

CANADA

(Class Action Division)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT

No.: 500-06-000956-181

V [REDACTED] G [REDACTED]

Plaintiff

v.

FORD MOTOR COMPANY OF CANADA,
LIMITED

-and-

FORD MOTOR COMPANY

Defendants

**THIRD (...) AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A
CLASS ACTION AS AUTHORIZED BY THE JANUARY 10, 2022 JUDGMENT
(Articles 574 C.C.P. and following)**

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 she 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-(...) 2019 Ford Escape;
- 2013-(...) 2019 Ford Fusion;
- 2014-2015 Ford Fiesta;
- (...) 2013-2015 Ford Transit Connect;

- 2015 -2018 Ford Edge;
- 2017- 2019 Lincoln MKC;
- 2017-2019 Lincoln MKZ.

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 which are all equipped with an EcoBoost® engine:
 - 2013-(...) 2019 Ford Escape;

- 2013-(...) 2019 Ford Fusion;
- 2014-2015 Ford Fiesta;
- (...) 2013-2015 Ford Transit Connect;
- 2015 -2018 Ford Edge;
- 2017- 2019 Lincoln MKC;
- 2017-2019 Lincoln MKZ;

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**”);

- 6.1. According to the car sales statistics website www.goodcarbadcar.net, Defendants have sold over 526,000 Subject Vehicles throughout Canada, as appears from the following table summarizing the Canadian sales figures for each Subject Vehicle:

Year \ Vehicle	Escape	Fusion	Fiesta	Transit Connect	Edge	Lincoln MKC	Lincoln MKZ	Total
2013	45,141	20,145		3,859				69,145
2014	52,198	18,472	9,312	2,862				82,844
2015	47,726	15,781	5,646	2,800	16,580			88,533
2016	46,661	14,424			20,517			81,602
2017	47,880	9,736			19,967	2,337	994	80,914
2018	43,587	6,350			19,156	2,466	833	72,392
2019	39,504	8,753				2,507	367	51,131
Total	322,697	93,661	14,958	9,521	76,220	7,310	2,194	526,561

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;
 - 8.1. The Subject Vehicles are equipped with Ford EcoBoost® engines (the “EcoBoost engine(s)”). The EcoBoost engines in question all share the same engine block design and suffer from the same defects, as detailed herein.
 - 8.2. EcoBoost engines are gasoline-fueled, turbocharged, direct-injection (also called “GTDI”) engines. EcoBoost engines are marketed as providing low-emissions, fuel-efficient alternative to hybrid or electric vehicles.
 - 8.3. In a non-defective engine, liquid coolant is used to ensure that the engine does not overheat. The coolant circulates through a set path within the engine block and cylinder head, cooling the engine. The liquid gathers heat due to contact with the engine and then flows through a hose and into the radiator to cool back down. Once its temperature has lowered, the coolant returns to the engine, and continues to circulate.
 - 8.4. The EcoBoost Engines in each of the Class Vehicles suffer from serious and dangerous defects which cause the engine coolant, which is vital to the safety and functionality of the engine, to leak into the engine's cylinders.
 - 8.5. In the Subject Vehicles, as the coolant circulates through the engine, it seeps through the grooves present on the cylinder head, and pools there. The coolant pooling contributes to the seal degrading, eventually allowing the coolant to leak into the

engine's cylinders.

- 8.6. The coolant leak causes two related problems. First, the leak results in insufficient coolant levels and, consequently, engine overheating. Engine overheating is well known to cause catastrophic damage to an engine. For example, overheating can cause the cylinder head to crack. Engine overheating can also warp other internal components, such as pistons. Additionally, when an engine overheats sufficiently, it causes a loss of oil viscosity, which can lead the engine to completely seize. In some instances, engine overheating can result in engine fire.
- 8.7. The second related problem caused by the coolant leak occurs as a result of the coolant leaking into the cylinders. Coolant should not enter the cylinders, and when it does, it causes the engine to misfire. Coolant in the cylinders is burned through the combustion chamber and exits through the vehicle's exhaust, sometimes resulting in smoke emitting from the vehicles' exhaust. In addition, coolant that enters the cylinders mixes with the oil on the cylinder walls, causing oil dilution and contamination, which in turn cause corrosion and excessive wear on bearings and other internal engine surfaces.
- 8.8. Ford has failed to provide an effective solution to Class Members who purchased or leased Subject Vehicles. Further, Ford has not satisfactorily or effectively addressed the source of the defect for those Class Members, including for those whose vehicles remain in warranty. Instead of replacing the engine block, Ford merely applies superficial stopgap, "Band-Aid" remedies such as installing coolant level sensors. This sensor alerts drivers when their coolant has been depleted, so that they can replenish it. It does not, however, prevent further future coolant depletion, or do anything to prevent the coolant from seeping into the engine cylinders. In some instances, Ford just replaces certain parts other than the defective engine block, thereby failing to address the root cause of the defect.
- 8.9. These half measures force Class Members to return repeatedly for service and to continue driving a vehicle at risk of future damage to the engine and components,

engine failure, and engine fires.

