

COURT FILE NUMBER 2001-~~09528~~

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS CHRISTOPHER HEARD and JANE DOE

DEFENDANT FIAT CHRYSLER AUTOMOBILES N.V., FIAT CHRYSLER AUTOMOBILES US LLC, FCA CANADA INC., ~~1643123-ONTARIO INC. o/a MOPAR & DESIGN CANADA~~ and WOCO TECH USA, INC.

DOCUMENT **AMENDED STATEMENT OF CLAIM**

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A Class Proceedings pursuant to the *Class Proceedings Act*, S.A. 2003, C-16.5

NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

I. PARTIES

A. PLAINTIFF

1. The proposed Representative Plaintiff, Christopher Heard, is an individual residing in Fort Saskatchewan, Alberta (the "Plaintiff"). Christopher Heard for himself and as Representative Plaintiff brings this action on behalf of all persons or corporations who

purchased a Dodge Ram 1500 model year from 2013-2020 or a Dodge Ram Rebel model year from 2013-2020, or Jeep Grand Cherokee model year from 2013-2020, with the optional equipment option Air Suspension, 4-Corner 9 (the “Affected Vehicles” or “Affected Vehicle” when singular), within the Dominion of Canada, including all provinces and territories.

2. The plaintiff Jane Doe is an individual residing in Calgary, Alberta. In the event that Christopher Heard becomes unwilling or unable to act as representative plaintiff in this action, Jane Doe shall stand in his place.

B. DEFENDANTS

3. The Defendant, Fiat Chrysler Automobiles N.V. (“FCA”), is a corporation with offices in London, United Kingdom. FCA provides direction and is involved in the business actions of FCA US and FCA Canada, as defined below.
4. The Defendant, Fiat Chrysler Automobiles US LLC (“FCA US”), is a corporation wholly owned by FCA. FCA US operates from offices located in Auburn Hills, Michigan. USA.
5. The Defendant, FCA Canada Inc. (“FCA Canada”), a wholly owned subsidiary of FCA US, is a corporation with offices in Windsor, Ontario. FCA Canada carries on business in Calgary, Alberta, the Province of Alberta, and throughout the Dominion of Canada. FCA Canada is the sole distributor of the Dodge-branded vehicles and Jeep Grand Cherokee branded vehicles in Canada.
6. WOCO Tech USA, Inc. (“WOCO USA”) is a corporation with its office located at Novi, Michigan, USA. WOCO USA manufactured the air suspension parts installed in the Affected Vehicles, pursuant to the specifications and directions provided to it by the vehicle manufacturers, which were installed by the manufacturers into Affected Vehicles and also distributed as replacement parts into the USA and Canada.
7. ~~1643123 Ontario Inc. o/a~~ Mopar & Design ~~Canada~~ (“Mopar”) is a wholly owned subsidiary of FCA US ~~corporation with offices located in Hamilton, Ontario with their agent for service located in Toronto, Ontario~~. Mopar was contracted by WOCO USA to distribute the Air Suspension parts to Dodge dealerships in Canada for replacement in Affected Vehicles.
8. FCA, FCA US, FCA Canada (collectively the “FCA Defendants”), have manufacturing facilities in Canada, including, but not limited to, manufacturing plants located in Brampton, Windsor, and Etobicoke, Ontario. The FCA Defendants have responsibilities for and provide direction for the engineering, design, development, research, marketing,

promotion, importing, sale and distribution of Dodge and Jeep Grand Cherokee vehicles in Canada.

C. CLAS

9. This action is brought on behalf of the Plaintiff in his own right, and pursuant to the *Class Proceedings Act*, SA 2003, c C-16.5 (“*Class Proceedings Act*”), to advance this Action on behalf of all persons in Alberta and throughout the Dominion of Canada (including, but not limited to, individuals, corporations, and estates), who own or have owned, or lease or have leased, one or more of the Affected Vehicles, which are affected by the Air Suspension (defined below) defect asserted by this claim, and additionally, all persons in Canada (including but not limited to individuals, corporations, and estates) who have suffered any injury or damages, including but not limited to the inconvenience of spending time and money to resolve the suspension issues, caused by a faulty Air Suspension system asserted by this claim (the "Class Members" or "Class").

