

CANADA

(Class Action Division)

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT

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No.: 500-06-000956-181

V [REDACTED] G [REDACTED]

(...)

*Plaintiff(...)*

v.

**FORD MOTOR COMPANY OF CANADA,  
LIMITED**

-and-

**FORD MOTOR COMPANY**

*Defendants*

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**RE-AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS  
ACTION (AS AUTHORIZED BY THE NOVEMBER 12, 2020 JUDGMENT)**  
**(Articles 574 C.C.P. and following)**

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TO (...) THE HONORABLE JUSTICE(...) **SYLVAIN LUSSIER** OF THE SUPERIOR COURT OF QUEBEC, **DESIGNATED TO PRESIDE OVER THE PRESENT MATTER,** SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PLAINTIFF STATES THE FOLLOWING:

**Introduction:**

1. Plaintiff(...) wishes to institute a class action on behalf of the following Group of which she is (...) a member:

Sub-Group A:

All residents of Canada (or subsidiarily Quebec), who own, owned, lease and/or leased one or more of the Subject Vehicles, namely:

- 2013-2014 Ford Escape;
- 2013-2014 Ford Fusion;
- (...) 2014 Ford Fiesta;

- 2014-2015 Ford Transit Connect;

Sub-Group B:

All residents of Canada (or subsidiarily Quebec), who have suffered damages and/or disbursed costs as a result of the defects affecting the Subject Vehicles;

or any other Group(s) or Sub-Group(s) to be determined by the Court;

(hereinafter referred to as the “**Plaintiff(s)**”, the “**Class Member(s)**”, the “**Class**”, the “**Group Member(s)**”, the “**Group**”);

2. Plaintiff(...) communicates herewith extracts from the Defendants’ websites, *en liasse*, as **Exhibit R-1**, and a copy of the *Registraire des entreprises* (CIDREQ) report on Defendant Ford Motor Company of Canada, Limited, as **Exhibit R-2**;
3. As appears from the Exhibit R-2 CIDREQ report, Defendant Ford Motor Company of Canada (hereinafter “**Ford Canada**”) is the wholly-owned Canadian subsidiary of Defendant Ford Motor Company (a corporation headquartered in the State of Michigan, USA) (hereinafter “**Ford USA**”). The Defendants will sometimes collectively be referred to as “**Ford**” hereinbelow;
4. At all material times, Ford Canada, directly and/or in conjunction with its related entities and/or parent company Ford USA, marketed, promoted, distributed, leased and sold the Subject Vehicles throughout Canada, including in the Province of Quebec;
5. “Subject Vehicles” means the following Ford vehicles:
  - 2013-2014 Ford Escape;
  - 2013-2014 Ford Fusion;
  - (...) 2014 Ford Fiesta;
  - 2014-2015 Ford Transit Connect;

Plaintiff(...) is reserving the right to amend these proceedings to include any further makes or models distributed by Defendants with similar or identical defects and/or malfunctions (as detailed more fully below);

**The situation:**

6. Defendants have marketed, promoted, distributed, leased and sold the Subject Vehicles to Class Members, which were defectively designed and manufactured, namely with defective engines and related parts which are prone to overheating, leak coolant liquid or fuel, stall and/or in certain circumstances catch fire. The defects in question affect various parts and components of the engine and fuel system of the Subject Vehicles, namely the engine coolant systems and associated wiring and the computer systems including, but not limited to, the wiring harness, the Power Control Module (hereinafter the “**PCM**”) and the Manifold Absolute Pressure Sensor (hereinafter the “**MAP**”);
7. Although announcing multiple recalls over the years regarding some of these issues, Ford has been unable to adequately and completely solve the underlining issues and Class Members are forced to continue to drive highly unsafe vehicles as a result;
  - 7.1. The Ford “Escape” models have been highly popular in Canada and the USA. In 2011, 44,248 second generation Ford Escapes vehicles were sold in Canada, the whole as confirmed in the April 24, 2012 Globe and Mail article entitled “Ford’s Escape plan drives auto maker into the future”, a copy of which is communicated herewith as **Exhibit R-21**;
  - 7.2. Ford released the third generation of its very successful Ford “Escape” model in or about May 2012 (for the USA) and in or about June 2012 (for Canada), for the 2013 model year. For this new model release, Ford rebadged its Europe-designed Ford “Kuga”. Although still manufactured in the US, the third generation Escape is fully aligned with the Kuga as per Ford’s so-called "One Ford" plan of having only one

vehicle per segment internationally;

- 7.3. In fact and accordingly, the redesigned 2013 Ford Kuga formed the basis for the redesigned 2013 Ford Escape sold in the USA and Canada, the whole as confirmed in the Globe and Mail article (R-21):

“The Escape/Kuga will be built in three different plants – one in Germany, one in China and one in North America – each one using identical procedures and processes.”

8. The issues and latent design and manufacturing defects affecting Plaintiff's (...) 2013 Ford Escape are also affecting the other Subject Vehicles;
9. Indeed, on July 7, 2012, Transport Canada announced a Ford safety recall bearing Ford's recall number 12S35 regarding the 2013 Ford Escape model equipped with a 1.6L engine ((...) Plaintiff's model), as follows, the whole as more fully appears from a copy of the Transport Canada Recall #2012218, communicated herewith as though recited at length herein as **Exhibit R-3**:

“On certain vehicles equipped with a 1.6L GTDI (turbocharged) engine, an **incorrectly manufactured engine compartment fuel line may develop a leak**. Fuel leakage, in the presence of an ignition source, **could result in a fire causing property damage and/or personal injury**. Correction: Dealers will replace the engine compartment fuel line.”;

(Emphasis added)

10. The problems persisted and approximately 2 months later, namely on September 4, 2012, Transport Canada announced another Ford safety recall bearing Ford's recall number 12S39 regarding the 2013 Ford Escape model equipped with a 1.6L engine once again ((...) Plaintiff's model), as follows, the whole as more fully appears from a

copy of the Transport Canada Recall #2012298, communicated herewith as though recited at length herein as **Exhibit R-4**:

“On certain vehicles equipped with a 1.6L engine, the cylinder head cup plug (freeze plug) may become dislodged, resulting in **a significant loss of coolant which could cause the engine to overheat**. Under certain circumstances, water in the remaining coolant mixture may vaporize, resulting in a higher concentration of glycol (antifreeze). **A high concentration of glycol could become flammable and, in the presence of an ignition source, could result in a fire causing property damage and/or personal injury**. Correction: Dealers will inspect the cylinder head. If the cup plug is dislodged or leaking, the cylinder head assembly will be replaced. If the cup plug is not dislodged or leaking, a wicking sealant will be applied to the plug and a cover plate will be installed over the plug with adhesive.”

