

Amended pursuant to the order of Master Bilawich,
made November 30, 2023.
Original filed on October 19, 2023

No. S-237109
Vancouver Registry



In the Supreme Court of British Columbia

DAYNE ZIEGLER EZ-Junk Ltd.

Plaintiff

and

**HINO MOTORS, LTD.; TOYOTA MOTOR CORPORATION;
HINO MOTORS MANUFACTURING U.S.A., INC.;
HINO MOTORS SALES U.S.A., INC.; HINO MOTORS
CANADA LTD.; TOYOTA CANADA INC.**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, RSBC 1996, C. 50

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (d) serve a copy of the filed response to civil claim and counterclaim on the Plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

Overview

1. This case exposes another emissions and fuel-economy cheating scheme, this time within the Toyota corporate family.
2. Following an investigation by the US Department of Justice, the defendants admitted to defrauding Japanese regulators: they made false statements about

test conditions, altered emissions test data, failed to perform durability tests, and faked fuel economy test results. This admitted misconduct was the result of systemic failures that infected the testing and certification process for all defendants. The defendants engaged in the same or similar conduct in North America, including Canada.

3. As a result, Canadians paid for vehicle features they did not receive, they purchased or leased vehicles that were unlawful to sell, and they paid higher fuel and repair costs to drive and maintain these vehicles.
4. The plaintiff seeks to bring a class proceeding to recover the damages suffered by the Class due to the defendants' conduct.

The Plaintiff and the Class

5. This action is brought on behalf of the Plaintiff and all persons who purchased or leased a vehicle, model years 2004-2021, that contained a Hino A05C, A09C, E13C, NO4C, J05D, J05E or J08E diesel engine, including but not limited to the following models: Hino 155, 195, 238, 258, 268, 338, M series, L series and XL series ("**Vehicles**") in Canada, excluding (i) the defendants and their officers and directors and (ii) authorized motor vehicle dealers of the defendants and the officers and directors of those dealers (the "**Class**" or "**Class Members**").

~~6. The Plaintiff, EZ Junk Ltd., is a company incorporated pursuant to the laws of British Columbia. Its sole director and shareholder is Dayne Ziegler. EZ Junk Ltd. is a Vancouver-based full-service junk removal company that provides junk removal, dumpster rental, and demolition services. The company provides these services throughout the lower mainland.~~

~~6. The Plaintiff leased a 2016 Hino 195 ("**EZ Plaintiff Vehicle**") and then bought it after the lease expired. The Plaintiff's decision to lease and purchase the **EZ Plaintiff Vehicle** (and to pay the lease and purchase price) was based on the Plaintiff's belief that the **EZ Plaintiff Vehicle** was highly fuel efficient, that the **EZ Plaintiff Vehicle** would meet or exceed regulatory emissions requirements for its~~

useful life, and that EZ Vehicle's emissions control system was durable and free from defects.

7. The Plaintiff Vehicle is used by EZ Junk Ltd. ("EZ Junk"). EZ Junk is a company incorporated pursuant to the laws of British Columbia. The Plaintiff is EZ Junk's sole director and shareholder. EZ Junk is a Vancouver-based full-service junk removal company that provides junk removal, dumpster rental, and demolition services. EZ Junk provides these services throughout the lower mainland.
8. Prior to acquiring the Vehicle, the Plaintiff did not know the **EZ Plaintiff** Vehicle operated with materially worse fuel economy than was advertised or that the **EZ Plaintiff** Vehicle's emission control system had defects. The Plaintiff would not have leased or purchased the **EZ Plaintiff**-Vehicle, or would have paid less for it, had it known that the **EZ Plaintiff** Vehicle did not comply with emission standards or that their real-world fuel economy was significantly worse than advertised.

