

CANADA

(Class Action Division)
SUPERIOR COURT OF QUEBEC

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

ANIS SALHI

Plaintiff

No.: 500-06-001105-200

v.

FCA CANADA INC.

- and -

FCA US LLC

Defendants

**JOINT APPLICATION TO STAY THE CLASS ACTION
(Articles 18, 49, 158, 577 C.C.P. and 3137 C.C.Q.)**

TO THE HONORABLE DONALD BISSON, COORDINATING JUDGE OF THE CLASS ACTION DIVISION OF THE SUPERIOR COURT OF QUEBEC SITING IN THE DISTRICT OF MONTREAL, THE PARTIES JOINTLY AND RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. The parties jointly seek a temporary stay of the *Application for Authorization to Institute a Class Action* filed on November 20, 2020, (the "**Quebec Action**") pending a final judgment on the *Amended Notice of Civil Claim*, a parallel class action proceeding originally filed on October 20, 2020, before the Supreme Court of British Columbia, in *Andrew Keith Jacquard vs. FCA Canada Inc. and FCA US LLC*, in the court file number S2010558 (the "**BC Action**" or the "**British Columbia Action**"), as amended.
2. The BC Action raises the same issues as the Quebec Action and seeks to certify a national class.
3. By this Joint Application, the parties therefore seek to avoid the possibility of contradictory judgments and to ensure efficient use of judicial resources in

accordance with Article 18 of the *Civil Code of Procedure* (“**C.C.P.**”), all the while protecting the interests of the putative class members who are Quebec residents.

4. For the reasons detailed below, the parties submit that it is in the interests of justice and consistent with the principles of proportionality and judicial economy that the overlapping issues raised in the Quebec Action and the BC Action be adjudicated by a single court, which the parties propose to be the Supreme Court of British Columbia.

II. THE PARALLEL CLASS ACTIONS INVOLVED

5. At least three (3) class action proceedings were filed against Defendants in Canada regarding alleged defects in the exhaust gas recirculation coolers affecting the vehicles mentioned below.
6. As mentioned, the BC Action was the first to be filed on October 20, 2020, the Quebec Action was filed on November 20, 2020 and finally another class action proceeding was filed before the Ontario Superior Court of Justice in the file *Mark Sharpe vs FCA Canada Inc. and FCA US LLC*, in the court file number CV-20-00001916-00CP, on December 7, 2020 and Amended on February 26, 2021 and again on March 2, 2021 (the “**Ontario Action**”).
7. The Quebec Action seeks the authorization to institute a class action against defendant on behalf of:

All persons in Quebec who own, owned, lease and/or leased a 2014 to 2019 Dodge Ram 1500 or 2014 to 2019 Dodge Ram1500 Classic vehicle, equipped with a 3.0 litre EcoDiesel engine containing exhaust gas recirculation coolers, designed, manufactured, assembled, tested, marketed, advertised, distributed, leased and/or sold by the Defendants, or any other Group(s) or Sub-Group(s) to be determined by the Court.
8. On January 29, 2021, and as it appears from the Court record, Plaintiff notified Defendants and filed at the Digital Court Office of Quebec his *Amended Application for Authorization to Institute a Class Action* for the purpose to include the 2014 to 2019 Jeep Grand Cherokee models and the related Exhibits in the

original application for authorization.

9. The BC Action was first filed on October 20, 2020 and then was amended on November 24, 2020, to include the Quebec class members.
10. The BC Action currently seeks to represent the following Class and Class Period:

This action is brought on behalf of members of a class consisting of the Plaintiff, all British Columbia residents, and all other persons resident in Canada, who own, owned, lease and/or leased a 2014-2019 Dodge Ram 1500, 1500 Classic and Jeep Grand Cherokee vehicles equipped with a 3.0 litre EcoDiesel engine containing exhaust gas recirculation coolers that may crack and leak coolant leading to engine compartment fire, designed, manufactured, assembled, tested, marketed, advertised, distributed, leased and/or sold by the Defendants in Canada ("Class Members"), and who claim to have suffered damage and/or loss as a result of an exhaust gas recirculation cooler defect in such vehicles, and or such other class definition or class period as the Court may ultimately decide on the application for certification.

the whole as more fully appears of the BC Action, *Further Amended Notice of Civil Claim* together with the October 12, 2021 *Order Made After Application* permitting said amendment, communicated herewith as **Exhibit R-1**.