(Emphasis added)

11. The problems persisted again and approximately 2 months later, namely on November 30, 2012, Transport Canada announced another Ford safety recall bearing Ford’s recall number 12S41 regarding the 2013 Ford Escape once again ((...)  
Plaintiff’s model) and the 2013 Ford Fusion equipped with a 1.6L engine, as follows, the whole as more fully appears from a copy of the Transport Canada Recall #2012399, communicated herewith as though recited at length herein as **Exhibit R-5**:

“Certain vehicles equipped with 1.6L engines **may experience a fire originating in the engine compartment, while the engine is running, caused by the engine overheating that results in flammable fluid leaks coming into contact with the hot exhaust system. This could result in property damage and/or**

**injury.** Correction: Dealers will reprogram the Powertrain Control Module and the Instrument Panel Cluster module to improve the system's ability to detect and mitigate an overheating condition. Dealers will also inspect for coolant leaks and make any necessary corrections."

(Emphasis added)

12. The problems persisted again and approximately 1 year later, namely on November 27, 2013, Transport Canada announced another Ford safety recall bearing Ford's recall number 13S12 regarding the 2013 Ford Escape equipped with a 1.6L engine once again ((...) Plaintiff's model), as follows, the whole as more fully appears from a copy of the Transport Canada Recall #2013424, communicated herewith as though recited at length herein as **Exhibit R-6**:

**"On certain vehicles equipped with 1.6L engines, localized overheating of the engine cylinder head could lead to cracks, causing oil leaks. Engine oil that comes into contact with a hot engine surface could potentially result in a fire. In addition, fuel lines replaced as part of recall 2012-218 (12S35) may have been improperly installed and may chafe, potentially resulting in a fuel leak. Fuel leakage, in the presence of an ignition source, could result in a fire. Both situations could result in injury and/or property damage.** Correction: Dealers will enhance engine heat shielding, cooling and control systems, as well as inspect fuel line routing and replace fuel lines as necessary. Note: This recall supersedes recall 2012-218."

(Emphasis added)

13. As appears from this R-6 recall, Ford admitted that the R-3 recall announced in July 2012 was ineffective and had to be corrected as well;
14. The problems persisted again and approximately 9 months later, namely on August 12 2014, Transport Canada announced another Ford safety recall bearing Ford's recall number 14S17 regarding the 2013 and 2014<sup>1</sup> Ford Escape once again and the 2013-2014 Ford Focus, as follows, the whole as more fully appears from a copy of the Transport Canada Recall #2014349, communicated herewith as though recited at length herein as **Exhibit R-7**:

“On certain vehicles, **defective engine wiring harness splices could affect engine function, causing reduced engine power and/or hesitation, and also cause the engine to stall. Stalling would result in a loss of motive power, increasing the risk of a crash resulting in injury and/or damage to property.** Correction: Dealers will replace affected wiring splices.”

(Emphasis added)

15. The problems persisted again and on April 28, 2015, Transport Canada announced another Ford safety recall bearing Ford's recall number 15S13 regarding the 2014 Ford Edge, the 2014 Ford Escape, the 2014 Ford Fiesta, the 2014 Ford Focus and the 2014 Ford Transit Connect, as follows, the whole as more fully appears from a copy of the Transport Canada Recall #2014349, communicated herewith as though recited at length herein as **Exhibit R-8**:

“On certain vehicles, improper nickel plating of certain fuel pump internal components could contaminate the pump, potentially resulting in an inoperative fuel pump. **This could result in a no-start condition, or an engine stall without warning and**

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<sup>1</sup> The Transport Canada document regarding recall 14S17 (Exhibit R-7) only refers to 2013 Ford Escape models and 2013-2014 Ford Focus models whereas the recall also included the 2014 Ford Escape models.

**without the ability to restart the vehicle, which could increase the risk of a crash.** Correction: Dealers will replace the Fuel Delivery Module (FDM).”

(Emphasis added)

16. As appears from the R-8 Recall, Ford did not include the Plaintiff's(...) 2013 Ford Escape model which has the same 1.6L engine and design as the 2014 Ford Escape;
17. The problems persisted again and on March 29, 2017, Transport Canada announced another Ford safety recall bearing Ford's recall number 17S09 regarding the 2014 Ford Escape, the 2014 Ford Fiesta, the 2013-2014 Ford Fusion and the 2014-2015 Ford Transit Connect, as follows, the whole as more fully appears from a copy of the Transport Canada Recall #2017184, communicated herewith as though recited at length herein as **Exhibit R-9**:

**“On certain vehicles equipped with 1.6L GTDI engines, low coolant level could lead to localized overheating of the cylinder head, which could cause a fire. This could increase the risk of injury and/or damage to property.** Correction: Dealers will install a coolant level sensor and supporting hardware and software. Note: Until repair parts are available, owners should regularly check engine coolant level and top up as necessary. Also note for Fiesta, only the ST model vehicles are affected.”