The Defendants

9. Hino Motors, Ltd. ("**Hino Motors**") is a Japanese corporation with its principal place of business in Tokyo, Japan. Toyota Motor Corporation owns a controlling interest in Hino Motors. Hino Motors engineers, designs, develops, manufactures, and sells commercial vehicles—small, medium, and heavy-duty trucks and buses—as well as diesel engines. Hino Motors conducted its business with the knowledge and understanding that its vehicles and motors would be sold throughout Canada, including in British Columbia. Hino Motors also reviewed and approved the designs, testing strategies, marketing, and advertising campaigns designed to sell the Vehicles in Canada, including in British Columbia. Hino Motors knew and approved of the submissions made to Canadian and U.S. regulators that were necessary for Hino Motors to export its products for sale in Canada, including in British Columbia.
10. Hino Motors Manufacturing U.S.A., Inc. ("**Hino US Manufacturing**") is an American corporation with its principal place of business located in Michigan at 45501 Twelve Mile Road, Novi, MI 48377. Hino US Manufacturing is a wholly-

owned U.S. subsidiary of Hino Motors. Hino US Manufacturing engages in the manufacturing, research and development, sales, and parts distribution with respect to the Vehicles. Hino US Manufacturing regularly submits applications to the U.S. Environmental Protection Agency (“**EPA**”) to obtain the certification necessary for the sale of Hino vehicles in the United States and in Canada.

11. Hino Motors Sales U.S.A., Inc. (“**Hino US Sales**”) is a Delaware corporation with its principal place of business located in Michigan at 45501 12 Mile Road, Novi, MI 48377. Hino US Sales is a wholly-owned U.S. subsidiary of Hino Motors. It is in the business of distributing, marketing, and selling automobiles. Hino US Sales reviewed and approved the advertising, sales strategies, engineering, purchasing, manufacturing, and marketing materials for the Vehicles.
12. Hino Motors Canada Ltd. (“**Hino Canada**”) is a federally incorporated company with a registered office at 6975 Creditview Road, Unit #2, Mississauga, Ontario. It is a wholly-owned Canadian subsidiary of Hino Motors and, since 2006, it has operated an assembly plant in Woodstock Ontario that assembles Vehicles. Hino Canada is in the business of producing, distributing, obtaining or ensuring regulatory certification, marketing and selling the Vehicles in Canada. Hino Canada reviewed and approved the advertising, sales strategies, engineering, purchasing, manufacturing, and marketing materials for the Vehicles.
13. Toyota Motor Corporation (“**Toyota**”) is a Japanese corporation with its principal place of business in Toyota City, Japan. Toyota owns a controlling interest in Hino Motors. Toyota reviewed and approved Hino’s vehicle designs, testing strategies, regulatory emissions compliance and marketing materials.
14. The businesses of each of the defendants Hino Motors, Hino US Manufacturing, Hino US Sales, Hino Canada and Toyota (collectively, “**Hino**” or the “**Defendants**”) are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the development, manufacturing, regulatory authorization process, marketing, and sale of the Vehicles sold in Canada including British Columbia.

15. At all material times, the Defendants acted pursuant to a common design to develop, manufacture, seek regulatory authorization for, market, and sell the Vehicles in Canada including British Columbia.

Canadian Emissions Laws

16. The Vehicles have diesel engines. Diesel exhaust is materially different from the exhaust produced by gasoline engines. Compared to gasoline engines, diesel engines emit more air pollutants that are harmful to humans and the environment, such as nitrogen oxides (“**NOx**”) and other particulate matter. NOx emissions contribute to the formation of acid rain, photochemical smog, and ground level ozone. The particulate matter in diesel exhaust is directly linked to a number of health issues due to its impact on human respiratory and cardiovascular systems. It is also largely comprised of black carbon, which has been shown to be a significant contributor to global warming.
17. Given the danger of diesel exhaust, diesel vehicle emissions are regulated. Between 1994 and 2016, these regulations have become increasingly strict as regulators – and consumers – have demanded lower emissions. In Canada, the general approach has been to harmonize Canadian emissions standards with the United States Environmental Protection Agency (“**EPA**”) federal standards. There has also been a growing consumer demand for vehicles with smaller environmental footprints.
18. All vehicles imported or sold in Canada must pass emissions tests and comply with the standards contained in the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c.33, (“**CEPA**”), *On-Road Vehicle and Engine Emission Regulations*, SOR/2003-2, and the *Heavy-duty Vehicle and Engine Greenhouse Gas Emission Regulations*, SOR/2013-24, as well as Provincial and Territorial emissions legislation and regulations (collectively, the “**Emissions Standards**”).
19. The Emissions Standards are closely aligned with those in the United States. The Emissions Standards are consistent with the regulatory requirements for vehicle

