



Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

ZACHARY CHRISTOU

Plaintiff

– and –

FORD MOTOR COMPANY and  
FORD MOTOR COMPANY OF CANADA, LIMITED

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 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.

- 2 -

**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 \$10,000.00 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:

Issued by: \_\_\_\_\_  
Local Registrar

Court House  
393 University Avenue,  
10<sup>th</sup> Floor  
Toronto, Ontario  
M5G 1E6

**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

## CLAIM

### 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) “BECM” means the high-voltage Battery Energy Control Module;
- (b) “CJA” means the *Courts of Justice Act*, R.S.O., c. C. 43, as amended;
- (c) “Class” and “Class Members” means all persons in Canada, except for Excluded Persons, who own, owned, lease, or leased one of the Vehicles;
- (d) “*Competition Act*” means the *Competition Act*, R.S.C. 1985, s. C-34;
- (e) “*Consumer Protection Act*” means the *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sched. A;
- (f) “Class Proceeding” means this putative class action;
- (g) “CPA” means the *Class Proceedings Act*, 1992, S.O. 1192 c. 6, as amended;
- (h) “Equivalent Consumer Protection Statutes” includes, but is not limited to, the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (British Columbia), the *Consumer Protection Act*, R.S.A. 2000, c. C-26.3 (Alberta), the *Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2 (Saskatchewan), the *Business Practices Act*, C.C.S.M. c. B120 (Manitoba), the *Consumer Protection Act*, C.C.S.M. c. C-200 (Manitoba), the

*Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1 (Newfoundland and Labrador), the *Consumer Protection Act*, R.S.N.S. 1989, c. 92 (Nova Scotia), the *Consumer Protection Act*, R.S.P.E.I. 1988, c. C-19 (Prince Edward Island), and the *Consumer Protection Act*, C.Q.L.R., c. P-40.1 (Québec), the *Consumer Protection Act*, R.S.N.W.T. 1988, c.C-17 (Northwest Territories), the *Consolidation of Consumer Protection Act*, R.S.N.W.T. 1988, c.C-17 (Nunavut), the *Consumers Protection Act*, R.S.Y. 2002, c. 40 (Yukon), all as amended, and such other statutes and regulations in force in Canada as might be applicable;

- (i) “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);
- (j) “Ford Canada” means Ford Motor Company of Canada, Limited;
- (k) “Ford US” means Ford Motor Company;
- (l) “Ford” or “Defendants” means Ford Canada and Ford US, collectively and interchangeably;
- (m) “Plaintiff” means Zachary Christou;
- (n) “PHEV” means Plug-In Hybrid Electric Vehicle;
- (o) “*Sales of Goods Act*” means *Sales of Goods Act*, R.S.O. 1990, c. S.1;

(p) “TEWS” means the Defendants’ Trend and Early Warning Support;  
and

(q) “Vehicles” mean the follow vehicles:

Vehicles	Model Year(s)
Ford Fusion PHEV	2019-2020

## RELIEF SOUGHT

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

- (a) An order pursuant to sections 2 and 5 of the *CPA* certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff;
- (b) A declaration that the Defendants were negligent in the design, research, development, testing, and/or warning of the Vehicles;
- (c) A declaration that one or both of the Defendants breached the *Motor Vehicle Safety Act*, S.C. 1993, c. 16, by failing to provide notice of latent BECM defects to the Plaintiffs and other Class Members promptly;
- (d) A declaration that the Defendants engaged in conduct contrary to Part VI of the *Competition Act*;
- (e) 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;

- 6 -

- (f) 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;
- (g) 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;
- (h) A declaration that the benefits which accrued to the Defendants as a result of *inter alia* their negligence/failure to warn and/or failure to honour their warranties unjustly enriched the Defendants;
- (i) An accounting of the benefits which accrued to the Defendants as a result of their negligence/failure to warn and/or failure to honour Ford Canada's Manufacturer Warranty;
- (j) A declaration that the Defendants hold in trust for the Class the benefits which accrued to the Defendants as a result of their negligence/failure to warn and/or failure to honour Ford Canada's Manufacturer Warranty;
- (k) A declaration that the Defendants, or either of them, are vicariously liable for the acts and omissions of their respective officers, directors, agents, employees and representatives;
- (l) General damages and special damages in the amount of \$20,000,000.00;
- (m) Punitive damages and/or aggregated damages in the amount of \$1,000,000.00;

- 7 -

- (n) A reference to decide any issues not decided at the trial of the common issues;
- (o) Full investigative costs pursuant to section 36 of the *Competition Act*;
- (p) Prejudgement interest compounded and post-judgement interest pursuant to the *CJA*;
- (q) Costs of this action on a full indemnity scale, or in an amount that provides substantial indemnity, plus, pursuant to s. 26(9) of the *CPA*, plus applicable taxes, the costs of administering the plan of distribution of the recovery in this action; and
- (r) Such further and other relief as to this Honourable Court seems just.