II. CLAIM

A. DEFECTIVE AIR SUSPENSION SYSTEM

10. The Plaintiffs allege and the fact is that the years 2013-2020 Models of Dodge Ram 1500 vehicles, and years 2013-2020 Models of Jeep Grand Cherokee, with the optional equipment option ‘Air Suspension, 4-Corner’ have operational issues in colder climates that results in damage to other components of the vehicle (the “Affected Vehicles”). The ‘Air Suspension, 4-Corner’ for the Affected Vehicles (the “Air Suspension”) was installed in the Affected Vehicles by the Defendants, or any one of them, and fails to successfully operate in temperatures that fall below around zero (0) degrees Celsius, in colder climates. The Air Suspension is marketed as a luxury upgrade and commands an enhanced selling price.
11. The Plaintiff asserts and the fact is that many owners, lessors and operators of Affected Vehicles have had issues with the failure of the Air Suspension system ceasing to operate in colder climates. Owners of the Affected Vehicles are having to spend time, effort and thousands of dollars on replacing the Air Suspension to a standard suspension system or another Air Suspension system. The consistent experience of owners, lessors, or operators of the Affected Vehicles is that the Air Suspension system fails in colder climates, causing a variety of damages, including, but not limited to, additional repair costs, lost or down time of Affected Vehicles while waiting for repair, and potentially other loss of property and/or personal damages that can result from the Air Suspension failure.
12. The Plaintiffs assert and the fact is that this proposed Class action involves more than 10 Affected Vehicles and more than 10 parties that have been affected by the Air Suspension failure.

13. The Air Suspension system uses a compressor to operate. The Plaintiff alleges and the fact is that the compressor fails as a result of condensation, dampness or moisture which causes the internal valves and solenoids to jam and stick, blowing control fuses. As a result of exposure to colder climates, this causes Affected Vehicles to have accelerated and increased wear down on other components of the Affected Vehicles including, but not limited to, the fuses, relays, bolt joints and bushings which in turn affects the alignment of the wheels. This can further result in tires wearing quicker, becoming more prone to tire leaks and causes the Affected Vehicles' brakes to wear prematurely and steering wheels to vibrate, particularly at higher speeds. These problems have been experienced by owners, lessors or operators of Affected Vehicles.
14. As a result of the defects caused by the failure of the Air Suspension system, owners, lessor and operators of Affected Vehicles have experienced issues with the safety, comfort and ride quality.
15. The Plaintiff asserts and the fact is that if the Air Suspension system is not replaced in the Affected Vehicles, users are driving an Affected Vehicle without a functioning suspension system in colder climates that damages other components of the Affected Vehicle and results in accelerated failure of other parts and components.
16. The Plaintiff asserts and the fact is that in some cases, the Air Suspension defect results in the deploy of the air bag safety system while an Affected Vehicle is being operated at proper lawful speed on a roadway. This causes the brakes and tires to become locked up, causing additional damages and need of repair to the Affected Vehicle.
17. The Air Suspension defect creates engineering, installation and manufacturing challenges. The Defendants, through their employees, officers, directors, and agents, failed to meet the reasonable standard of care expected in the circumstances when designing, manufacturing and/or distributing the Affected Vehicles and the suspension in the Affected Vehicles.

B. FACTS

18. In or about 2016, the Plaintiff purchased a 2016 Dodge Ram 1500 from St. Albert Dodge located in Alberta. The Plaintiff's 2016 Dodge Ram 1500 is equipped with the Air Suspension system containing the defect.
19. To the Plaintiff's knowledge, the Air Suspension system in his 2016 Dodge Ram 1500 has not been properly repaired or replaced.
20. At the time of sale, had the Plaintiff known about the Air Suspension system defect, he would not have purchased his 2016 Dodge Ram 1500 or would not have paid as much as he did for it, given the associated safety risk. The value of the Plaintiff's 2016 Dodge Ram

1500 has been diminished as a result of the Air Suspension system defect and associated safety risk.