11. The Ontario Action seeks to represent:
 - (a) "**Affected Vehicles**" means all model year 2014-2019 Dodge Ram 1500 -and 1500 Classic, and Jeep Grand Cherokee vehicles designed, developed, manufactured, marketed, distributed, leased, and/or sold by the Defendants and equipped with the Engine;
 - (b) "**Class**" and/or "**Class Members**" means all persons, corporations or other entities resident in Canada who are current and/or former owners and/or lessees of **an Affected Vehicle**;
 - (...)
 - (d) "**Engine**" and/or "**Engines**" means the 3.0 litre EcoDiesel engine containing **EGR** coolers designed, developed and manufactured by

VM Motori, an Italian diesel engine manufacturer that has been owned by the Defendants since 2013;

the whole as more fully appears of the Ontario Action, *Amended Statement of Claim*, communicated herewith as **Exhibit R-2**.

12. As appears from the above, the three class action proceedings are essentially identical, aim to obtain the same type of reparations and all of them are at the authorization (or certification) stage.
13. Class Counsels for the three Plaintiffs (Lex Group Inc., Garcha & Company and McKenzie Lake Lawyers LLP) signed a consortium agreement and are collaborating to pursue the proceedings on a national basis in British-Columbia.

III. LIS PENDENS AND INTERESTS OF THE QUEBEC CLASS MEMBERS

14. It is trite law that this Honorable Court can stay a proceeding when another action bearing the same parties, involving the same facts and having the same subject is pending before a foreign authority in virtue of Article 3137 C.C.Q.
15. In class actions, it is also well-known that the identity of the parties does not have to be perfect¹ and that it is focused on the judicial identity of the class that plaintiffs seek to represent instead of the representative plaintiffs themselves².
16. As demonstrated above, the three actions seek to represent the same group of people, the products concerned are the same “Affected Vehicle” and the products are allegedly affected by the same alleged defect, namely the exhaust gas recirculation coolers system that may crack and leak coolant and cause overheating of the engine and, in certain circumstances, catch fire.
17. Furthermore, the parallel class action proceedings seek very similar consumer protection reliefs for the class members. It is therefore in the interest of the Quebec class members and in the interest of all class members across Canada

¹ *Li c. Equifax inc.*, 2018 QCCS 1892, par. 34, 45; *Chasles c. Bell Canada inc.*, 2017 QCCS 5200, par. 30-35 ;

² *Société canadienne des postes c. Lépine*, 2009 CSC 16, par. 52 ;

to have the case pursued in only one jurisdiction, namely in British Columbia, to avoid contradictory judgments.

18. Accordingly, the parties respectfully submit that the criteria of Article 3137 C.C.Q. are fulfilled herein. They also submit that it is in the best interest of judicial economy and in respect of the principles of proportionality to suspend the Quebec action.
19. Finally, the interests of the Quebec members will be preserved by the fact that the Quebec class counsel is actively working with the British Columbia and the Ontario class counsels. The Quebec class counsel will maintain and update the website page dedicated to this specific class action and the Quebec class counsel will remain available to answer to questions from the Quebec class members, in both French and English.
20. The parties, therefore, respectfully submit that this Joint Application respects article 577 C.C.P. and the recent jurisprudence regarding the suspension of class actions³.

FOR THESE REASONS, MAY IT PLEASE THIS HONORABLE COURT TO:

GRANT the present *Joint Application to Stay the Class Action*;

STAY the present action until a final judgment is rendered in the class action filed by Andrew Keith Jacquard before the Supreme Court of British Columbia, in the court file number S2010558;

TAKE ACT that the class action filed by Mark Sharpe before the Ontario Superior Court of Justice, in the court file number CV-20-00001916-00CP will be held in abeyance while the class action proceeds to certification in British Columbia;

TAKE ACT of the Parties' undertaking to provide this Court with an update on the status of the British Columbia Action on a semi-annual basis, and to advise this

³ *FCA Canada inc. c. Garage Poirier & Poirier inc.*, 2019 QCCA 2213 ; *Micron Technology Inc. c. Hazan*, 2020 QCCA 1104 ;

Court within 45 days of any significant development in the British Columbia Action that may affect the course of the Quebec Action;

THE WHOLE, without costs.

Montreal, March 23, 2022

Montreal, March 23, 2022

Fasken Martineau DuMoulin LLP

Lex Group Inc.

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NOTICE OF PRESENTATION

(Article 223 of the Superior Court's Directives for the Montreal District)

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TAKE NOTICE that the present *Joint Application to Stay the Class Action* will be presented before the Honorable Justice Donald Bisson of the Superior Court of Quebec, at the Montreal Courthouse located at 1 Notre-Dame Street East, in the city and district of Montreal, at a date to be determined by the Honorable Justice Bisson, coordinating Judge of the class action division.

MONTREAL, March 23, 2022

Lex Group Inc.

Lex Group Inc.

Per: David Assor and Joanie Lévesque

Class Counsel / Attorneys for Plaintiff

**SUPERIOR COURT
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ORIGINAL

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