(Emphasis added)

18. As appears from the R-9 Recall, Ford did not include the Plaintiff's(...) 2013 Ford Escape model which has the same 1.6L engine and design as the 2014 Ford Escape. However, as more fully detailed below, when Defendant was ultimately unable to



repair Plaintiff's(...) 2013 Ford Escape which was experiencing repeated overheating and stalling, Defendant conducted the R-9 Recall repairs on Plaintiff's(...) 2013 Ford Escape, although refusing to conduct these repairs for free. That "repair" did not resolve the issue, as more fully detailed below;

19. When the above Canadian recalls were announced in Canada, the Defendants also announced similar or identical recalls in the United States of America;
20. On July 16, 2018, the US Department of Transport's National Highway Traffic Safety Administration (the "**NHTSA**") opened and announced a Preliminary Evaluation (PE) after having been made aware of 40 complaints and 2 instances of crashes/fire involving the 2013 Ford Escape 1.6L GTDI, the same model as Plaintiff's(...) vehicle, as follows, the whole as more fully appears from a copy of the NHTSA Office of Defects Investigation Resume notice, communicated herewith as though recited at length herein as **Exhibit R-10**:

**"Problem Description:** In the subject vehicles, sudden loss of motive power is possible at highway speeds with little to no warning."

**Action:** Open a Preliminary Evaluation (PE).

**Summary:** The Office of Defects Investigation (ODI) has received 40 Vehicle Owner Questionnaire (VOQ) reports for model year 2013 Ford Escape vehicles reporting that the vehicle will suddenly stall without warning while driving. The subject vehicles are equipped with a 1.6L GTDI (turbo) engine. Complainants allege stalling was caused by overheating of the engine resulting in delayed or no restart possible.

A Preliminary Evaluation has been opened to determine the scope, frequency, and potential safety-related

consequences of the alleged defect.”

20.1. On or about August 2, 2018, NHTSA sent a notification letter to Ford USA regarding the commencement of the Office of Defects Investigation (ODI)’s preliminary evaluation and requesting documentation from Ford USA further to 42 complaints received at the time, the whole as more fully appears from the extract from the NHTSA website regarding the investigation in question and from a copy of the NHTSA’s August 2, 2018 letter to Ford USA, communicated herewith, *en liasse*, as though recited at length herein, as **Exhibit R-14**:

“This letter is to inform you that the Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA) has opened a Preliminary Evaluation (PE18-007) to investigate allegations of loss of motive power in certain model year (MY) 2013 Ford Escape vehicles equipped with the 1.6L GTDI (turbo) engine manufactured by Ford Motor Company (Ford), and to request certain information.

The office has received 42 reports of loss of motive power in certain 2013 Ford Escape vehicles equipped with the 1.6L GTDI (turbo) engine. Complaints allege that the vehicle will suddenly stall without warning while driving due to overheating of the engine. The stall would result in delayed or no restart possible. A copy of each of the reports has been sent to you under secure email.

Unless otherwise stated in the text, the following definitions apply to these information requests:

- **Subject Vehicles:** all MY 2013 Ford Escape vehicles equipped with the 1.6L GTDI (turbo) engine manufactured

for sale or lease in the United States (...)

- **Peer Vehicle:** all other MY 2013 and all MY 2014 Ford Escape vehicles manufactured for sale or lease in the United States (...).
  
- **Subject Components:** all components used in the cooling of the engine in the subject vehicles.
  
- **Subject Recalls:**
  1. Ford Recall Campaign 17S09 (NHTSA Recall No 17V20900)
  2. Ford Recall Campaign 14S30 (NHTSA Recall No 15V005000)
  3. Ford Recall Campaign 14S20 (NHTSA Recall No 14V525000)
  4. Ford Recall Campaign 13S12 (NHTSA Recall No 13V584000)
  5. Ford Recall Campaign 13S12 (NHTSA Recall No 13V583000)
  6. Ford Recall Campaign 12S41 (NHTSA Recall No 12V551000)
  7. Ford Recall Campaign 12S39 (NHTSA Recall No 12V431000)
  8. Ford Recall Campaign 12S35 (NHTSA Recall No 12V336000)
  
- **Alleged Defect:** any one or more of the following symptoms or conditions:
  1. All allegations of engine overheating;

2. All allegations of stalling at speed or while stationary;
3. All allegations of the engine entering a limp mode where full power is supplied;
4. All allegations of coolant leaking or coolant consumption;
5. All allegations of cooling system failure or malfunctions;
6. All allegations of cooling issues related to the subject recalls.”

- 20.2. The Plaintiff(...) communicates herewith, *en liasse*, as **Exhibit R-15**, the extracts from the NHTSA website containing the text of the 42 complaints mentioned in the Exhibit R-14 NHTSA notification letter, as though recited at length herein;
21. As detailed below, Plaintiff(...) repeatedly experienced the same sudden stalling without warning while driving their 2013 Ford Escape equipped with 1.6L engine;
22. The above recalls, (...) complaints, admissions, and investigations clearly evidence a serious and important safety and security risk affecting the Subject Vehicles, which put/puts the safety and security of the Plaintiff(...), the Class Members and any passengers of the Subject Vehicles at great risk of damages, injury, crash and possibly death;
23. We respectfully submit that Defendants should therefore be ordered to recall all Subject Vehicles in order to properly repair the defective engine coolant system, associated wiring and computer systems (and any other related and affected parts or components) with non-defective replacement parts or components, failing which that Defendants should be ordered to take back the Subject Vehicles and reimburse the Class Members for all amounts paid for the purchase or lease of their Subject Vehicle and/or any repair costs disbursed and other disbursements;
24. Defendants have known about this issue for many years, as detailed above and as more fully detailed below, since Plaintiff and many (...) Class Members (as well as

owners and lessees in other countries including the United States) have brought in their Subject Vehicle to Defendants' various dealers complaining of the stalling, leaking and overheating issues and Defendants and their agents were unable to properly address and repair the Subject Vehicles;

25. Class Members such as Plaintiff(...) were forced to disburse repair costs whereas Defendants were ultimately unable to repair the underlining design and manufacturing defects affecting the Subject Vehicles and Class Members were inconvenienced and suffered loss of time and income when dealing with these issues, bringing in their vehicles for the ineffective recalls, renting other vehicles during the "repairs" in question, continuing to make loan payments, etc., all of which Class Members claim as damages from Defendants herein;
26. Furthermore, (...) Class Members have suffered and/or will suffer a significant decrease in value (and/or resell value) of their Subject Vehicle unless a proper and effective recall is announced and conducted in order to properly repair the Subject Vehicles with non-defective replacement engines and/or related parts;