### **THE NATURE OF THE ACTION**

3. The Vehicles are PHEVs and can be driven without charging; however, they will use more gasoline than if the Vehicles had been charged.

4. This class action concerns the negligent and dangerous design, manufacture and installation of the high-voltage battery energy control module in the 2019-2020 Ford Fusion PHEV vehicles.

5. The BECM in the Vehicles could become damaged, resulting in the Vehicles not starting, losing power when driving, and overheating, which puts the Vehicles at risk of catching fire.

6. Ford Canada and Ford US failed to advise the owners of the Vehicles and the public about this BECM defect which they knew about. This failure by Ford Canada and Ford US was life threatening. At least seven fires were caused by this non-disclosure.

7. In June 2023, Ford Canada and Ford US finally disclosed the dangerous defect and commenced a massive recall.

8. As the Defendants have no fix for the defect, they have instructed owners of the Vehicles to not plug in the Vehicles as fully charging the high-voltage hybrid batteries may increase the risk of power loss and fire. As a result, owners of the Vehicles have spent significantly more money on gasoline than they would if they were able to charge their Vehicles since receiving the recall notice in June 2023.

### **THE PLAINTIFF AND THE CLASS**

9. The Plaintiff, Zachary Christou, is a 22-year-old individual who resides in the City of Vaughn, in the Province of Ontario. In June 2022, he purchased a 2020 Ford Fusion SEL Hybrid. He currently owns this motor vehicle.

10. The Plaintiff chose to purchase the 2020 Ford Fusion SEL Hybrid to save money on gasoline.

11. In June 2023, the Plaintiff received a recall letter from the Defendants regarding the BECM, advising him to not to charge his vehicle until a corrective solution is developed by the Defendants.

12. Before receiving the recall, the Plaintiff spent \$655.11 on gasoline in a twelve-month period. Since receiving the recall letter, the Plaintiff has spent \$1,117.06 on gasoline over an almost 7-month period.

### **THE CLASS**

13. The Plaintiff seeks to represent the following class (the “Class”) of which the Plaintiff is a Class Member:

All persons in Canada, except for Excluded Persons, who own, owned, lease or leased a model years 2019-2020 Ford Fusion



Plug-In Hybrid Electric Vehicle.

14. According to Transport Canada Recall Notice, there are approximately 3,198 affected Vehicles. The Plaintiff does not have information to calculate the total number of Class Members, but such information is known to the Defendants.

**THE DEFENDANTS**

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

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

17. 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.

18. 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.

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

20. 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, manufacturing, regulatory compliance, fuel economy and emission testing, marketing,

distribution, sale, and lease of the Vehicles and for the purposes of the claims described herein.

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

21. On July 17, 2022, the Defendants' TEWS team informed the Critical Concern Review Group of five reports of fire allegations that occurred in the trunk area on 2019 Vehicles in North America equipped with 30Ah high voltage batteries, with the incidents occurring between March and May 2022. The fires occurred while the vehicles were at dealerships during a replacement BECM service to remedy one or more voltage sense Diagnostic Trouble Codes, a check engine light, no start, or loss of motive power concern.

22. Analysis of the vehicles by the Defendants' High Voltage Battery Systems Team identified the fires originated in the BECM. The high voltage batteries were sent to the supplier for analysis, and they confirmed the Current Interrupt Device was activated in high voltage battery cells from the suspect units, but the root cause of the Current Interrupt Device activation was unknown.

23. On August 16, 2022, the Defendants' Critical Concern Review Group placed the investigation on monitor.

24. On February 8, 2023, a Technical Service Bulletin was published providing direction to replace the high voltage battery if Vehicles came in for service with one or more voltage sense Diagnostic Trouble Codes rather than only replacing the BECM.

