members. In these circumstances, the ~~PlaintiffsandPlaintiff~~ Class Members could not reasonably have uncovered this conduct.

~~71.~~~~76~~.80. By their unlawful conduct, the Defendants affected the financial interests of the ~~Plaintiffs and~~Plaintiff Class Members.

~~72.~~~~77~~.81. The Defendants' actions caused harm to the ~~Plaintiffs and~~Plaintiff Class Members and constitute a fault for which they are liable.

~~O.~~P. BREACH OF *COMPETITION ACT*

~~73.~~~~78~~.82. The Defendants made the Representations to the public and in so doing breached section 52 of the *Competition Act* because the Representations:

(g) 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;

(h) were made to the public; and

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

~~74.~~~~79~~.83. The Plaintiffs and the Plaintiff Class Members relied on the Representations in purchasing or leasing the Vehicles to their detriment. The Plaintiffs and the Plaintiff Class Members would not have purchased or leased the Vehicles without the Representations in breach of section 52.

~~75.~~~~80~~.84. The Defendants' breach of section 52 of the *Competition Act* caused loss and damage to the ~~Plaintiffs and the~~Plaintiff Class Members. Pursuant to section 36 of the *Competition Act*, the Defendants are liable to pay the damages resulting from their breach of section 52 thereof.

~~P.~~Q. BREACH OF *CONSUMER PROTECTION ACT* AND EQUIVALENT CONSUMER PROTECTION STATUTES

~~76.81.~~85. The FCA Defendants, Scarsview Motors Ltd., and some of the FCA Dealers are located in Ontario for the purposes of the *Consumer Protection Act*.

~~77.82.~~86. The Plaintiff 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*.

~~78.83.~~87. The Plaintiff Class Members resident in British Columbia, Alberta, Saskatchewan, Manitoba, Prince Edward Island, 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 FCA Defendants and the FCA Dealers carried on business in those Provinces and were, among other things, suppliers for the purposes of the Equivalent Consumer Protection Statutes.

~~79.84.~~88. The FCA 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 FCA Defendants and the FCA Dealers knew, or ought to have known, that:

(a) the FCA Representations were false, misleading and deceptive;

(b) the Vehicles did not have the performance characteristics, uses, benefits or qualities as set out in the FCA Representations;

(c) the Vehicles were not of the particular standard, quality or grade as set out in the FCA Representations;

(d) the Vehicles did not provide the specific price advantage as set out in the FCA Representations;

(e) the FCA 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 Plaintiff Class Members were unable to receive all expected benefits from the Vehicles;

(h) the consumer transactions were excessively one-sided in favour of the FCA Defendants and the FCA Dealers;

(i) the terms of the consumer transactions were so adverse to the Plaintiff Class Members as to be inequitable; and/or

(j) because of such further conduct concealed by the FCA Defendants and the FCA Dealers, and unknown to the Plaintiffs.

~~80.85.~~89. The FCA Representations were made on or before the Plaintiffs and other Plaintiff Class Members entered into the agreements to purchase the Vehicles.

~~81.86.~~90. The Plaintiffs and other Plaintiff 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.

~~82.87.~~91. The Plaintiff 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 FCA Defendants and the FCA Dealers have concealed the actual state of affairs from the Plaintiff Class Members.

~~Q.~~R. BREACH OF *CEPA*

~~88.~~92. The Defendants' conduct violated *CEPA* and Emissions Standards. Had the Defendants not violated *CEPA* and Emissions Standards, the Plaintiff Class Members either would not have bought the Vehicles or the Vehicles would have diminished in value. The Plaintiff Class Members have therefore suffered loss or damage as a result of the Defendants' contravention of *CEPA* and Emissions Standards.

~~89.~~93. Pursuant to section 40 of *CEPA*, the Defendants are liable to pay the Plaintiff Class Members an amount equal to their loss or damage arising from the Defendants' contraventions of *CEPA* and Emissions Standards.

~~R.~~S. BREACH OF EXPRESS AND IMPLIED WARRANTIES

~~83.90.~~94. The FCA Defendants and the FCA Dealers expressly or impliedly warranted to the ~~Plaintiffs and the~~Plaintiff 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.

~~84.91.~~95. Without limiting the generality of the foregoing, FCA Canada and the FCA Dealers provided the Plaintiff 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 the FCA Defendants would remedy any "non-conformity"

that resulted in a Vehicle failing a Federal, Provincial, or Territorial emissions control test.

~~85.92.~~96. Despite and contrary to the foregoing warranties and representations, the Vehicles were sold or leased when they did not comply with Federal, Provincial, and Territorial regulatory requirements, and the Defendants concealed from or failed to disclose that non-compliance to the Plaintiff Class Members and regulators.