8.10. Class Members whose EcoBoost engines overheat or fail when the vehicle is out of warranty must pay out-of-pocket for the necessary repairs and, again, may have to return for repeated service if Ford does not replace the defective engine with a non-defective engine block. These repairs, including a full engine replacement, can cost thousands of dollars.

8.11. The above detailed engine defect interferes with Class Members' safe, comfortable, and expected use of their Subject Vehicles. It exposes them to severe risk created by engine failures and engine fires, and it requires them to pay for repairs and/or engine replacement.

8.12. In addition, the above detailed defect poses a serious safety hazard to drivers, passengers, and the public because an engine with insufficient coolant and/or coolant in its cylinders can misfire, suddenly fail or stall, and/or catch on fire, while the vehicle is otherwise in normal operation. Sudden engine failures and engine fires create serious risks of crash, injury and/or death to those inside the vehicle and to others nearby.

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 2014¹ 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

¹ 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.

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 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;
- 19.1. At the time, it was reported by the Globe and Mail that the March 29, 2017 recall involved over 360,000 vehicles in North America and Europe which were affected by the coolant defect. Furthermore, the article states that Ford issued the recall following 29 reports of engine fire in Canada and in the USA, the whole as appear from a copy of the March 29, 2017 Globe and Mail article, communicated herewith as **Exhibit R-25.**
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;

20.3. In addition, Defendants failed, refused, or omitted to recall and properly address the similar defects also affecting other Subject Vehicles equipped with an EcoBoost engine, namely certain “Ford” branded vehicles and certain “Lincoln” branded vehicles (which are also manufactured and distributed by Ford).

20.4. Indeed, between 2018 and 2020, Ford issued multiple Technical Service Bulletins (hereinafter “TSB(s)”), Special Service Messages (hereinafter “SSM”) and at least one Customer Satisfaction Program along with three Supplements, regarding the same defects and associated risks, the whole as more fully detailed below.

20.5. On March 30, 2018, Ford issued a SSM (reference number SSM 47204), a copy of which is communicated herewith, as though recited at length herein, as **Exhibit R-26**, confirming the following:

“Some 2015-2018 Fusion/MKZ/MKC/Escape/Edge vehicles equipped with a 2.0L EcoBoost engine may exhibit a runs rough condition with DTCs P0300, P0301, P0302, P0303, P0304 and/or P0316. **This may be due to coolant intrusion due to corrosion on the engine block.** To diagnose this concern, with the engine at normal operating temperature, pressurize the cooling system to 138 kPa (20 psi) and hold for 5 hours. If the coolant pressure drops 27.57 kPa (4psi), remove the spark plugs and inspect for coolant in the cylinders. **If coolant is found in any of the cylinders, replace the engine long block assembly.** Follow normal prior approval process for your Dealership. However, follow the diagnostic repair procedure in this article to determine correct repair. For claiming, use causal part 6006 and applicable labor operations in Section 6 of the SLTS Manual”.

(Emphasis added)

20.6. On August 13, 2018, Ford issued another SSM (reference number SSM 47462), a copy of which is communicated herewith, as though recited at length herein, as **Exhibit R-27**, confirming the following:

“2015-2018 Edge, Fusion, Focus, MKZ, MKC, Escape vehicles equipped with a 2.0L EcoBoost engine **may exhibit coolant consumption, white smoke and/or a runs rough condition.** Refer to the extended coolant pressure test and checking for combustion gases in Workshop Manual (WSM), Section 303-03A. **If internal coolant loss is confirmed, further investigation of the head gasket interface is required.** Carefully inspect the cylinder block and head for erosion, pitting, and flatness defects, primarily between the cylinder to cylinder bore bridges. If defects to the aluminum surface on the cylinder block and/or cylinder head are found, follow the cost cap tool for component replacement. Follow WSM, Section 303-01A for the repair procedures”

(Emphasis added)

20.7. On October 30, 2018, Ford issued a further SSM (reference number SSM 47625), a copy of which is communicated herewith, as though recited at length herein, as **Exhibit R-28**, confirming the following:

“Some 2014-2019 Fusion and 2017-2019 Escape vehicles equipped with a 1.5L Ecoboost engine **may exhibit coolant consumption and white smoke concern.** Follow the Cooling System Pressure Test procedure in Workshop Manual(WSM), Section 303-03, pressurize the cooling system to 138 kPa (20 psi) and hold for 5 hours. If

cooling system pressure drops 27.57kPa(4psi) after 5 hours and **internal engine coolant loss is confirmed, further investigation of the head gasket interface is required. Carefully inspect cylinder block for erosion, pitting, and flatness. Defects will be between the engine block cylinders and cylinder bore bridges. If defects with the surface of the cylinder block and/or cylinder head are identified, follow WSM, Section 303-01A procedures for repairs. Complete cost cap as needed to determine the most cost effective repair.**