25. During the monitor period, two additional fires occurred, both while a customer was driving the vehicle. These fires were reported to the Defendants' Critical Concern Review Group on May 2, 2023. In total, the Defendants' were made aware of 7 fires and 270 warranty claims resulting in a loss of motive power as a result of the defect.

26. On June 23, 2023, the Defendants reported a safety recall on some of its Vehicles to the National Highway Traffic Safety Administration.

27. On June 23, 2023, Recall concerning some of the Vehicles by Transport Canada. This Recall read as follows:

### Recall Details

#### Transport Canada Recall # 2023-355

<b>Recall Date</b>	2023-06-23
<b>Last Updated</b>	2023-12-11
<b>Notification Type</b>	Safety Mfr
<b>System</b>	Electrical
<b>Issued By</b>	FORD
<b>Manufacturer Recall Number</b>	23S33
<b>Units Affected</b>	3,198
<b>Category</b>	Car
<b>Recall Details</b>	<p>Issue: On certain Fusion Energi plug-in hybrid electric vehicles (PHEV), the high-voltage battery energy control module could become damaged. If this happens, there could be a loss of power to the wheels or the control module could overheat.</p> <p>Safety Risk: A sudden loss of power to the wheels could increase the risk of a crash. A battery energy control module that overheats can create the risk of a fire.</p> <p>Corrective Actions: Ford will notify owners by mail. The corrective actions for this recall are under development. Ford advises not to charge your vehicle until the recall repairs are completed.</p>

<b>Make</b>	<b>Model</b>	<b>Model Year(s) Affected</b>
FORD	FUSION	2019 2020
<b>Manufacturer Name</b>	<b>Contact Number</b>	<b>Website</b>
FORD	1-800-565-3673	<a href="http://www.ford.ca/support/recalls/">www.ford.ca/support/recalls/</a>

### **NOT FIT FOR INTENDED USE**

28. At all material times, the Defendants owed a duty of care to the Plaintiff and Class Members to ensure that the Vehicles were fit for intended and/or reasonably foreseeable use.

29. As a result of the Defendants' negligence described below, the Defendants failed to adequately design, research, develop, test, and/or manufacture the Vehicles before marketing, advertising, promoting, warranting, leasing, and selling the Vehicles as suitable and safe for use in an intended and/or reasonably foreseeable manner.

30. The Defendants represented that the Vehicles were fit for their intended purposes and of merchantable quality when the Defendants knew or ought to have known that these representations were false.

### **BREACH OF EXPRESS AND STATUTORY WARRANTIES**

31. At all relevant times, the Defendants or any of them used advertising, publications, and sales representatives to advertise and market the use of purchase of the Vehicles for use as a hybrid vehicle and expressly warranted that the Vehicles had both a hybrid battery and a gasoline engine, either of which could be used alone to propel the vehicle.

32. The Defendants or any of them expressly warranted that the Vehicles would function efficiently in both a gasoline and electric powered mode and was

safe for use by consumers.

33. By purchasing or leasing the Vehicles, the Plaintiff and Class Members specifically relied on the skill and judgement of the Defendants and their express warranties and representations that the Vehicles were safe for use and were hybrid vehicles, allowing them to be powered by electricity.

34. The Defendants or any of them breached the express warranty by designing, manufacturing, and marketing a defective product that failed to properly function as a hybrid vehicle.

35. The defective product fails to comply with explicit warranties provided by the manufacturer as well as the implied warranties of fitness for intended purpose or merchantability in the *Sales of Goods Act*, sections 14 and 15, the *Consumer Protection Act*, section 9.

### **NEGLIGENT DESIGN**

36. The defect in the Vehicles is the result of the Defendants' negligent design of the BECM in the Vehicles over which they maintained control.

37. The Defendants knew or ought to have known of the dangerous defect with the BECM in the Vehicles at the time of manufacture, and the above-noted risks and dangers were reasonably foreseeable consequences of the defect.

38. The Defendants could have reasonably employed safer design alternatives that were/are also economical. The design at issue offers no advantage to outweigh the significant dangers posed by the potential for sudden loss of power steering and/or car fire.

39. At the time the Vehicles were manufactured, other automobile manufacturers and the Defendants themselves designed and built vehicles with BECMs that did not fail without warning or cause car fires.