#### **FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PLAINTIFF(...)**

27. The Plaintiff's (...) common law spouse(...) is former Co-Plaintiff herein [REDACTED] Nicholson (hereinafter "Nicholson");
28. As at the date of the original Application for Authorization herein, (...) Nicholson was the registered owner of a fully loaded 2013 Ford Escape SE equipped with a 1.6L engine, bearing vehicle identification number (VIN): 1FMCU9GX8DUA49689. Said vehicle was apparently built on or about July 23, 2012 at Ford's Louisville, Kentucky, USA plant;
29. Plaintiff(...) and Nicholson purchased said vehicle on March 28, 2017 from Westend Automotive, in Ottawa, Ontario. The vehicle had approximately 50,000 kms at the time of purchase and was purchased for \$22,377 (included taxes and applicable fees). At the time of purchase, the Plaintiff(...) and Nicholson were told that the vehicle previous

had only one owner, in the Province of Quebec, and that it had a “clean CarProof” report (namely that it had never been accidented);

30. Defendants are hereby summoned to retain and communicate all reports, repair reports, invoices, documents, recall reports, and/or call or interaction recordings or notes regarding Plaintiff(...) Nicholson and their particular 2013 Ford Escape;
31. In order to purchase their vehicle, Nicholson (...) signed a loan with Scotia Bank, and at as the date of the original Application for Authorization herein, (...) Nicholson was making monthly payments of \$526 and had not yet paid back the balance owing on the loan;
32. Including the various recalls mentioned above which include the 2013 Ford Escape, there have been a total fifteen (15) different recalls in the USA and thirteen (13) recalls in Canada affecting the 2013 Ford Escape vehicles (including Plaintiff's(...) vehicle), the whole as more fully appears from the relevant extracts from the Transport Canada and NHTSA websites, communicated herewith, *en liasse*, as **Exhibit R-11**;
33. All past recalls affecting the Plaintiff's(...) particular 2013 Ford Escape have already been conducted on Plaintiff's(...) vehicle by either Plaintiff(...) or the vehicle's previous owner. Indeed, there are no outstanding recalls affecting said vehicle as of the date of the original Application for Authorization, the whole as more fully appears from the recall search results on Defendants' website and on the NHTSA.gov website regarding Plaintiff's(...) particular Vehicle Identification Number (“VIN”), communicated herewith, *en liasse*, as **Exhibit R-12**;
34. Plaintiff V [REDACTED] G [REDACTED] is the person who mostly drove and operated the vehicle in question, notwithstanding the fact that her common law spouse Nicholson was the registered owner;
35. Plaintiff G [REDACTED] is the person who personally disbursed the amounts paid in repair costs to date which she claims from Defendants herein;

36. Plaintiff's(...) vehicle has experienced repeated and ongoing issues with the coolant system and overheating, including stalling while driving;
37. In January 2018, Plaintiff and Nicholson (...) notice that their vehicle smelled of a leak. Their local mechanic notices the odor of a leak as well and after conducting some research, advised the Plaintiff(...) to proceed to an actual Ford dealership since the 2013 Ford Escape had previously been recalled for certain known issues involving coolant leaks;
38. Accordingly, Plaintiff G [REDACTED] made several calls to Ford Canada Customer Service. She had great difficulty obtaining information regarding which recalls had or had not been conducted on her vehicle. She then called Transport Canada to determine exactly which recalls pertained to her vehicle;
39. Transport Canada apparently sent an email to Ford and Ford then reluctantly agreed to pay for a diagnostic at the Campbell Ford dealership (Defendants are being summoned to produce a copy of said email as Plaintiff(...) never received it);
40. On January 26, 2018, Plaintiff G [REDACTED] took her vehicle into the Campbell Ford dealership. The vehicle had 65,245 kms at the time. Ford proceeded to a diagnostic and did not find the issue. It did however detect some small leaks at the Heater Core and Trans LH Axle Core and put a dye into the car to try to find where the main leak is coming from. Plaintiff was then asked to drive her vehicle for 2 days so the dye can work through the system. Plaintiff G [REDACTED] then returned to Campbell Ford who was not able to find a trace of a large leak but who did acknowledge finding Code P2560 - Low Coolant Level when performing the diagnostic. It then completed one unrelated outstanding recall regarding the door latches and returned the vehicle to Plaintiff(...);
41. In October 2018, while only driving 50 KMs / hour, Plaintiff's(...) vehicle overheated, 4 KMs from their residence. The vehicle's dash's Engine Overheating Light illuminated indicating: Pull Over to Safety. Before Plaintiff could actually pull over, the vehicle abruptly stalled and the engine shut off while still on the road;

42. Plaintiff turned off the vehicle and waited for approximately 1 minute before attempting to turn on the engine. The engine successfully turned on long enough for Plaintiff to be able to pull over onto the shoulder of the road, at which time the engine stalled again;
43. Plaintiff waited 20 minutes this time before attempting to turn the engine back on. It turned on and Plaintiff drove home slowly (with the heat turned off) and made an appointment with her mechanic (who advised her to fill the coolant reservoir before driving to garage, which Plaintiff did);
44. Two (2) days later, Plaintiff G [REDACTED] slowly drove her vehicle to the mechanic late in the evening (with the heat turned off), with (...) Nicholson following in his truck in order to ensure her safety;
45. The next day, October 18, 2018, the mechanic confirmed that he had ran diagnostics and found a puddle of coolant. He therefore recommended that Plaintiff(...) take the vehicle back to the Ford dealer. The being said, during the diagnostics, a new dash board light had come on pertaining to the Coolant Bypass Valve, the whole as more fully appears from the detailed report from Grant's Garage as well as Plaintiff's(...) proof of payment of the total amount of \$55.18 (including taxes) for said visit, communicated herewith, as **Exhibit R-16**, Plaintiff G [REDACTED] claiming said amount of \$55.18 from Defendants as damages;
46. Plaintiff called to make an appointment at Mont Blue Ford but was forced to wait 2 weeks for next open time slot. Plaintiff was forced to drive her vehicle as little as possible during those two weeks (with the heat turned off), constantly checking coolant level and working from home for several days in order to avoid driving the vehicle;
47. In late October 2018, Plaintiff G [REDACTED] called Ford Canada and spoke with the manger assigned to her file. She requested a free repair due to the recalls and was told that the vehicle is out of warranty and that all recalls pertaining to her vehicle had been done;



