

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT OF QUEBEC
(CLASS ACTION)

No.: 500-06-000956-181

V [REDACTED] GARTNER, residing and
domiciled at [REDACTED]
[REDACTED]

-and-

B [REDACTED] NICHOLSON, residing and
domiciled at [REDACTED]
[REDACTED]

Plaintiffs

vs.

FORD MOTOR COMPANY OF CANADA, LIMITED, a legal person duly constituted according to the Law, having its elected domicile at 1, Place Ville-Marie, 37 the floor, in the City and District of Montreal, Province of Quebec, H3B 3P4 and its head office at 1 The Canadian Road, in the City of Oakville, Province of Ontario, L6J 5E4;

-and-

FORD MOTOR COMPANY, a legal person duly constituted according to the Law, having its head office at 1 The Amercian Road, Dearborn, Michigan, United Stated of America, 48126

Defendant

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
(Articles 574 C.C.P. and following)**

TO ONE OF THE HONORABLE JUSTICES OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PLAINTIFF STATES THE FOLLOWING:

Introduction:

1. Plaintiffs wish to institute a class action on behalf of the following Group of which they are 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;

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. Plaintiffs communicate herewith extract 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;
 - 2013 Ford Fiesta;
 - 2014-2015 Ford Transit Connect;

Plaintiffs 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;

8. The issues and latent design and manufacturing defects affecting Plaintiffs' 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 (the model owned by the Plaintiffs), 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 (the model owned by the Plaintiffs), 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 (the model owned by the Plaintiffs) 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 (the model owned by the Plaintiffs), 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 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 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 Plaintiffs’ 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 Plaintiffs’ 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 Plaintiffs' 2013 Ford Escape which was experiencing repeated overheating and stalling, Defendant conducted the R-9 Recall repairs on Plaintiffs' 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 Plaintiffs' 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.”

21. As detailed below, Plaintiffs have repeatedly experienced the same sudden stalling without warning while driving their 2013 Ford Escape equipped with 1.6L engine;
22. The above recalls and investigation clear evidence a serious and important safety and security risk affecting the Subject Vehicles, which puts the safety and security of the Plaintiffs, 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 evidence below and as more fully detailed below, since many the Plaintiffs and 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 Plaintiffs 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, the Plaintiffs and Class Members have 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 PLAINTIFFS

27. The Plaintiffs are common law spouses;
28. Plaintiff B [REDACTED] Nicholson is the registered owner of a fully loaded 2013 Ford Escape SE equipped with a 1.6L engine, bearing vehicle identification number (VIN): [REDACTED]. Said vehicle was apparently built on or about July 23, 2012 at Ford’s Louisville, Kentucky, USA plant;
29. Plaintiffs purchased said vehicle on March 28, 2017 from Westend Automotive, in Ottawa, Ontario. The vehicle had approximately 50,000 kms at the time of purchased and was purchased for \$22,377 (included taxes and applicable fees). At the time of purchase, the Plaintiffs 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 Plaintiffs and their particular 2013 Ford Escape;
31. In order to purchase their vehicle, Plaintiffs signed a loan with Scotia Bank, and make monthly payments of \$526. Plaintiffs have 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 Plaintiffs' 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 Plaintiffs' particular 2013 Ford Escape have already been conducted on Plaintiffs' vehicle by either Plaintiffs or the vehicle's previous owner. Indeed, there are no outstanding recalls affecting said vehicle as of the date of this application, the whole as more fully appears from the recall search results on Defendants' website and on the NHTSA.gov website regarding Plaintiffs' particular Vehicle Identification Number ("VIN"), communicated herewith, *en liasse*, as **Exhibit R-12**;
34. Plaintiff V [REDACTED] Gartner is the person who mostly drives and operates the vehicle in question, notwithstanding the fact that her common law spouse is the registered owner;
35. Plaintiff Gartner is the person who personally disbursed the amounts paid in repair costs to date which she claims from Defendants herein;
36. Plaintiffs' vehicle has experienced repeated and ongoing issues with the coolant system and overheating, including stalling while driving;
37. In January 2018, Plaintiffs 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 Plaintiffs to proceed to a actual Ford dealership since the 2013 Ford Escape had previously been recalled for certain known issues involving coolant leaks;

