

Court File No.

CV-17-568086-COCP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

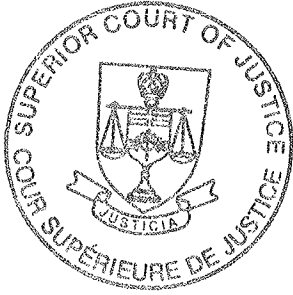
DAMEN MACGILLIVRAY

Plaintiff

- and -

FIAT CHRYSLER AUTOMOBILES NV,  
FCA CANADA INC. and FCA US LLC

Defendants



Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF ACTION**

TO THE DEFENDANTS

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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$400.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

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 20, 2017

Issued by   
Local registrar

Address of  
court office

|                |   |  |  |
|----------------|---|--|--|
| <b>TO:</b>     | <b>FIAT CHRYSLER AUTOMOBILES NV</b><br>25 St. James's Street<br>London SW1A 1HA<br>United Kingdom | <b>SUPERIOR COURT<br/>OF JUSTICE<br/>393 UNIVERSITY AVE.<br/>10TH FLOOR<br/>TORONTO, ONTARIO<br/>M5G 1E6</b> | <b>COUR SUPÉRIEURE<br/>DE JUSTICE<br/>393 AVE. UNIVERSITY<br/>10E ÉTAGE<br/>TORONTO, ONTARIO<br/>M5G 1E6</b> |
| <b>AND TO:</b> | <b>FCA CANADA INC.</b><br>One Riverside Drive West<br>Windsor ON N9A 5K3                          |  |  |
| <b>AND TO:</b> | <b>FCA US LLC</b><br>1000 Chrysler Drive<br>Auburn Hills, MI 48326-2766<br>U.S.A                  |  |  |

## CLAIM

1. The Plaintiff, on his own behalf and on behalf of all Class Members, claim:
  - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative Plaintiff;
  - (b) statutory damages pursuant to the *Competition Act* R.S.C. 1985, c. C-34, the *Consumer Protection Act, 2002*, S.O. 1992, c. 6 (and equivalent statutes in every Canadian Province) ("**CPA**") and the *Canadian Environmental Protection Act, 1999*, S.C. 1999 c. 33, ("**CEPA**") in an amount to be determined by this Honourable Court;
  - (c) a declaration that the Defendants violated CEPA, Part VI of the *Competition Act* and that the Defendants engaged in unfair practices contrary to the CPA;
  - (d) a declaration that each of the Defendants misrepresented the characteristics of the Vehicles intentionally or negligently;
  - (e) a declaration that the Defendants breached the express and/or implied warranties in relation to the Vehicles;
  - (f) a declaration that the Defendants were negligent in the engineering, design, development, research, manufacture, regulatory compliance, marketing and distribution of the Vehicles;
  - (g) general damages and special damages in an the amount of \$500,000,000;
  - (h) punitive damages and/or aggravated damages in the amount of \$50,000,000;
  - (i) a reference to decide any issues not decided at the trial of the common issues;

- (j) prejudgment interest compounded and post-judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c. C-43;
- (k) costs of this action on a substantial indemnity basis and the cost of administration and notice pursuant to s. 26(9) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, plus applicable taxes; and,
- (l) such further and other relief as to this Honourable Court seems just.

### **NATURE OF THE ACTION**

2. This class action concerns the intentional or negligent and dangerous design, manufacture and installation of a prohibited Defeat Device (as defined below) in 2014-2016 model year Dodge RAM 1500 and Jeep Grand Cherokee model vehicles sold with a 3.0-litre EcoDiesel V6 engine ("**Vehicles**").

3. Much like the actions of Volkswagen and other diesel car manufacturers, the Defendants marketed the Vehicles as being 'clean', 'green' and ecologically friendly, when in fact, they polluted above and beyond the legal and regulatory limits in Canada.

4. The Vehicles contain software that suppressed the true measure of emissions or pollutant levels, including nitrogen oxide, and which resulted in higher performance and better fuel mileage. All of the Vehicles are and were engineered, developed, manufactured, tested, marketed and sold or leased by the Defendants.

### **THE PARTIES**

5. The Plaintiff Damen MacGillivray lives in the City of Brandon, Manitoba. As of January 12, 2017, he owned a 2016 Dodge RAM 1500 truck with a 3.0-litre EcoDiesel V6 engine.

6. Fiat Chrysler Automobiles NV is a Dutch holding company headquartered in London, United Kingdom.

7. FCA Canada Inc. ("**FCA Canada**") is a wholly-owned subsidiary of FCA US LLC, incorporated under the laws of Ontario and headquartered in Windsor, Ontario. FCA Canada is the distributor of the Vehicles in Canada. It is involved with, has responsibilities for and provides directions for the engineering, design, development, research, regulatory compliance, marketing and distribution of the Vehicles in Canada.