48. On November 13, 2018, Plaintiff G [REDACTED] took her vehicle to Mont Bleu Ford which ran a diagnostic and replaced the coolant bypass valve (while Plaintiff waited for the repairs to be conducted) (the vehicle had 81,513 KMs at the time). Plaintiff paid a total of \$599.79 including taxes for said repairs, the whole as more fully appears from her receipt, communicated herewith as **Exhibit R-13**. Plaintiff G [REDACTED] claims said amount from Defendants as damages since this did not resolve the issue, as detailed below;
49. The very next day, on November 14, 2018, approximately 6 KMs away from her home, the vehicle's Engine Overheating Light comes on, indicating: Pull Over to Safety. The car abruptly shut off while on the road with no time for Plaintiff to pull over to safety. In fact, Plaintiff was almost struck by the vehicle behind her;
50. Plaintiff turned off the vehicle and waited approximately 30 seconds and then successfully turned the engine back on in order to be able to pull over to the shoulder of the road. The vehicle then stalled again;
51. Plaintiff G [REDACTED] called (...) Nicholson for help and also called Mont Bleu Ford. After waiting for the engine to cool down, she was able to slowly drive home (with the heat turned off). That evening, she brought her vehicle back to Mont Blue Ford (with the heat turned off as well, on a particularly freezing evening);
52. Since November 14, 2018, the vehicle has remained at Mont Bleu Ford which is apparently still unable to fix the issue. Plaintiff(...) never retook possession of the(...) said vehicle since November 14, 2018, as more fully detailed below;
53. On November 15, 2018, Mont Bleu Ford calls Plaintiff G [REDACTED] and surprisingly recommends conducting the 17S09 recall, which as per the Exhibit R-9 Ford/Transport Canada notice, was only applicable to 2014 Ford Escape vehicles and not the 2013 Ford Escape model. Indeed, the service manager named Phil informed Plaintiff G [REDACTED] that he had recently did this on another Escape and it had apparently fixed the problem (confirming to Plaintiff G [REDACTED] that that the engine in the 2013 Ford Escape models is exactly the same, except for one part, as compared to the 2014

Ford Escape models).

54. Plaintiff had no other choice but to authorize the repair, which (...) apparently cost \$1,392.98 inclusive of taxes (which Plaintiff(...) confirmed in the(...) original Application for Authorization that she (...) would refuse to pay that amount but (...) would pay it under protest in order to recuperate the(...) vehicle, that is if it the(...) vehicle is ever actually repaired);
55. Plaintiff(...) also reiterates that both the 2013 and 2014 Ford Escape models were built at the same Ford plant in Louisville, Kentucky, USA and share the same engine. Indeed, the 2013 year for the Ford Escape was the first year model following Ford's complete redesign of the Escape model, as detailed above. Ford abusively announced recall 17S09 (Exhibit R-9) without including the 2013 Ford Escape models. Furthermore, the R-14 NHTSA letter to Ford USA specifically mentions that the subject vehicle in said letter is the 2013 Ford Escape equipped with the 1.6L GTDI (turbo) engine and that the so-called "Peer Vehicles" where all other 2013 and all 2014 Ford Escape vehicles;
56. On November 15, 2018, Plaintiff G [REDACTED] called Transport Canada again in relation to her already filed complaint # 2018-2054 in order to update them of the situation;
57. On November 16, 2018, the Ford dealer called Plaintiff G [REDACTED] and informed her that it had replaced the wiring harness, 2 sensors, the coolant reservoir, and the battery, the whole without being able to resolve the issue. The Mont Bleu Ford representative indicated that he was looking into the issue and that he would be contacting Ford Canada for assistance;
58. Between November 14 and 18, 2018, Plaintiff G [REDACTED] made 2 more calls to Ford Canada and spoke to a Tier 1 agent. She was told that Ford will not help her since her vehicle is out of warranty;
59. On November 21, 2018, Plaintiff Gartner called Ford Canada Customer Service once again in order to obtain confirmation and details that all past recalls had been

conducted on her vehicle. During said call, the Ford agent confirmed *inter alia* the following had been done when Plaintiff's(...) Subject Vehicle was owned by its previous owner:

- a) That the Powertrain Control Module (PCM) had been replaced and a Coolant Sensor Module had been added on January 7, 2013;
- b) That the said Coolant Sensor Module failed immediately the next day and was replaced, namely on January 8, 2013;
- c) The replacement PCM installed on January 7, 2013 failed and was replaced on September 5, 2013; and
- d) That various other coolant system parts had been replaced in the vehicle under warranty or pursuant to the relevant recalls;

- 60. That same day, Plaintiff G [REDACTED] also called Mont Bleu Ford. The Service Manager named Phil indicated that he still did not know exactly what is wrong with the vehicle nor how to fix it. He confirmed that Ford Canada will not help because the vehicle is out of warranty and that he will ask his electrician to inspect the vehicle;
- 61. On November 23, 2018 Plaintiff G [REDACTED] called Ford Customer Service one last time, this time asking for any help Ford can offer and indicating that she will proceed to file a class action if Ford does not agree to properly repair her vehicle. Ford once again refused to help Plaintiffs in any way since the vehicle is out of warranty and Ford also refused to consider a trade-in or buy-buy of Plaintiff's(...) clearly defective vehicle;
- 62. On November 28, 2018, Plaintiff G [REDACTED] called the Mont Bleu Ford representative who indicated that he still did not know how to fix the problem and that he cannot tell her when the vehicle will be returned to her repaired;
- 63. Plaintiff(...) was then forced to start renting another vehicle and hereby claims from Defendants herein the reimbursement of the rental costs paid as damages, namely:

a) \$118.26 paid by (...) Nicholson, the whole as more fully appears from the Hertz rental record dated November 29, 2018, communicated herewith, as **Exhibit R-17**; and

b) \$226.41 paid by Plaintiff G■■■■■, the whole as more fully appears from the Hertz rental record dated February 27, 2019, communicated herewith, as **Exhibit R-18**;