21. The Plaintiff has had to spend time, effort and money on repairing the vehicle and its other components despite being diligent in regularly servicing their 2016 Dodge Ram 1500.
22. Eventually, after having the Affected Vehicle in for repair of the failure of the Air Suspension system and parts, on a number of different occasions, the Plaintiff eventually sold the Affected Vehicle at a substantial loss.
23. The Plaintiff asserts on behalf of himself and the Class Members that they did not receive the benefit of their bargain; rather, they purchased and/or leased vehicles that are of a lesser standard, grade and quality than represented, and they did not receive vehicles that met ordinary and reasonable consumer expectations regarding safe and reliable operation. Purchasers and/or lessors of the Affected Vehicles paid more, either through a higher purchase price or higher lease payments, than they would have, had the Air Suspension system been disclosed. The Class Members were deprived of having a safe, defect-free suspension system installed in their vehicles as they avoided incurring the costs associated with recalls and installing replacement parts for the Air Suspension system for years.
24. The Plaintiffs assert and the fact is that the Defendants knew this defect existed in the Affected Vehicles, soon following the initial issuance of the 2013 models of Affected Vehicles, and a number of Affected Vehicles were coming back with issues with the Air Suspension system failing. Given this defect exists in all Affected Vehicles leased or sold in North America, the Plaintiff asserts and the fact is that the FCA Defendants opted not to make a manufacturer recall for the defect, as the defect does not create a readily identifiable loss or failure of the Air Suspension system, until it is operated for extended periods of time in a colder climate.
25. The Plaintiff asserts on behalf of himself and the Class Members that the FCA Defendants knew, or ought to have known, that the Air Suspension system would fail in colder climates and did not cause a factory recall to be conducted, given the number of Affected Vehicles that would experience a loss was a relatively small sample compared to the number of total sales overall in North America. In the alternative, the FCA Defendants opted to allow Affected Vehicles to fail, which has resulted in substantial delays for owners, lessors and operators of such Affected Vehicles, given there has been high demand for replacement parts for those same Affected Vehicles.
26. The Plaintiff asserts and the fact is that owners, lessors and operators of Affected Vehicles have experienced loss such as:
 - a. Several thousand dollars of repairs to replace the Air Suspension system, including some Affected Vehicles that have required the replacement more than once;

- b. Several thousand dollars of repairs to replace the Air Suspension system with a completely different system, previously marketed as an inferior system, to avoid future failures;
- c. Loss of time, work time, and income, dealing with the time spent in dealerships to get Affected Vehicles repaired;
- d. With so many Affected Vehicles being concentrated in areas with colder climates, some users, operators, owners or lessors have experienced substantial delay and wait time for a particular dealership to locate and obtain replacement parts;
- e. Early replacement and cost experience for premature and early replacement of parts on Affected Vehicles, particularly with replacement of compressor units;
- f. Failure by Affected Vehicles while operating has resulted in loss of control of vehicles, which has resulted in property damage, third party property damage, personal injury and third party personal injury claims, all of which have impacted the insurance rates for the owners and operators of Affected Vehicles;
- g. More frequent need for repair and inspection of Affected Vehicles, resulting in additional costs for replacement of various parts that have failed or deteriorated;
- h. Owners, lessors or operators of Affected Vehicles have to pay to either replace a compressor or replace the Air Suspension system with a normal coiled suspension system, at cost of a few to several thousand dollars, as a result of premature failure of the Air Suspension systems;
- i. Owners, lessors or operators of Affected Vehicles experience multiple error codes while trying to use Affected Vehicles;
- j. Owners and lessors of Affected Vehicles experience loss on sale of Affected Vehicles in attempts to mitigate their damages, as a result of the Affected Vehicles being attributed a diminished value following the experience of so many problems that flow from the Air Suspension failure; and
- k. Such further and other damages as may be proven at a trial of this action.

C. A CLASS PROCEEDING IS APPROPRIATE

27. There are a number of issues common to all of the claims of the proposed Class Members, including, but not limited to, the following:

- a. A determination of the nature and extent of the duties owed to purchasers, lessors and operators of Affected Vehicles by the various named Defendants in this action;
- b. A determination of the validity of the allegations regarding breaches of duties owed to the Class Members and breaches of contract by the various named Defendants in this action;
- c. A determination of whether or not the Air Suspension system has a propensity to defect in a colder climate as compared to a warmer climate;
- d. A determination of whether or not the Defendants knew, or ought to have known, or should have known that their Air Suspension system has a defect in colder temperatures and, if so, when they discovered or ought to have discovered this;
- e. Whether or not the Defendants failed to disclose and concealed the existence of the Air Suspension defect from the Class Members;
- f. Whether the Defendants made the Representations about the reliability and fitness for purpose of the Air Suspension system, and if any such publicly made assertions misrepresented the characteristics of the Affected Vehicles intentionally or negligently;
- g. Whether the Defendants have breached their warranty obligations;
- h. Whether the Defendants' conduct breached the *Sale of Goods Act* and the Equivalent Sale of Goods Statutes (means the *Sale of Goods Act*, RSO 1990, c.S.1, as amended, ss. 15 and 51; *Sale of Goods Act*, RSBC 1996, c. 410, as amended, ss. 18 and 56; *Sale of Goods Act*, RSS 1978, c. S-1, as amended, ss. 16 and 52; *The Sale of Goods Act*, RSM 1987, c. S10, as amended, ss. 16 and 54; *Sale of Goods Act*, RSNS 1989, c. 408, as amended ss. 17 and 54; *Sale of Goods Act*, RSPEI 1988, c. S-1, as amended ss. 16 and 53; *Sale of Goods Act*, RSNB 1973, c. S-1, as amended ss. 15 and 50; and *Sale of Goods Act*, RSY 2002, c. 198, ss. 15 and 50; *Sale of Goods Act*, RSNL 1990, c. S-6, s. 16 and 54; and *Sale of Goods Act*, RSNWT 1988, c. S-2, as amended ss. 18 and 60), the *Competition Act* RSC 1985 c. C-34 (“*Competition Act*”) and/or the *Consumer Protection Act* 2000 C-26.3 (“*Consumer Protection Act*”) and Equivalent Consumer Protection Statutes (means the *Business Practices and Consumer Protection Act*, SBC 2004, c 2, the *Consumer Protection Act*, SS 1996, c C-30.1, the *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, the *Business Practices Act*, CCSM, c B120, the *Consumer Protection Act*, 2002, SO 2002, c 30, Sched. A, the *Consumer Protection Act*, CQLR, c P-40.1, the *Consumer Protection and Business Practices Act*, SNL

2009, c C-31.1, *the Consumer Protection Act*, RSNS 1989, C 92, *Consumer Protection Act*, RSNWT 1988, c C-17, and the *Business Practices Act*, RSPEI 1988, c B-7, as amended and any applicable regulations thereunder);

- i. In the event that any of the allegations asserted above are demonstrated or proven, what damages are allowable against any or all of the named Defendants;
 - j. Whether the actions of the Defendants merit an award for aggravated damages; and
 - k. Whether the actions of the Defendants merit an award of punitive damages.
28. In the alternative, a determination of the common issues will substantially advance the proceedings even though some issues relating to individual assessment of damages may remain to be determined. The Plaintiff asserts and the fact is that a class proceeding is the most efficient way to determine the liability of any of the Defendants for losses caused to the Affected Vehicles, and through this process, the most efficient claims determination process may be created.
29. The proposed Representative Plaintiff can fairly and adequately represent the interests of the Class Members.
30. Class Members, as individuals, cannot match the resources of the Defendants. The claims of many Class Members would not be economical to pursue individually. The Class Members would be denied access to justice in the absence of a class proceeding.
31. It is unlikely that an individual could or would seek prospective relief to deter future misconduct by the Defendants. The Defendants are sufficiently large and well-resourced that an individual lawsuit would be unlikely to have any significant impact on their manufacturing, sales and distribution policies, procedures and practices. This class proceeding will impact the Defendants such that they will have to ensure that their policies, procedures and practices are sufficient to protect their customers.
32. The proposed Representative Plaintiff and Class Members plead and rely on the *Class Proceedings Act* and the *Alberta Rules of Court*, Alta Reg 124/2010.

D. REPRESENTATIONS

33. The FCA Defendants made, approved or authorized a number of consistent, common and uniform representations in, among other things, their written warranties, vehicle manuals, television and radio advertisements, media releases, internet, social media and print media

advertising, website(s), sales brochures, posters, dealership displays and other marketing materials in relation to the Affected Vehicles.

34. As used in this Statement of Claim, the term “Representations” includes the following common and consistent representations made by the FCA Defendants (whether expressly or by omission) to the effect that the Affected Vehicles are, would be or were:
- (a) Of exceptional quality in all facets of their design and engineering;
 - (b) Reasonably fit for the purposes of driving on roads in Canada;
 - (c) Of merchantable quality; and
 - (d) Free from defects.