(Emphasis added)

20.8. On March 7, 2019, Ford issued a further SSM (reference number SSM 47849), a copy of which is communicated herewith, as though recited at length herein, as **Exhibit R-29**, confirming the following:

“Some 2014-2019 Fusion and 2017-2019 Escape equipped with 1.5L Ecoboost **engine may exhibit coolant consumption and white smoke concern.** Follow the Cooling System Pressure Test procedure in WSM, Section 303-03, pressurize the cooling system to 138kPa(20 psi) and hold for 5 hours. If cooling system pressure drops 27.57kPa(4psi) after 5 hours and **internal engine coolant loss is confirmed, further investigation of the engine block surface to head gasket interface is required.** Carefully inspect engine block cylinders and cylinder bore bridges for erosion, pitting, and flatness. If defects with the cylinder block surface are identified, follow WSM, Section 303-01A procedures for repairs. Complete cost cap as needed to determine the most cost effective

repair. Ford has found that all returned cylinder heads pass inspection and may have been reused.”

(Emphasis added)

20.9. On or about December 10, 2019, Ford issued a TSB (reference number 19-2375), bearing the title “1.5L EcoBoost – Low Coolant, White Exhaust Smoke And/Or Illuminated MIL – Built On Or Before 10-Jun-2019”, a copy of which is communicated herewith, as though recited at length herein, as **Exhibit R-30**, confirming the following:

“Some 2014-2019 Fusion vehicles built on or before 10-Jun-2019 and 2017-2019 Escape vehicles built on or before 08-Apr-2019 equipped with a 1.5L **EcoBoost engine may exhibit low coolant level, white exhaust smoke and/or runs rough condition** with or without an illuminated malfunction indicator light (MIL) with only diagnostic trouble codes (DTCs) P0300, P0301-P0304, P0316, P0217, P1285 and/or P1299 stored in powertrain control module (PCM). **This may be due to coolant intrusion into the cylinder.** To resolve the condition, replace the short block and head gasket.”

(Emphasis added)

20.10. On December 12, 2019, Ford issued a Customer Satisfaction Program 19B37 which provided for an emergency repair program regarding the defects affecting certain Subject Vehicles. Ford later issued three supplements to this repair program, the whole as appear from said Customer Satisfaction Program and its three supplements, copies of which are communicated herewith, as though recited at length herein, as **Exhibit R-31, en liasse**:

“URGENCY

We recommend dealers utilize their FSA VIN Lists name and address (available on January 31, 2020) to contact customers with affected vehicles. This will help minimize the number of vehicles that may exhibit coolant intrusion into the cylinder bores, which may require a more extensive repair.

AFFECTED VEHICLES

<u>Vehicle</u>	<u>Model Year</u>	<u>Assembly Plant</u>	<u>Build Dates</u>
<u>Escape</u>	<u>2017-2019</u>	<u>Louisville</u>	<u>September 17, 2015 through April 8, 2019</u>
<u>Fusion</u>	<u>2017</u>	<u>Flat Rock</u>	<u>October 1, 2015 through October 16, 2015</u>
<u>Fusion</u>	<u>2017-2019</u>	<u>Hermosillo</u>	<u>October 6, 2015 through June 10, 2019</u>

Affected vehicles are identified in OASIS and FSA VIN Lists.

REASON FOR THIS PROGRAM

Some of the affected vehicles may exhibit coolant intrusion into the cylinder bores. Customer symptoms include coolant loss, excessive tailpipe smoke, or illuminated malfunction indicator lights (MIL) due to engine misfire. Over time, this condition may damage the engine, requiring replacement of the engine short block.”

20.11. On or about December 19, 2019, Ford issued a further TSB (reference number 19-2346), bearing the title “2.0L EcoBoost - Coolant In Cylinders, White Exhaust Smoke And/Or Illuminated MIL”, a copy of which is communicated herewith, as though recited at length herein, as **Exhibit R-32**, confirming the following:

“Some 2015-2018 Edge and 2017-2019 Fusion/MKZ/Escape/MKC vehicles equipped with a 2.0L

EcoBoost engine may exhibit a low coolant level, white exhaust smoke and/or a runs rough condition with or without an illuminated malfunction indicator lamp (MIL). Diagnostic trouble codes (DTCs) may include P0300, P0301-P0304, P0316, P0217, P1285 and/or P1299 stored in powertrain control module (PCM). **This may be due to coolant intrusion into the cylinder.** To correct the condition, follow the Service Procedure steps to replace the long block engine assembly.”