64. Plaintiff(...) also claims damages for the loss of time, inconvenience, embarrassment, aside from punitive damages as detailed below;

64.1. Following the institution of the present class action proceedings (...) on November 29, 2018, Plaintiff(...) never retook possession of the (...) 2013 Ford Escape, which (...) was still in the possession of the Mont Bleu Ford dealership as at the date of the (...) Amended Application (June 20, 2019);

64.2. The Mont Bleu Ford dealer in question had indicated, after the institution of the present legal proceedings, that it had removed and replaced the vehicles standpipe that apparently housed the coolant level sensor (the “**Standpipe**”);

64.3. It is important to note that Plaintiff’s(...) 2013 Ford Escape vehicle in question was not originally manufactured with said Standpipe. Indeed, it was only in the context of Ford’s recall number 13S12 (Exhibit R-6) that said Standpipe was installed into the vehicle (and all other recalled Subject Vehicles undergoing the same recall);

64.4. As mentioned above, Plaintiff(...) never regained possession of the(...) vehicle and therefore never drove it since November 14, 2018;

64.5. On April 9, 2019, Plaintiff(...), Nicholson and Defendant signed a partial Transaction Agreement partially settling some but not all of the individual claims asserted by the then Plaintiffs herein and without in any way affecting, reducing or renouncing to any of the claims or causes of action by the other putative class members in the present

class action proceedings (the “**Partial Transaction**”), a copy of which has been filed under seal as **Exhibit R-20**;

64.6. The Partial Transaction provided for the following, *inter alia*:

- a) Defendants bought back the Plaintiff's(...) 2013 Ford Escape vehicle for the sum of \$17,485.26, including taxes;
- b) Neither the Defendants nor the Mont Bleu dealer had any monetary claims against the then Plaintiffs regarding said vehicle, any previous attempted repairs or work on said vehicle, or the “loaner” vehicle provided to the then Plaintiffs;
- c) Defendants became the owners of the vehicle in question although each party continues to claim ownership of the removed Standpipe;
- d) Defendants became the custodians of the vehicle in question and of the Standpipe during the present proceedings, the Parties agreeing that until final resolution of the present proceedings, Defendants and their agents will not dispose of, or destroy, the vehicle or the Standpipe and that same will only be examined or inspected by the Parties’ respective experts upon jointly agreed schedule and protocol;
- e) Plaintiff(...) and Nicholson *inter alia* released and discharged the Defendants of any and all claims and/or damages relating to the loss of value of their vehicle and the cost of the winter tires purchased for the vehicle (the “**Released Claims**”);
- f) The Parties recognized, confirmed and agreed that aside from the Released Claims, the then Plaintiffs were not releasing or settling any other claims alleged against Ford in the context of the present class action proceedings, including, without limitation, for the repair costs paid by the then Plaintiffs for their vehicle and not assumed or paid by Defendants or the Mont Bleu dealer (which amounts

are detailed above and which remain claimed by Plaintiff(...) against Defendants herein, as detailed above), for the loss of use or enjoyment of their vehicle, for the loss of time, for stress, for fear, for inconvenience, for the cost of renting a replacement or “loaner” vehicle, for the loss of use of a replacement vehicle prior to the buy-back, for moral damages and/or for punitive damages (collectively the “**Remaining Claims**”);

- g) Defendants agreed not to invoke the buy-back of the Plaintiff’s(...) vehicle or the execution of the Partial Transaction in order to contest the authorization criterion provided for at Article 575 of the Civil Code of Procedure in the present class action proceedings; and
- h) Defendant agreed that the buy-back of the Plaintiff’s(...) vehicle and the execution of the Partial Transaction shall not be alleged by Defendants to contest the Plaintiff’s(...) or Nicholson’s interest to act as proposed class representatives in the context of the present class action proceedings;

**FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

- 65. Each Class Member has purchased or leased a Subject Vehicle and/or has suffered damages, loss of time, disbursements, paid repair costs or car rental fees as a result of the defects affecting the Subject Vehicles;
- 66. Plaintiff(...) and the Class Members’ consent when purchasing or leasing the Subject Vehicle was vitiated as a result of the discovery of this serious defect and security/safety risk, as described hereinabove;
- 67. Plaintiff(...) and the Class Members would not have purchased or leased the Subject Vehicle had they been made aware of the defects mentioned above;
- 68. Certain Class Members and the Plaintiff(...) have paid to repair their Subject Vehicle

but to no avail since Defendants have been unable to properly address the issues to date, for which the Class Members claim reimbursement and/or damages from Defendants;

69. The safety of the current owners or lessees of the Subject Vehicles, and their passenger, is at great risk due to the serious defects mentioned above, which involve risk of sudden stalling without warning, crash, fire, etc.;
70. Reiterating all that is alleged hereinabove, Plaintiff submits that Defendants' malicious intention to refuse to properly recall and repair the Subject Vehicles or to buy back the vehicles and resiliate the purchase or lease agreement, over many years, notwithstanding widespread comments and complaints by owners of the Subject Vehicles and concerning the Ford Kuga in other countries, as detailed above, show an intentional, malicious, oppressive and/or high-handed conduct that represents a marked departure from ordinary standards of decency when dealing with customers. In that event, punitive damages should be awarded to Plaintiff(...) and Class Members, independently from the compensable damages claimed by Plaintiff(...) and the Class Members;