E. THE DEFENDANTS’ CONCEALMENT OF THE AIR SUSPENSION DEFECT

35. The Plaintiffs assert and the fact is the Defendants intentionally concealed from the proposed Class Members the Air Suspension defect even though the Defendants knew, or should have known, that defects in design, manufacturing, assembly, materials and/or workmanship were causing the Air Suspension system to fail in colder climate regions. The Plaintiff asserts on his behalf and that of the Class Members that had the Defendants adequately tested the Air Suspension system in the Affected Vehicles, they would have determined the propensity of it to fail in colder climates and should have properly altered the system to ensure the system would not fail in colder climates.
36. Knowledge and information regarding the Air Suspension system’s defect were in the exclusive and superior possession of the Defendants and that information was not provided to the Class Members. Based on pre-production testing, post-production design or failure mode analysis, production design or failure mode analysis, post-collision inspections, reports prepared by the Transport Canada department and/or the National Highway Traffic Safety Administration (“NHTSA”) investigations in the United States, and early consumer complaints, the Defendants were aware, or ought to have been aware, of the Air Suspension defect in the Affected Vehicles and intentionally concealed the Air Suspension defect from the proposed Class Members, which defect caused Affected Vehicles to experience the failures described within this claim when operated in colder climates.
37. The Plaintiff asserts on his behalf and that of the Class Members that the Defendants know, or ought to have known, the Air Suspension defect is not reasonably discoverable by consumers when purchasing the Affected Vehicles. The fact is, operators of Affected Vehicles discover the Air Suspension defect when they experience sustained exposure to

cold climate conditions and subsequently have a defective Air Suspension system cause damages to the Affected Vehicle. Operators of Affected Vehicles will only discover an issue with the Affected Vehicle if the Air Suspension system improperly or prematurely deploys, causing additional issues and damages to the Affected Vehicle. Unless the Air Suspension improperly deploys, the owner or operator of the Affected Vehicle has no means of discovering the premature deterioration of the various parts within the Affected Vehicle which are a direct result of the defect.

38. Despite having extensive knowledge of industry reports, which identify the number of operators and consumers having issues with the defective Air Suspension system, the Defendants have continued to withhold information about the Air Suspension defect and the issues with the propensity of the Air Suspension system installed both originally or as a replacement part, to fail in colder climates.
39. Given the defective Air Suspension system and the associated problems as described in the pleadings above, the FCA Defendants either should not have sold and/or leased to the proposed Class Members the Affected Vehicles, or they should have prominently disclosed that the Affected Vehicles' Air Suspension system was defective and would fail in colder temperatures. Alternatively, the FCA Defendants should have mitigated the defects by either issuing a recall related to the defective Air Suspension system, or mitigated the damage by replacing the systems either prior to or immediately following sale of Affected Vehicles, when the Defendants first learned of the defect to the Air Suspension system.

F. PRODUCT LIABILITY AND DESIGN/MANUFACTURE CLAIM

40. The Plaintiffs allege and the fact is, the Affected Vehicles were built with a negligent design, and one that was negligently manufactured in a manner that caused the Air Suspension system to fail and operate improperly in colder climates.
41. The Defendants, or any of them, owed a duty of care to the Class Members who were sold vehicles containing the defective Air Suspension system to warn them of issues of operating the Affected Vehicle in colder climates and were negligent in this regard. The Defendants, or any of them, breached the standard of care of a reasonable manufacturer in manufacturing the Air Suspension system. In the alternative, the Defendants misrepresented the suitability of the Affected Vehicles to be properly and safely operated in colder climates.
42. The Defendants owed a duty of care to the Class to ensure the Affected Vehicles were engineered, designed, developed, tested and manufactured free of any defect. The Defendants, or any of them, through their negligence caused the defective Air Suspension system to be installed in Affected Vehicles that were knowingly being sold to owners,

lessors and operators who intended to use them in regions of Canada that experienced colder climates. This negligence or breach of the standard of care caused the Plaintiffs to suffer damages as described in this action.

43. The Defendants knew, and it was reasonably foreseeable, that the Class Members would trust and rely upon the Defendants' skill and integrity when purchasing the Affected Vehicles. The Defendants also knew, and it was reasonably foreseeable, that if the Affected Vehicles possessed a defect, the value of the Affected Vehicles would diminish and the Affected Vehicles could be subject to recalls, both of which would cause loss and damage to the Class Members.