(Emphasis added)

20.12. On or about April 1, 2020, Ford issued a further TSB (reference number 20-2100), titled “1.5L EcoBoost - Low Coolant, White Exhaust Smoke And/Or Illuminated MIL - Built On Or Before 10-Jun-2019”, a copy of which is communicated herewith, as though recited at length herein, as **Exhibit R-33**, confirming the following:

“Some 2014-2019 Fusion vehicles built on or before 10-Jun-2019 and 2017-2019 Escape vehicles built on or before 08-Apr-2019 equipped with a 1.5L EcoBoost engine **may exhibit low coolant level, white exhaust smoke and/or runs rough condition with or without an illuminated malfunction indicator light (MIL)** with only diagnostic trouble codes (DTCs) P0300, P0301-P0304, P0316, P0217, P1285 and/or P1299 stored in powertrain control module (PCM). **This may be due to coolant intrusion into the cylinder.** To resolve the condition, follow the Service Procedure to replace the short block and head gasket.”

(Emphasis added)

20.13. Finally, on July 10, 2020, Ford issued a further SSM (reference number SSM 48991), a copy of which is communicated herewith, as though recited at length herein, as **Exhibit R-34**, confirming the following:

Some 2015-2020 F150/Edge/Fusion, 2016-2018 MKX, 2019-2020 Nautilus, and 2017-2020 Continental vehicles equipped with 2.7L EcoBoost engines **may exhibit an illuminated malfunction indicator lamp (MIL) and/or Engine Coolant Over Temperature warning with diagnostic trouble codes (DTCs) P0116, P0117, P0118, P0119, P0128, P0217, P0330, P1026, P1299, and/or P130D. This may be due to the engine coolant temperature (ECT) sensor or knock sensor wiring harness.** To correct the condition, replace the 12A648 ECT sensor and 12A699 knock sensor. Do not disconnect the ECT sensor from the knock sensor harness in case parts are called back for analysis. For claiming, use causal part 12A699 and applicable labor operations in Section 10 of the Service Labor Time Standards (SLTS) Manual.

(Emphasis added)

21. As detailed below, Plaintiff repeatedly experienced the same sudden stalling without warning while driving her 2013 Ford Escape equipped with 1.6L EcoBoost engine;
22. The above recalls, complaints, admissions, TSBs, SSMs, Customer Satisfaction Program, 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 EcoBoost 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;
- 26.1. Additionally, Plaintiff communicates herewith the Consolidated Class Action Complaint for Damages dated June 21, 2021, which consolidates class action proceedings having been filed in the State of California in September 2020, in the State of

Delaware in November 2020, and in the State of Arkansas in December 2020, the whole as appears from the Consolidated Class Action Complaint for Damages in the case of Miller et al. v. Ford Motor Company, before the United States District Court for the Eastern District of California, bearing case number 2:20-cv-01796-TLN-CKD, communicated herewith, as though recited at length, as **Exhibit R-35**.

26.2. Paragraphs 223 and following of the Exhibit R-35 US consolidated Class Action Complaint for Damages also cites at length multiple customer complaints which have been lodged with the NHTSA regarding the Subject Vehicles, the whole to the knowledge of Ford and which are publicly available on the NHTSA website.

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PLAINTIFF

27. The Plaintiff's common law spouse is former Co-Plaintiff herein Brian 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 EcoBoost 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 and 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 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" were 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 G [REDACTED] 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 Plaintiff(...) 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 [REDACTED], 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 hundreds (...) 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, the sales figured mentioned above from the www.goodcarbadcar.net website, 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 through the undersigned attorneys is communicating herewith, *en liasse*, as **Exhibit R-19, (...) R-19A, R-19B, 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-(...) 2019 Ford Escape;
- 2013-(...) 2019 Ford Fusion;
- 2014-2015 Ford Fiesta;
- (...) 2013-2015 Ford Transit Connect;
- 2015 -2018 Ford Edge;
- 2017- 2019 Lincoln MKC;
- 2017-2019 Lincoln MKZ.

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 3, 2021

(s) Lex Group Inc.

Lex Group Inc.

Per: David Assor

Class Counsel / Attorneys for Plaintiff

4101 Sherbrooke St. West

Westmount, (Québec), H3Z 1A7

Telephone: 514.451.5500 ext. 321

Fax: 514.940.1605

**(Class Action Division)
SUPERIOR COURT**

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

V [REDACTED] G [REDACTED]

Plaintiff

v.

FORD MOTOR COMPANY OF CANADA, LIMITED

-and-

FORD MOTOR COMPANY

Defendants

**THIRD AMENDED APPLICATION FOR
AUTHORIZATION TO INSTITUTE A CLASS
ACTION AS AUTHORIZED BY THE JANUARY
10, 2022 JUDGMENT**

ORIGINAL

Me David Assor



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