### **CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

71. The composition of the Group makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings (Article 575 (3) C.C.P.) for the following reasons:
72. Plaintiff(...) is unaware of the specific number of persons who purchased or leased the Subject Vehicles, however, it is safe to estimate that it is in the tens of thousands across the country considering the various Transport Canada recall documents detailed above, which indicate and confirm the total number of affected units in Canada for the various Subject Vehicles being recalled, and considering the recent investigation initiated by the NHTSA (Exhibits R-10 and R-14);

73. Class Members are numerous and are scattered across the entire province and country;
74. In addition, given the costs and risks inherent to litigation before the Courts, many people will hesitate to institute an individual action against the Defendants. Even if the Class Members themselves could afford such individual litigation, the Court system could not handle it as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the Court system;
75. Moreover, a multitude of actions instituted risk leading to contradictory judgments on questions of fact and law that are similar or related to all Class Members;
76. These facts demonstrate that it would be impractical, if not impossible, to contact each individual Class Member to obtain mandates and to join them in one action;
77. In these circumstances, a class action is the only appropriate procedure for all the Class Members to effectively access justice and pursue their respective rights;
78. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely Defendants' defectively designed and/or manufactured (...) the Subject Vehicles;
79. The claims of the Class Members raise identical, similar or related issues of law and fact (Article 575 (1) C.C.P.), namely:
  - a) Do the Subject Vehicles suffer from common latent design and/or manufacturing defects?
  - b) Did Defendants know of this issue and fail to warn Class Members of the defect and if they knew, when they knew or should have known?
  - c) Did Defendants fail to disclose material information to Class Members?



- d) Are Defendants' omission of material facts misleading and/or reasonably likely to deceive a Class Member?
- e) Are Defendants legally obligated to recall and properly repair the Subject Vehicles with new non-defective replacement parts;
- f) Do the Subject Vehicles perform or not in accordance with the standard of fitness for the purposes for which the Subject Vehicles are normally used?
- g) Do the Subject Vehicles perform or not in accordance with the standard of durability for normal use for a reasonable length of time, having regard to the price, terms of the contract and conditions of use for the Subject Vehicles?
- h) Should the sale or lease contracts signed by the Class Members for the Subject Vehicles be annulled or resiliated, and should all amounts paid by the Class Members be reimbursed in full or in part?
- i) Are Defendants liable to pay compensatory and/or moral damages to the Class Members, and if so, in what amount, including without limitation for the reimbursement of the purchase or lease price (or a portion thereof), any repair costs disbursed, rental car fees, other disbursements incurred, loss of time, loss of use of the Subject Vehicle, embarrassment and inconvenience?
- j) Are Defendants liable to pay exemplary and/or punitive damages to the Class Members, and if so, in what amount?

80. The majority of the issues to be dealt with are issues common to every Class Member;

81. The interests of justice favor that this Application be granted in accordance with its conclusions;

### **NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

82. The action that the Plaintiff(...) wishes to institute for the benefit of the Class Members

is an action in damages, product liability, consumer protection and injunctive relief;

83. The facts alleged herein appear to justify the conclusions sought by the Plaintiffs (Article 575 (2) C.C.P.), namely the following conclusions that Plaintiff(...) wishes to introduce by way of an originating application:

**GRANT** the class action of the Representative Plaintiff(...) and each of the Class Members;

**ORDER** Defendants to issue a recall of the Subject Vehicles and to repair them free of charge **FAILING WHICH: ANNUL** the sale or lease contract signed by (...) the Class Members for the Subject Vehicles and **ORDER AND CONDEMN** Defendants to reimburse the total amounts paid by Plaintiff(...) and the Class Members for their Subject Vehicle and **ORDER** Defendants to then retake possession and ownership of the said vehicles, at Defendants' costs;

**CONDEMN** the Defendants to pay to Plaintiff(...) and each of the Class Members a sum to be determined in compensatory damages, including without limitation for the reimbursement of the purchase or lease price, any repair costs disbursed, rental costs paid, other disbursements incurred, loss of time, inconvenience, loss of use of the Subject Vehicle, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay to Plaintiff(...) and each of the Class Members a sum to be determined in moral damages, including without limitation for embarrassment, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay to each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay interest and additional indemnity on the above sums according to the Law from the date of service of the original Application for Authorization to Institute a Class Action;

**ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest, additional indemnity, and costs;

**ORDER** that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action, including experts' fees and all notice fees;

**RENDER** any other order that this Honorable Court shall determine and that is in the interest of the Class Members;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses, including expert's fee and publication fees to advise the Class Members;

84. Plaintiff(...) suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a. Many Class Members are domiciled in the District of Montreal;
  - b. Defendant Ford Canada's elected domicile and principal establishment are located in the District of Montreal (Exhibit R-2);
  - c. The undersigned attorneys practice law in the District of Montreal;

85. Plaintiff(...), who (...) is requesting to be appointed as Representative Plaintiff(...), (...) is in a position to properly represent the Class Members (Article 575 (4) C.C.P.) since Plaintiff(...):
- a. is (...) a member of the class who purchased through Nicholson and drove a Subject Vehicle which suffers from the common latent defect, (...) has disbursed unnecessary repair costs which have not resolved the issues affecting her (...) Subject Vehicle, and has (...) suffered the other compensatory and moral damages as detailed above;
  - b. understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Class Members;
  - c. is (...) available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class Counsel in this regard;
  - d. is (...) ready and available to manage and direct the present action in the interest of the Class Members and is (...) determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class Members;
  - e. does not have interests that are antagonistic to those of other Class Members;
  - f. has (...) given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
  - g. has (...) given the mandate to the undersigned attorneys to post the present matter on their firm website in order to keep the Class Members informed of the progress of these proceedings and in order to more easily be contacted or consulted by said Class Members. In this regard, Plaintiff(...) though the(.) undersigned attorneys is (...) communicating herewith, *en liasse*, as **Exhibit R-19 and R-19A, confidentially, under seal and without waiving professional secrecy**, the online submissions received from multiple Class Members across the country, as though recited at length herein. Plaintiff(...) reserves the(...) right to file additional communications received from the Class Members in this regard, for the purposes of further fulfilling their burden to demonstrate an arguable case at the authorization hearing herein;
  - h. conducted online research in order to locate and consult the various recalls

and online postings and forums dealing with the defects affecting the Subject Vehicles and (...) sought out the undersigned attorneys in order to institute the present class action proceedings on her (...) behalf and on behalf of the Class Members, the whole after contacting multiple customer service representatives at Ford in attempts to resolve the issue amicably;