G. FAILURE TO WARN

44. Despite repeated consumer complaints, and the Defendants' knowledge of the faulty Air Suspension system, the Defendants have failed to warn the Class Members of the defective Air Suspension system, and continue to sell the Affected Vehicles without any warning to consumers, and have failed to adequately remedy the problem. To date, the Defendants have failed to acknowledge that the Air Suspension system is defective, continue to deny the existence of the problem and have failed to adequately remedy the defect.
45. The Defendants owed a duty of care to the Class, and specifically a duty to warn the Plaintiff and the Class. The Defendants breached the standard of care of a reasonable manufacturer in failing to adequately warn the Plaintiff, the Plaintiff was injured, the type of injury resulting from the failure to warn was reasonably foreseeable and the Defendants failing to warn the Class caused damages to owners, lessors and operators of Affected Vehicles.
46. Despite the Defendants' knowledge regarding the defective Air Suspension system and the domino effect the faulty Air Suspension system has on other components of the Affected Vehicles, the Defendants failed to adequately warn consumers at the time of Affected Vehicle purchase or lease, and failed to instruct dealers to do so. The Defendants have not made any reasonable efforts to alert Class Members about the defective Air Suspension system and their dangers. Despite the knowledge of the Defendants of the existence of the defective Air Suspension system, the Defendants have continued to conceal the problem from the Class Members and potential customers. Further, the Defendants have failed to adequately remedy the defective Air Suspension system.

H. NEGLIGENT MISREPRESENTATION

47. The Defendants were in a proximate and special relationship with the Class Members by virtue of, amongst other things:

- (a) their design and manufacture of the Air Suspension system and Affected Vehicles in question;
 - (b) their sale of the Affected Vehicles to the Class Members;
 - (c) their skill, experience and expertise in the design and manufacture of air suspension systems and vehicles in general;
 - (d) their knowledge of design and manufacturing defects, as well as history of repairs of the Affected Vehicles, when the Class Members had no such knowledge or practical method of obtaining such information; and
 - (e) the fact that the Class Members had no option but to rely on the Representations of the Defendants in respect of the Affected Vehicles and their features and attributes.
48. The Defendants owed a duty of care to the Class Members. It was intended by the Defendants and reasonably foreseeable that the Class Members would rely upon the Representations made about the Affected Vehicles by the FCA Defendants, when purchasing the Affected Vehicles and the FCA Defendants knew, or ought to have known, the proposed Class Members would suffer the damages described in this claim as a result.
49. The Representations were false and were made negligently.
50. The Class Members reasonably relied upon the Representations made by the FCA Defendants in deciding to purchase the Affected Vehicles. Their reliance can be inferred on a class-wide basis from the purchase or lease of the Affected Vehicles. Had the Representations not been made, the Class Members would not have purchased the Vehicles, or would not have paid the premium price for the Air Suspension system.
51. The Class Members suffered damages as a result of relying upon the Representations of the FCA Defendants, in purchasing the Affected Vehicles. It was reasonably foreseeable that the Class Members would suffer damages as a result of relying upon the Representations. The Defendants are liable to pay damages to the Class Members.

I. COMPETITION ACT

52. The Defendants, or any of them, made the Representations to the Class Members and the public at large, and in doing so breached s. 52 of the *Competition Act* because the Representations:
- a. were made for the purpose of promoting the supply or use of the Affected Vehicles for the business interests of the Defendants;

- b. were made to the public;
 - c. were false and misleading in a material respect; and
 - d. caused the Class Members to purchase the Affected Vehicles where they otherwise would not have, or alternatively to purchase the Affected Vehicles at a price which was above their true value.
53. The Class Members suffered losses as a result of the Defendants' breaches of s. 52 of the *Competition Act*, and, pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay the damages resulting from those breaches in an amount to be proven at the trial of this action.

J. CONSUMER PROTECTION ACT AND EQUIVALENT CONSUMER PROTECTION STATUTES

54. The Plaintiff is located in the Province of Alberta for the purposes of the *Consumer Protection Act*. The Plaintiff's purchase of the Affected Vehicle is a consumer transaction for the purposes of the *Consumer Protection Act*.
55. The other Class Members in Alberta who purchased or leased the Affected Vehicles entered into consumer transactions for the purposes of the *Consumer Protection Act*.
56. Class Members resident in British Columbia, Saskatchewan, Manitoba, Ontario, Prince Edward Island, Newfoundland and Labrador, Quebec, Nova Scotia, the Northwest Territories, and the Yukon Territory who purchased or leased the Affected Vehicles for personal, family or household purposes and not for resale or for the purposes of carrying on business (as those concepts apply in the various Provinces and Territories), are consumers located in those Provinces and Territories for the purposes of the Equivalent Consumer Protection Statutes. The Defendants carried on business in those Provinces and Territories and were, amongst other things, suppliers for the purposes of the Equivalent Consumer Protection Statutes.
57. The Defendants' Representations were made and received by the Class Members in Alberta for the purpose of the *Consumer Protection Act*.
58. The Representations concerned material facts that affected the decisions of Class Members to acquire their Affected Vehicles.
59. The Representations constitute unfair, unconscionable or otherwise prohibited practices under the *Consumer Protection Act* and Equivalent Consumer Protection Statutes, given that, among other things, the Defendants knew, or ought to have known, that:

- a. the Representations were false, misleading or deceptive;
 - b. the Class Members would rely on the Representations to their disadvantage;
 - c. the Affected Vehicles did not have the performance characteristics, capabilities, uses, benefits or qualities as set out in the Representations;
 - d. the Affected Vehicles were not of the particular standard, quality or grade as set out in the Representations;
 - e. the Class Members were unable to receive all expected benefits from the Affected Vehicles; or
 - f. the consumer transactions were excessively one-sided in favour of the Defendants.
60. The Representations were made before the Plaintiff and the Class Members entered into the agreements to purchase the Affected Vehicles:
61. The Class Members are entitled to the remedies available under the *Consumer Protection Act* and the Equivalent Consumer Protection Statutes, including cancellation of the purchase, lease or other related agreements as well as damages pursuant to ss. 7 to 7.3 and 13 of the *Consumer Protection Act* and equivalent provisions of the Equivalent Consumer Protection Statutes.
62. The Class Members are entitled, to the extent necessary, to a waiver of any notice requirements under the *Consumer Protection Act* or of the Equivalent Consumer Protection Statutes, particularly as the Defendants have concealed the actual state of affairs from the Class.

K. GENERAL AND SPECIAL DAMAGES

63. As a result of the dangerous defects in the Affected Vehicles, and the failures by the Defendants to disclose the existence of the defective Air Suspension, the Class has suffered damages. The Defendants have not issued a recall and are replacing the defective Air Suspension with the same type of air suspension or replacing it with a standard air suspension system, thereby failing to remedy the underlying defect. Because of the continued existence of this harmful and dangerous defect, the value of each of the Affected Vehicles is reduced.
64. The Plaintiff pleads that the Class Members' damages were sustained in Alberta and in the rest of Canada, as applicable.

L. WAIVER OF TORTS

65. In the alternative to damages, the Plaintiff pleads that he and the Class Members are entitled to claim "waiver of tort" and thereby to claim an accounting or other

restitutionary remedy for disgorgement of the revenues generated by the Defendants as a result of the sale of the Affected Vehicles, due to the failure of the Defendants to disclose the defective Air Suspension system.

M. DAMAGES

66. As a result of the Representations and deliberate omissions of the Defendants, Class Members that constitute this Action have suffered loss and damage. The Defendants have not issued a recall and are simply replacing the defective Air Suspension system with the same Air Suspension or a standard air suspension system supplied by Mopar, thereby failing to remedy the underlying defect. Because of the continued existence of this defective part, the value of each of the Affected Vehicles is reduced.
67. The Plaintiffs assert and the fact is that despite this defect existing in all vehicles sold in North America, the FCA Defendants have made an economic decision to only deal with this problem on a case by case basis, given the defects are only crystalizing in a failure in colder climates.
68. The Plaintiff seeks relief for all other owners and/or lessors of the Affected Vehicles equipped with the Air Suspension system including, inter alia, recovery of damages and/or repair of any component within the Affected Vehicles under various provincial consumer protection legislation, breach of implied warranty of merchantability and reimbursement of all expenses associated with the recall and/or repair of the Air Suspension system in the Affected Vehicles.
69. The Class Members plead and rely upon the provisions of the *Judgment Interest Act*, R.S.A. 2000, c. J-1, as amended, and the regulations made thereunder.
70. The Class Members plead and rely upon the provisions of the *Sale of Goods Act*, R.S.A. 2000, c. S-2 and the Equivalent Sale of Goods Statutes.
71. The Class Members plead and rely upon the provisions of the *Excise Tax Act*, R.S.C. 1990 c. E-15, Part IX, and amendments thereunder.
72. The Class Members plead and rely upon the provisions of the *Consumer Protection Act* R.S.A. 2000 Chapter C-26.3 and the Equivalent Consumer Protection Statutes.
73. The Class Members plead and rely upon the provisions of the *Competition Act* R.S.C. 1985 c. C-34 and the Equivalent Competition Act Statutes.

74. The Plaintiffs plead and rely upon the provisions of the *Limitations Act*, being Chapter L-12 of the Revised Statutes of Alberta 2000, as amended, and the regulations made thereunder.
75. The full extent of the damages sustained by the Plaintiffs are not fully determined and the Plaintiffs put the Defendants upon notice that they shall apply at a trial of this action to amend their pleadings to more accurately itemize and particularize the damages sustained.