~~86.93.~~97. The Vehicles' engine, emissions system, Software and Defeat Devices are warranted parts under the warranty. The Vehicles are defective under the terms of the warranty and any similar or related extended warranties.

~~87.94.~~98. As a result of the installation of the Defeat Device 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.

~~88.95.~~99. The FCA Defendants and the FCA Dealers have breached their warranties to ~~the Plaintiffs and~~Plaintiff Class Members, and as a result ~~the Plaintiffs and~~Plaintiff Class Members have suffered damages.

~~96.~~100. Furthermore, the Plaintiff Class Members were "buyers" as defined in the *SGA* and Equivalent Sale of Goods Statutes who entered into "contracts of sale" for the Vehicles with the sellers, the FCA Dealers, under the *SGA* or as defined in Equivalent Sale of Goods Statutes. The contracts of sale were subject to a "warranty" and/or "warranty of quality" as defined in the *SGA* and Equivalent Sale of Goods Statutes. As particularized

herein, the FCA Dealers breached the warranties contrary to section 51 of the *SGA* and similar provisions in Equivalent Sale of Goods Statutes causing the Plaintiff Class harm. The Plaintiff Class Members are therefore entitled to damages for breach of warranty and diminution of the value of the Vehicles.

~~S.~~T. NEGLIGENCE

~~89.97.~~101. The FCA Defendants and the Bosch Defendants owed a duty of care to the ~~Plaintiffs and the~~Plaintiff Class Members to ensure that the Vehicles and the diesel and emission control components of 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 Plaintiff Class Members a duty to warn that the Vehicles incorporated and used a Defeat Device, and, independent of the Defeat Device, that the Vehicles contained dangerous defects.

~~90.98.~~102. The FCA Defendants and the Bosch Defendants knew and it was reasonably foreseeable that in purchasing or leasing the Vehicles, Plaintiff Class Members would trust and rely on the ~~Defendants'~~ skill and integrity~~,~~ of the FCA Defendants and the Bosch Defendants. The FCA Defendants and the Bosch Defendants also knew and it was reasonably foreseeable that, if the Vehicles contained dangerous 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 Plaintiff Class Members to suffer damages.

~~91.99.~~103. The standard of care reasonably expected in the circumstances required the FCA Defendants and the Bosch 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 their components, and having them certified, imported, distributed, marketed and sold or leased. The FCA Defendants and the Bosch Defendants, through their employees, officers, directors and agents, failed to meet the reasonable standard of care.

~~92.100.~~104. The ~~Defendants'~~ negligence of the FCA Defendants and the Bosch Defendants proximately caused damage to the ~~Plaintiffs and the other~~Plaintiff Class Members. Had the FCA Defendants and the Bosch Defendants complied with the required standard of care, the Vehicles would have been sold without dangerous defects and without the Defeat Devices or would not have been imported into Canada at all, or, alternatively, they would have been offered and/or acquired at reduced prices that represented their true value.

~~93.101.~~105. As a result of the Defendants' failure to disclose the true specifications of the Vehicles, ~~the Plaintiffs and~~Plaintiff Class Members suffered damages.

~~S.T.~~U. UNLAWFUL MEANS CIVIL CONSPIRACY

~~94.102.~~106.~~The~~The FCA Defendants and the Bosch Defendants and other unknown co-conspirators unlawfully agreed and conspired to design, develop and install the Defeat Devices, and to deceptively conceal their existence in the Vehicles.

~~95.103.~~107.The ~~Defendants'~~ conduct of the FCA Defendants and the Bosch Defendants was unlawful, as contrary to US and Canadian laws.

~~96.104.~~108. The ~~Defendants'~~ conduct of the FCA Defendants and the Bosch Defendants was directed towards the ~~Plaintiffs and the~~ Plaintiff Class. The FCA Defendants and the Bosch Defendants knew or should have known that harm to the ~~Plaintiffs and the~~Plaintiff Class was likely.

~~T. BREACH OF *CEPA*~~

~~97. The Defendants' conduct violated *CEPA* and Emissions Standards. Had the Defendants not violated *CEPA* and Emissions Standards, the Class Members either would not have bought the Vehicles or the Vehicles would have been free from defects that caused a diminution of their value. The Class Members have therefore suffered loss or damage as a result of the Defendants' contravention of *CEPA* and Emissions Standards.~~

~~98. Pursuant to section 40 of *CEPA*, the Defendants are liable to pay the Class Members an amount equal to their loss or damage arising from the Defendants' contraventions of *CEPA* and Emissions Standards.~~

~~U.~~V. UNJUST ENRICHMENT

~~99.105.~~109. The FCA Defendants and the FCA Dealers caused the Plaintiff 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.