### **NEGLIGENT TESTING**

40. The Defendants failed to detect the defect because it was negligent in testing the BECM prior to distributing the Vehicles for sale.

41. If the Defendants had conducted proper testing, it would have discovered the defect.

42. In the alternative, to the extent the Defendants discovered the design defect after manufacturing of the Vehicles has begun, the Defendants ought to have stopped such manufacturing and distribution until such time as the dangerous defect was fully remedied and it could produce cars safe for their intended use.

### **NEGLIGENT MANUFACTURING**

43. In the alternative, if the design of the BECM was not inherently defective, the Defendants were negligent in the manufacture of the BECM. The Defendants failed to ensure manufacturing of the BECM was in accordance with the design specifications and sound design principles, resulting in the same dangers noted above.

44. In the further alternative, if the Defendants did not manufacture the defective parts, it did maintain control over the BECM design which included such parts. It failed to ensure that the parts it approved, ordered, and installed in the Vehicles were manufactured in accordance with its design specifications and did not pose a dangerous defect in the context of the car's overall design.

### **NEGLIGENT DISTRIBUTION AND SALES**

45. The Defendants knew or ought to have known of the dangerous defect prior to manufacturing the Vehicles and certainly prior to selling and distributing the Vehicles throughout Canada.

46. The Defendants and their authorized dealers negligently distributed and sold the Vehicles containing the dangerous defect throughout Canada, which were purchased or leased by the Class.

### **FAILURE TO WARN**

47. Despite the Defendants' knowledge of the dangerous defect and failures and fires in the Vehicles, the Defendants failed to issue an adequate warning to the Class of the defect and the danger it posed to human life and property.

48. The Defendants knew of BECM failures and car fires from:

(a) Reports they received directly and indirectly from their subsidiaries, affiliates, and authorized dealers worldwide; and

(b) Reports by the Defendants' TEWS team.

49. Despite having the reports by the TEWS team in July 2022, the Defendants stayed silent and failed to adequately warn the Class, with a recall occurring in June 2023, almost a full year after the TEWS team report.

50. As the defect can lead to personal injury and even death, the Defendants had a duty to disclose it to the Plaintiffs and the other Class Members promptly.

51. By failing to give adequate notice of the defect, the Defendants were and are in breach of their statutory obligations under Section 10(1) of the *Motor Vehicle Safety Act*, S.C. 1993, c. 16.

52. As manufacturers and distributors of the Vehicles, the Defendants ought to have warned the Class immediately of the danger of the sudden loss of power and/or car fire upon learning of these reports and further advised them to not plug in the Vehicles.

53. As a result of the Defendants' failure to adequately warn, Class Members were exposed and continue to be exposed to potential harm from the design defect as well as increased costs related to fuel.

54. Class Members did not know and could not have known to take precautionary measures against the risk of sudden power loss or a car fire.

55. The Plaintiff pleads and relies on the doctrine of discoverability. None of the Class Members knew or could have known of their claim against the Defendants until the recall that was issued in June 2023, because the Defendants' failure to warn made it impossible for the Class to know their Vehicles contained a hidden dangerous defect.

56. Even if a Class Member suffered a loss of power or a car fire, Class Members would have had no way of knowing that the cause was the result of a defective design that the Defendants concealed.

## **STATUTORY RIGHTS OF ACTION**

### **(a) *Competition Act***

57. As a result of their representations, the Defendants breached section 52 of the *Competition Act* and committed an unlawful act because their representations:

(a) Were made for the purpose of promoting, directly or indirectly, the supply or use of the Vehicles;

(b) Were made for the purpose of promoting indirectly or directly, any business interest of the Defendants;

(c) Were made to the public;

(d) Were made knowingly and recklessly; and



(e) Were false and misleading in a material respect.

58. The Plaintiffs and the Class Members suffered damages as a result of the Defendants' unlawful breach of section 52 of the *Competition Act*. Those damages include:

(a) Purchasing and using the Vehicles when they would not have otherwise done so;

(b) The cost of purchasing the Vehicles; and

(c) Other losses incidental to their harms caused by their use of the Vehicles.

59. The Plaintiff and Class members also seek their costs of investigation, pursuant to section 36 of the *Competition Act*.

**(b) *Consumer Protection Act* and Equivalent Consumer Protection Statutes**

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

61. 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*.