and engine emissions set out in Title 40, Chapter 1, subchapter C, of the *Code of Federal Regulations of the United States* (“**CFR**”).

20. The Defendants could elect to seek regulatory approval of the Vehicles under either the U.S. or Canadian procedures. Vehicles and/or engines that have been issued a certificate of conformity (“**COC**”) to U.S. federal standards by the EPA are eligible for sale and use in Canada as set out in the regulations under the *CEPA*.
21. The Defendants knew or should have known that they are prohibited from assembling, manufacturing, importing and/or selling into Canada vehicles, engines or equipment unless the Emissions Standards are met.
22. Hino knew or should have known that fuel consumption and emissions are important factors for consumers and businesses choosing a vehicle to purchase or lease.
23. As discussed below, rather than meet the Emissions Standards through legitimate means, Hino cheated on emissions tests to feign compliance and equipped Vehicles with defective emission control systems that allow for excess pollution and require costly maintenance. Hino intentionally misled consumers by falsely claiming the Vehicles consume less fuel and emit less NO_x, CO₂, and other pollutants than they actually do.

Hino’s Fraud

24. In 2022, Hino admitted it had been cheating on regulatory testing in Japan as far back as 2003. As emissions standards became more stringent over time, Hino’s cheating increased in order to meet those standards (“**Fraudulent Conduct**”).
25. Examples of Hino’s Fraudulent Conduct are as follows.
26. During regulatory emissions testing, the Defendants used materially different hardware in the emissions control systems in test vehicles than what was installed in Vehicles sold and leased to the Class. Hino did this because it knew the Vehicles were equipped with emissions control systems that would have failed emissions

testing without cheating. This was illegal. Vehicles and engines used in regulatory testing must be materially identical to those produced and sold to the public.

27. The emissions control systems installed in the Vehicles were also faulty (“**Defective ECSs**”). For example, the Vehicles’ onboard diagnostic systems (“**OBDs**”), which must accurately monitor emissions and detect emissions control system failures, do not properly alert drivers when particulate matter has accumulated in the diesel particulate filter (“**DPF**”).
28. The DPF filters particulate matter out of diesel emissions before it is released into the air. The Emissions Standards require an OBD to properly warn the driver when the DPF is at risk of becoming clogged, because a clogged DPF can result in excessive amounts of diesel particulate matter (NO_x in particular) being released into the air.
29. The OBDs installed in the Vehicles fail to give timely warnings to drivers or to initiate timely diesel particulate filter cleaning. As a result, the Vehicles’ DPFs get clogged more frequently than they should, releasing dangerous particulates into the air, reducing fuel economy, and requiring costly maintenance, often outside of the warranty period.
30. The Emissions Standards also include a ceiling for a manufacturer’s fleet-wide average CO₂ emissions. Hino knew it could not meet these standards without cheating. Hino therefore faked CO₂ and fuel consumption certification test data for Vehicles and tampered with testing instruments to make the Vehicles appear more fuel-efficient than they actually were. Hino provided this falsified data to regulators.
31. Hino has admitted that the actual fuel economy performance of certain Vehicles does not meet the levels reported to regulators or advertised to customers. The Vehicles’ actual fuel economy and CO₂ emissions do not meet Emissions Standards.
32. Hino knew or ought to have known that the Vehicles were given regulatory approval based on Hino’s Fraudulent Conduct and that the Vehicles are not as fuel

efficient as Hino represented to consumers and regulators; they emit more CO₂, NO_x and other emissions than the Emissions Standards allow; and that the Vehicles were equipped with the Defective ECSs that do not comply with the Emissions Standards.