N. LIMITATION ACT

76. The proposed Class Members allege, and the fact is that the alleged defects were concealed by the Defendants and/or were latent defects, which were not discoverable by the proposed plaintiffs at any material time. To the extent that any respective limitation statutes or any applicable common law limitation periods may appear to apply, the proposed Class plead and rely upon the doctrine of discoverability and plead relief from any limitation defence.
77. In the alternative, the proposed Class allege, and the fact is, the Defendants' concealment of the defect in the Air Suspension system is relied upon to plead for relief and suspension from the application of any limitation period that may apply to the claim of a proposed plaintiff in this action. The proposed Class Members sustained damages from the defects in the Air Suspension system, which failed in colder climates, and/or deteriorated and failed on an accelerated basis in colder climates, thereby causing damages and injury, such that the proposed Class seek suspension of any claimed or applicable limitation periods.
78. The Plaintiffs propose that the trial of this action be held at the Court House, in the City of Calgary, in the Province of Alberta.
79. In the opinion of the Plaintiffs, this matter will take more than 25 days to try.

III. PRAYER FOR RELIEF

80. The Class therefore claim against the Defendants, jointly and severally:
 - a. An Order certifying this action as a class proceeding and appointing the named representative plaintiff, or an appropriate alternate, as may be subsequently determined, as Representative Plaintiff of the Class Members invested in this investment;
 - b. A declaration that the Defendants were negligent and liable in damages;

- c. A finding that the Defendants misrepresented the characteristics of the Affected Vehicles intentionally or negligently;
- d. A finding that the Defendants breached the express and implied warranties in relation to the Affected Vehicles;
- e. A finding that the Defendants contravened the *Sale of Goods Act* and the equivalent provisions in the Equivalent Sale of Goods Statutes;
- f. A finding that the Defendants violated Part VI of the *Competition Act*;
- g. A finding that the Defendant engaged in unfair practices contrary to Part 2 of the *Consumer Protection Act* and the equivalent provisions in the Equivalent Consumer Protection Statutes;
- h. A declaration that it is not in the interests of justice to require notice be given pursuant to s. 7.2(3) of the *Consumer Protection Act* (and any equivalent provisions of the Equivalent Consumer Protection Statutes) and waiving any such notice provisions;
- i. An Order for the statutory remedies available under the *Consumer Protection Act* (and the Equivalent Consumer Protection Statutes), including rescission of the purchase of the Affected Vehicles as well as the rescission of any financing, lease or other agreements related to the Affected Vehicles;
- j. Statutory damages pursuant to the *Sale of Goods Act* and the Equivalent Sale of Goods Statutes, *Competition Act*, the *Consumer Protect Act* and the Equivalent Consumer Protection Statutes in an amount to be determined by this Honourable Court;
- k. A declaration that the Defendants were negligent in the engineering, design, development, research, manufacture, marketing and distribution of the Affected Vehicles;
- l. An Order, pursuant to s. 30 of the *Class Proceedings Act*, RSA 2003, c C-16.5 directing an aggregate monetary award;
- m. An Order, pursuant to s. 32 of the *Class Proceedings Act*, RSA 2003, c C-16.5 allowing for the use of standard claim forms or other documentary evidence or such other procedure as warranted under the circumstances;
- n. An Order that the damages be paid by the Defendants into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court;

- o. Any interim Order that may be sought and is deemed appropriate, as it relates to the Affected Vehicles;
- p. An Order that the damages be paid by the Defendants into a common fund and distributed to the Class Members in an appropriate manner as directed by the Court;
- q. General damages in an amount to be proven at a Trial of this Action;
- r. Special damages in an amount to be proven at the Trial of this Action;
- s. Aggravated damages in such amounts as may be proven at the Trial of this Action;
- t. Punitive damages in such amounts as may be proven at the Trial of this Action;
- u. Interest in accordance with the provisions of the *Judgment Interest Act*, R.S.A. 2000, c. J-1, as amended;
- v. Any applicable Goods and Services Tax pursuant to the terms of the *Excise Tax Act*, R.S.C. 1990 c. E-15, Part IX, and amendments thereto;
- w. Costs of this action, including, but not limited to costs of providing notice to Class Members and administration of damages pertaining to a plan of distribution;
- x. Costs of this action on a substantial indemnity basis, or alternatively, solicitor and his or her own client costs, or alternatively Costs; and
- y. Such further and other relief as this Honourable Court may deem just and proper.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.