62. 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.

63. The Representations constituted unfair, unconscionable and/or otherwise prohibited practices under the *Consumer Protection Act*, including sections 14 and 15(2)(c), and equivalent provisions of the 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 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;

- 19 -

- (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.

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

65. 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.

66. The Plaintiff and other 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.

## **DAMAGES**

67. As a result of the negligent design, testing, manufacturing, and distribution of the Vehicles, and the ongoing failure to adequately warn the Class and to find a solution to the defect, the Plaintiff and the Class have suffered damages, all of which were reasonably foreseeable.

68. The Plaintiff claims the following on behalf of the Class:

- (a) With respect to current owners and lessees of the Vehicles, the cost to repair and/or replace (i) the dangerously defective parts to make the Vehicles safe for their intended use; or (ii) the Vehicles that have been damaged or destroyed as a result of a car fire or sudden loss of power;

(b) With respect to past and current owners and lessees of the Vehicles, the actual monetary expense incurred relating to increased gas expenditure as a result of an inability to charge the battery of the Vehicle; and

(c) With respect to all Class Members, the loss suffered as a result of any property damage arising from the sudden and unexpected loss of power and/or a car fire.

### **UNJUST ENRICHMENT/WAIVER OF TORT**

69. The Defendants were unjustly enriched by their failure to stop selling the Vehicles until they had a solution for the defect and/or by their failure to proactively recall each Vehicle promptly.

70. As a result, the Defendants have been unjustly enriched, Class Members have suffered a corresponding deprivation, and there is no juristic reason for the enrichment.

71. The Defendants should be ordered to disgorge the profits they made on the sales of the Vehicles to the Class Members or disgorge the excess profits they earned by shifting the risk of fire, personal injury, increased expenditure on gasoline, and any other loss to the Class Members.

72. The Plaintiff and the Class Members plead the doctrine of waiver of tort and, due to the wrongful conduct of the Defendants described herein, are entitled to a restitutionary award of the benefits which accrued to the Defendants as a result of their wrongful conduct.

73. Further, or in the alternative, the Plaintiff and the Class Members claim an accounting and disgorgement of the benefits which accrued to the Defendants.

### **PUNITIVE DAMAGES**

74. For at least a year, the Defendants have known of the danger to human life and property posed by the defect. Yet, in breach of their statutory and common law duties, the Defendants failed to issue an adequate warning to Class Members due to their overarching concern that proper disclosure would damage the reputation of their brand and negatively affect worldwide sales and the Defendants' share price.

75. The Defendants' conduct described above was arrogant, high-handed, outrageous, reckless, wanton, entirely without care, deliberate, secretive, callous, willful, disgraceful, in contemptuous disregard of the Class' rights, intentionally disregarded the interests of the Class Members and the public, and indifferent to the consequences of delayed recall. For such abhorrent conduct and motivated by economic consideration, the Defendants are liable to pay punitive and aggravated damages.

#### **REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO**

76. This action has a real and substantial connection with Ontario, because, among other things:

- (a) Ford Motor Company of Canada, Limited is headquartered in Ontario;
- (b) All of Ford Motor Company of Canada, Limited's manufacturing facilities are located in Ontario;
- (c) Some of the Vehicles were manufactured in Ontario;
- (d) The Plaintiff and a substantial portion of the Class Members reside in Ontario; and
- (e) A portion of the damages sustained by the Class were sustained by persons and entities domiciled in Ontario.

## SERVICE OUTSIDE OF ONTARIO

77. This originating process may be served outside of Ontario on Ford Motor Company without leave, in accordance with section 17.02 of the *Rules of Civil Procedure*, on the basis that:

(a) The tort was committed in Ontario (Rule 17.02(g)); and

(b) Ford Motor Company carries on business in Ontario (Rule 17.02(p)).

## THE RELEVANT STATUTES

78. The Plaintiffs plead and rely upon the provisions of the *CPA*, the *CJA*, the *Competition Act*, the *Consumer Protection Act*, the Equivalent Consumer Protection Statutes, the *Sales of Goods Act*, and the *Motor Vehicle Safety Act*, S.C. 1993, c. 16.

## TRIAL

79. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario.

(Date of Issue)

### **GLUCKSTEIN LAWYERS**

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Plaintiff

Defendant

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF CLAIM**

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