- i. is (...), with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed;

86. The present Application is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present Application;

**AUTHORIZE** the institution of a class action in the form of an originating application in damages, product liability, consumer protection, and injunctive relief;

**APPOINT** the Plaintiff(...) as the Representative Plaintiff(...) representing all persons included in the Class herein described as:

Sub-Group A:

All residents of Canada (or subsidiarily Quebec), who own, owned, lease and/or leased one or more of the Subject Vehicles, namely:

- 2013-2014 Ford Escape;
- 2013-2014 Ford Fusion;
- (...) 2014 Ford Fiesta;
- 2014-2015 Ford Transit Connect;

Sub-Group B:

All residents of Canada (or subsidiarily Quebec), who have suffered damages and/or disbursed costs as a result of the defects affecting the Subject Vehicles;

or any other Group(s) or Sub-Group(s) to be determined by the Court;

**IDENTIFY** the principal issues of law and fact to be treated collectively as the following:

- a) Do the Subject Vehicles suffer from common latent design and/or

manufacturing defects?

- b) Did Defendants know of this issue and fail to warn Class Members of the defect and if they knew, when they knew or should have known?
- c) Did Defendants fail to disclose material information to Class Members?
- d) Are Defendants' omission of material facts misleading and/or reasonably likely to deceive a Class Member?
- e) Are Defendants legally obligated to recall and properly repair the Subject Vehicles with new non-defective replacement parts;
- f) Do the Subject Vehicles perform or not in accordance with the standard of fitness for the purposes for which the Subject Vehicles are normally used?
- g) Do the Subject Vehicles perform or not in accordance with the standard of durability for normal use for a reasonable length of time, having regard to the price, terms of the contract and conditions of use for the Subject Vehicles?
- h) Should the sale or lease contracts signed by the Class Members for the Subject Vehicles be annulled or resiliated, and should all amounts paid by the Class Members be reimbursed in full or in part?
- i) Are Defendants liable to pay compensatory and/or moral damages to the Class Members, and if so, in what amount, including without limitation for the reimbursement of the purchase or lease price (or a portion thereof), any repair costs disbursed, rental car fees, other disbursements incurred, loss of time, loss of use of the Subject Vehicle, embarrassment and inconvenience?
- j) Are Defendants liable to pay exemplary and/or punitive damages to the Class Members, and if so, in what amount?

**IDENTIFY** the conclusions sought by the action to be instituted as being the following:

**GRANT** the class action of the Representative Plaintiff(...) and each of the Class Members;

**ORDER** Defendants to issue a recall of the Subject Vehicles and to repair them free of charge **FAILING WHICH: ANNUL** the sale or lease contract signed by (...) the Class Members for the Subject Vehicles and **ORDER AND CONDEMN** Defendants to reimburse the total amounts paid by Plaintiff(...) and the Class Members for their Subject Vehicle and **ORDER** Defendants to then retake possession and ownership of the said vehicles, at Defendants' costs;

**CONDEMN** the Defendants to pay to Plaintiff(...) and each of the Class Members a sum to be determined in compensatory damages, including without limitation for the reimbursement of the purchase or lease price, any repair costs disbursed, rental costs paid, other disbursements incurred, loss of time, inconvenience, loss of use of the Subject Vehicle, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay to Plaintiff(...) and each of the Class Members a sum to be determined in moral damages, including without limitation for embarrassment, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay to each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay interest and additional indemnity on the above sums according to the Law from the date of service of the original Application for Authorization to Institute a Class Action;

**ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest, additional indemnity, and costs;

**ORDER** that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action, including experts' fees and all notice fees;

**RENDER** any other order that this Honorable Court shall determine and that is in the interest of the Class Members;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses, including expert's fee and publication fees to advise the Class Members;

**DECLARE** that all Class Members who have not requested their exclusion from the Group in the prescribed delay to be bound by any Judgment to be rendered on the class action to be instituted;

**FIX** the time limit for opting out of the Class at thirty (30) days from the date of the publication or notification of the notice to the Class Members;

**ORDER** the publication or notification of a notice to the Class Members in accordance with Article 579 C.C.P., within sixty (60) days from the Judgment to be rendered herein, by way of direct mail and or emails to Class Members, bilingual press releases, and notices published in LA PRESSE, the MONTREAL GAZETTE, the GLOBE AND MAIL, and the NATIONAL POST, and **ORDER** Defendants to pay for all said publication costs;

**ORDER** that said notices be available on all of Defendants' websites, Facebook page(s), and Twitter account(s) regarding the Subject Vehicles, with a proper link the wording of which will be determined by the Court;

**THE WHOLE** with legal costs, including the Court stamp filing fees and all publication costs.

**MONTREAL, (...) February 12, 2021**

*(s) Lex Group Inc.*

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**Lex Group Inc.**

Per: David Assor

Class Counsel / Attorneys for Plaintiff(...)

4101 Sherbrooke St. West

Westmount, (Québec), H3Z 1A7

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**(Class Action Division)  
SUPERIOR COURT**

**PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

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**V [REDACTED] G [REDACTED]**

(...)

*Plaintiff(...)*

v.

**FORD MOTOR COMPANY OF CANADA, LIMITED**

-and-

**FORD MOTOR COMPANY**

*Defendants*

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**RE-AMENDED APPLICATION FOR  
AUTHORIZATION TO INSTITUTE A CLASS  
ACTON (AS AUTHORIZED BY THE NOVEMBER  
12, 2020 JUDGMENT)**

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**ORIGINAL**

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*Me David Assor*

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