38. Accordingly, Plaintiff Gartner 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 Plaintiffs never received it);
40. On January 26, 2018, Plaintiff Gartner 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 Gartner 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 Plaintiffs;
41. In October 2018, while only driving 50 KMs / hour, Plaintiffs' 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 Gartner slowly drove her vehicle to the mechanic late in the evening (with the heat turned off), with Plaintiff Nicholson following in his truck in order to ensure her safety;
 45. The next day, the mechanic confirmed that he had ran diagnostics and found a puddle of coolant. He therefore recommended that Plaintiffs 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;
 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 Gartner 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 Gartner 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 Gartner 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 Gartner called Plaintiff 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;
53. On November 15, 2018, Mont Bleu Ford calls Plaintiff Gartner 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 Gartner that he had recently did this on another Escape and it had apparently fixed the problem (confirming to Plaintiff Gartner 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 will apparently cost \$1,392.98 inclusive of taxes (which Plaintiffs refuse to pay but which they shall pay under protest in order to recuperate their vehicle, that is if it their vehicle is ever actually repaired). Should Plaintiffs be forced to pay any amounts in order to recuperate their vehicle, they hereby claim said amounts

from Defendants as damages;

55. Plaintiffs also reiterate 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. Ford abusively announced recall 17S09 (Exhibit R-9) without including the 2013 Ford Escape models.
56. On November 15, 2018, Plaintiff Gartner called Transport Canada again in relation to her already filed complaint # 2018-██████ in order to update them of the situation;
57. On November 16, 2018, the Ford dealer called Plaintiff Gartner 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 Gartner 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 Plaintiffs' 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 Gartner 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 Gartner 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 Plaintiffs' clearly defective vehicle;
62. On November 28, 2018, Plaintiff Gartner 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. Plaintiffs have now been forced to start renting another vehicle and will claim herein the reimbursement of the rental costs paid and to be paid as damages;
64. Plaintiffs will also claim damages for the loss of time, inconvenience, embarrassment, aside from punitive damages as detailed below;

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. Plaintiffs' 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. Plaintiffs 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 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. 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, 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 Plaintiffs and Class Members, independently from the compensable damages claimed by Plaintiffs 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. Plaintiffs are 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 (Exhibit R-10);
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 doors and door handle mechanisms;
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 Plaintiffs wish 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 Plaintiffs wish to introduce by way of an originating application:

GRANT the class action of the Representative Plaintiffs 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 Plaintiffs and the Class Members for the Subject Vehicles and **ORDER AND CONDEMN** Defendants to reimburse the total amounts paid by Plaintiffs 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 Plaintiffs 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 Plaintiffs 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 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. Plaintiffs suggest 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. Plaintiffs, who are requesting to be appointed as Representative Plaintiffs, are in a position to properly represent the Class Members (Article 575 (4) C.C.P.) since Plaintiffs:
- a. are a member of the class who purchased a Subject Vehicle which suffers from the common latent defect and have disbursed repair costs which have not resolved the issues affecting their Subject Vehicle as detailed above;
 - b. understand 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. are 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. are ready and available to manage and direct the present action in the interest of the Class Members and are determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class Members;

- e. do not have interests that are antagonistic to those of other Class Members;
- f. have 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. have 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;
- 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 they sought out the undersigned attorneys in order to institute the present class action proceedings on their 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. are, 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 Plaintiffs as the Representative Plaintiffs 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;

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 Plaintiffs 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 Plaintiffs and the Class Members for the Subject Vehicles and **ORDER AND CONDEMN** Defendants to reimburse the total amounts paid by Plaintiffs 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 Plaintiffs 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 Plaintiffs 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 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 all publication costs.

MONTREAL, November 29, 2018

(S) David Assor

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