~~100.106.~~110. As a result of their conduct, the FCA Defendants and the FCA Dealers were enriched by the payment or overpayment.

~~101.107.~~111. The Plaintiff Class Members suffered a deprivation corresponding to the FCA Defendants' and the FCA Dealers' enrichment.

~~102.108.~~112. There is no juristic reason for the FCA Defendants' and the FCA Dealers' enrichment and the Plaintiff Class Members' corresponding deprivation. The Plaintiff Class Members are entitled to restitution and/or a disgorgement of profits as a result of the FCA Defendants' and the FCA Dealers' unjust enrichment.

~~V.~~W. DAMAGES

~~103.109.~~113. As a result of the conduct pleaded above, the ~~Plaintiffs and~~Plaintiff 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.

~~104.110.~~114. For those Plaintiff Class Members who purchased Vehicles, new or used, for resale, they have suffered damages 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. As a result, the value of each of the Vehicles will be irreparably diminished.

~~105.111.~~115. Each Class Member must expend the time to have their Vehicle repaired, and be without their Vehicles. The Plaintiff Class Members cannot have their Vehicles repaired immediately. The Defeat Device 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.

116. The Vehicles that have received the Software Reprogramming as part of the Recall have suffered damages and consequential damages, including but not limited to loss of fuel efficiency, power and torque, time to scrappage—all caused by the FCA Defendants' Software Reprogramming—loss of the use of the Vehicle, inconvenience, rental car and transportation costs, and lost wages.

~~106.112.~~117. The Plaintiff Class Members' damages were sustained in Ontario and in the rest of Canada.

~~107.113.~~118. ~~The Plaintiffs plead that, due~~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 products, manipulating environmentally-conscious consumers into purchasing Vehicles that emit a higher volume of pollutants than comparable vehicles, manipulating price-conscious consumers into purchasing Vehicles that, when repaired, will 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 consumers and the environment, ~~Plaintiffs and~~Plaintiff 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.

~~W.~~X. WAIVER OF TORT

~~108.114.~~119. In the alternative to damages, the Plaintiffs claim 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.

~~109.115.~~120. This remedy is appropriate for the following reasons, amongst 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 in Canada for them.

~~X.~~Y. RELEVANT STATUTES

~~110.116.~~121. The Plaintiffs plead and rely 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;

(bb) *Sale of Goods Act*, RSO 1990, c S.1;

(cc) *Sale of Goods Act*, RSS 1978, c S-1;

(dd) *Sale of Goods Act*, RSBC 1996, c 410;

(ee) *Sale of Goods Act*, RSA 2000, c S-2;

(ff) *Sale of Goods Act*, RSNS 1989, c 408;

(gg) *Sale of Goods Act*, RSNB 2016, c 110;

(hh) *Sale of Goods Act*, RSNL 1990, c S-6;

(ii) *Sale of Goods Act*, RSPEI 1988, c S-1;

(jj) *Sale of Goods Act*, RSY 2002, c 198;

(kk) *Sale of Goods Act*, RSNWT 1988, c S-2; and

(ll) *The Sale of Goods Act*, CCSM c S10.

~~Y.~~Z. SERVICE

~~111.117.~~122. 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 25, 2017 as amended January 17, 2019;
amended amended October __, 2019

SISKINDS LLP
Barristers & Solicitors
100 Lombard Street, Suite 302
Toronto, ON M5C 1M3

Daniel Bach (LSO # 52087E)
M. Eva Markowski (LSO #74162Q)

Tel: 416-594-4376
Fax: 416-594-4377

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

David Sterns (LSO # 36274J)
Louis Sokolov (LSO # 34483L)
Jean-Marc Leclerc (LSO # 43974F)
Mohsen Seddigh (LSO # 70744I)

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

Lawyers for the Plaintiffs

ROBERT MAGINNIS et al
Plaintiffs

and

FCA CANADA INC. et al
Defendants

Court File No.: CV-17-567691-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

AMENDED AMENDED FRESH STATEMENT OF CLAIM

SISKINDS LLP

100 Lombard Street, Suite 302
Toronto, ON M5C 1M3

Daniel E. H. Bach (LSO # 52087E)
M. Eva Markowski (LSO #74162Q)
Tel: 416-594-4376
Fax: 416-594-4377

Lawyers for the Plaintiffs

SOTOS LLP

180 Dundas Street, Suite 1200
Toronto, ON M5G 1Z8

David Sterns (LSO # 36274J)
Louis Sokolov (LSO # 34483L)
Jean-Marc Leclerc (LSO # 43974F)
Mohsen Seddigh (LSO # 70744I)
Tel: 416-977-0007
Fax: 416-977-0717