8. FCA US LLC ("**FCA US**") is a limited liability company organized and existing under the laws of Delaware and is wholly owned by Fiat Chrysler Automobiles NV. FCA US engages in the engineering, design, development, research, manufacture, regulatory compliance, marketing, and distribution of the Vehicles. FCA US's primary place of business and headquarters is in Auburn Hills, Michigan. The emissions testing of the Vehicles was facilitated in the United States by FCA US and such testing was relied upon by Canadian regulatory authorities, Class Members and the general public.

9. The class is comprised of all persons in Canada who own, owned, lease or leased one of the Vehicles ("**Class**" or "**Class Members**").

10. 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.

### **DANGEROUS DEFECTS IN THE VEHICLES**

11. At all material times, the Defendants were required to comply with, and 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 the CEPA and the regulations thereto.

12. Automobile companies, including the Defendants, are prohibited from assembling, manufacturing and/or importing into Canada vehicles, engines or equipment unless Canadian emissions standards are met. The CEPA prohibits equipping a vehicle with a Defeat Device and importing such a vehicle into Canada.

13. The Defendants incorporated software into the Vehicles that detect when a Vehicle is being tested for adherence with emissions standards, and responds to such testing by temporarily reducing the Vehicle's fuel consumption and emissions until the test is complete (the "**Defeat Device**"). As a result, the Defeat Device produces compliant emissions results in the Vehicles, which are, in fact, non-compliant with North American regulatory and legal requirements. The Defeat Device was designed by, and installed in, the Vehicles by the Defendants. The Defeat Device in the Vehicles misled those persons who tested emissions in the Vehicles.

14. When driven under ordinary conditions, the Defeat Device reduces the effectiveness of emissions control systems in the Vehicles, thereby increasing emissions, including, but not limited to, nitrous oxide ("**NOx**") and also thereby increasing the fuel consumption and reducing the fuel economy below represented levels.

15. Increased NOx exposure to Class Members and the public, has direct and indirect negative effects on human health. Moreover, NOx is a greenhouse gas found to be dangerous to the environment and the public at large.

16. The Defeat Device had the effect of misleading regulators, consumers, lessees and purchasers with respect to the emissions and fuel efficiency of the Vehicles.

**STATUTORY CAUSES OF ACTION AND NEGLIGENT MISREPRESENTATION**

17. The Defendants made, approved, utilized or authorized a number of consistent, common and uniform representations in, among other things, their written warranties, vehicle manuals, television, radio, internet and print media advertising, website(s), sales brochures, posters, dealership displays and other marketing materials in relation to the Vehicles. The Defendant 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, environmentally compliant and/or “green”;
- (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.

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

- (a) the Vehicles were not free from defects;
- (b) the Defeat Device in the Vehicles created inaccurate emissions testing results;
- (c) the Defeat Device in the Vehicles was designed to create false emissions testing results;
- (d) the Defeat Device in the Vehicles did mislead those persons who tested emissions in the Vehicles;
- (e) the Vehicles emitted more pollutants than the testing of the Vehicles indicated;
- (f) the Vehicles emitted more pollutants than the Defendants had publicly stated; and
- (g) the fuel consumption and fuel economy represented by the Defendants was not in fact accurate.

19. The representations and omissions referred to at paragraphs 18 and 19 above are collectively referred to as the “**Representation**”. The Representation was false, deceptive and misleading, and was made intentionally or negligently.



20. The Defendants' false, misleading and deceptive Representation and related conduct constitute an "unfair practice" and are "unconscionable representation[s]" under sections 14 and 15 of the CPA. As a result, the Defendants are liable for damages.

21. The Defendants made the Representation to the public and in so doing breached s. 52 of the *Competition Act* 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 material respect; and
- (d) stated that the Vehicles emitted significantly lower levels of pollutants than they actually did.

22. The Defendants were in a proximate and special relationship with the Plaintiff and the Class Members, which gave rise to a duty of care owed by the Defendants to the Plaintiffs and the Class Members, which the Defendants breached.

23. It was intended by the Defendants and reasonably foreseeable that the Class Members would reasonably rely upon the Representation when purchasing the Vehicles and would suffer damages described below as a result of the Representation, which in fact the Class Members did.

24. The Class Members' reliance on the Representation is established, among other things, by their purchase or lease of the Vehicles. Had the Class known that the Representation was false and misleading, they would not have purchased, leased or continued to drive the Vehicles.

25. The Plaintiff and Class Members suffered damages as a result of the Representation and in reliance thereon. The Defendants are liable to pay damages to the Class Members.

26. Pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay the damages which are payable as a result of the breach of s. 52.

27. The Defendants have breached the CEPA by, *inter alia*, equipping the Vehicles with a “defeat device” and importing them into Canada.

### **BREACH OF EXPRESS AND IMPLIED WARRANTIES**

28. The Defendants expressly or impliedly warranted to the Plaintiff and the Class Members that the Vehicles would be reasonably fit for the purposes of driving on roads in Canada, that the Vehicles were of merchantable quality, that the Vehicles were free from defects and/or that the Vehicles were of acceptable quality, when in fact the Vehicles were not. Despite and contrary to the foregoing warranties and representations, the Vehicles were sold or leased when they were intentionally or negligently manufactured, designed, tested, built and equipped not to comply with Canadian regulatory requirements and not to provide the stated fuel economy.

29. Without limiting the generality of the foregoing, FCA Canada provided the Class Members with a uniform written warranty that, among other things:

- (a) Covered any repair connected to a manufacturer’s defect in material or workmanship;

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

30. Despite and contrary to the foregoing warranties and representations, the Vehicles were intentionally or negligently manufactured, designed, tested, assembled, built and equipped not to comply with Federal, Provincial, and Territorial regulatory requirements, and to conceal that non-compliance from Class Members and government regulators. The Vehicles' engine, emissions system, software and Defeat Device are warranted parts under the warranty. The Vehicles are defective under the terms of the warranty and any similar or related extended warranties.

### **NEGLIGENCE**

31. The Defendants, through their employees, officers, directors and agents, owed the Class Members a duty of care. The Defendants, through their employees, officers,

directors and agents failed to meet the reasonable standard of care expected in the circumstances.

32. The Defendants knew and it was reasonably foreseeable that the Class Members would trust and rely on the Defendants' skill and integrity in purchasing the Vehicles.

33. The negligence of the Defendants resulted in damage to the Plaintiff and the other Class Members.

### **UNJUST ENRICHMENT**

34. The Defendants caused the Plaintiff and the Class Members to pay money for a dangerous and illegal product that they should not have paid for, or, in the alternative, for which they should have paid less than they did.

35. As a result, the Defendants were enriched by the payment or overpayment.

36. The Plaintiff and Class Members suffered a deprivation corresponding to the Defendants' enrichment.

37. 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.

### **GENERAL AND SPECIAL DAMAGES**

38. 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. The Value of each of the Vehicles is reduced. Each Class

Member overpaid for each Vehicle. Each Class Member must expend the time to have their Vehicle repaired, and be without their Vehicles.

39. The 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.

40. Each Class Member has suffered lower fuel economy in their Vehicles than what was represented by the Defendants. As a result, the Class Members paid higher sums for greater amounts of fuel, at a higher cost than they would have had they purchased an alternative vehicle.

41. 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.

42. The Plaintiff pleads that the Class Members' damages were sustained in Ontario and in the rest of Canada.

### **PUNITIVE DAMAGES**

43. The Plaintiff pleads that the Defendants' conduct was unlawful, reckless, high-handed and an abuse of its special relationship with the Class Members. The conduct of the Defendants as aforesaid was deliberate. Class Members were actively misled by the Defendants. The Defendants' conduct was motivated for financial gain at the expense of

the Class Members. The Defendants' conduct entitles the Class to an award of punitive, exemplary and aggravated damages in the amount of \$50,000,000.00.

**WAIVER OF TORT**

44. In the alternative to damages, the Plaintiff pleads that he is entitled to claim "waiver of tort" and thereby to claim an accounting or other such restitutionary remedy for disgorgement of the revenues generated by the Defendants as a result of the sale of the Vehicles, due to *inter alia*, the failure of the Defendants to disclose the existence of the Defeat Device, and the unlawful import of the Vehicles into Canada.

45. The Plaintiff claims that their entitlement to such an election is appropriate for, among other things, the following reasons:

- (a) Revenue was acquired in a manner in which the Defendants cannot in good conscience retain;
- (b) the integrity of the marketplace would be undermined if an accounting was not required;
- (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; and,
- (d) The Defendants engaged in wrongful conduct by putting into the marketplace the Vehicles whose value would diminish and which could be subject to recalls, both of which would cause damage to the Class Members

46. The Plaintiff proposes that this action be tried in the City of Toronto.
47. This originating process may be served without a court order outside Ontario because the claim is against a person carrying on business in Ontario (Rule 17.02(p)).

January 20 2017

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DAMEN MACGILLIVRAY  
Plaintiff

and

FIAT CHRYSLER AUTOMOBILES NV et al  
Defendants

Court File No.

CV-17-568086-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

**NOTICE OF ACTION**

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