33. Hino knew or ought to have known that it was illegal to assemble, import or sell the Vehicles in Canada, including British Columbia, because they were not subject to proper regulatory testing but were certified based on the Fraudulent Conduct. Had the Defendants provided accurate information to regulators, the Vehicles would not have been approved for sale in Canada, including British Columbia, because they do not comply with the Emissions Standards.

Connection to Canada, including British Columbia

34. While Hino has only publicly admitted to defrauding Japanese regulators, Hino committed the Fraudulent Conduct in North America, including Canada. As a result, people in British Columbia and across Canada paid for vehicle features they did not receive, they purchased or leased vehicles that were unlawful to sell, and they paid higher fuel and repair costs to drive and maintain these vehicles.
35. Hino's internal investigation into the Fraudulent Conduct began after U.S. regulators started to investigate Hino's North American operations. U.S. regulators started to take a closer look at diesel vehicle manufacturers following the Volkswagen emissions scandal, which began in 2015. In or around 2016, U.S. regulators questioned whether Hino falsified emissions data and cheated on testing.
36. Also in 2016, the Japanese Ministry of Land, Infrastructure, Transport and Tourism ("MLIT") asked Hino to report whether any misconduct occurred during emissions or fuel efficiency testing for vehicles sold in Japan. Hino told both regulators that there had been no misconduct. Hino's senior managers were aware of and involved in these discussions.

37. In or around 2018, U.S. regulators again questioned Hino. Hino commenced an internal investigation and provided an initial report of its findings to U.S. regulators. The U.S. Department of Justice (“DOJ”) commenced an investigation into Hino’s cheating on regulatory testing that, at the time of filing, is still ongoing.
38. In or around December 2020, due to the DOJ’s investigation, Hino ~~announced that it would~~ formally paused its vehicle production in North America, including in Canada. Hino knew the Vehicles did not meet the Emissions Standards and would not pass certification testing if Hino did not cheat. Since 2020, Hino has used a competitor engine manufacturer to equip Hino’s vehicles sold in North America.
39. In or around March 4, 2022, Hino publicly admitted to “misconduct” related to falsifying emissions measurements and fuel economy performance in its Japanese certification applications.
40. On March 11, 2022, Hino hired a Special Investigation Committee (“SIC”) to investigate the misconduct in Japan.
41. On March 18, 2022, MLIT conducted an administrative hearing prior to imposing sanctions on Hino and Toyota. MLIT found that Hino had falsified the engine performance and fuel consumption measurements in certification tests of Hino engines used in the Vehicles, and notified Hino that it would revoke certification of certain engines.
42. On March 25, 2022, Hino submitted a statement to MLIT, announcing recalls of certain Vehicles.
43. On August 1, 2022, the SIC produced a report detailing Hino’s history of regulatory non-compliance and cheating in Japan, and its implications for Hino’s world-wide operations.

Representations

44. Hino made, approved or authorized a number of consistent, common and uniform representations in, among other things, their written warranties, vehicle manuals,

television and radio, media releases, internet, social media and print media advertising, websites, sales brochures, posters, dealership displays, and other marketing materials in relation to the Vehicles.

45. More specifically, Hino made the following common and consistent representations (whether expressly or by omission):
- (a) The Vehicles met or exceeded all relevant Emissions Standards;
 - (b) The Vehicles are free from defects in materials and workmanship that would cause the Vehicles not to conform with the Emission Standards;
 - (c) Hino is a sustainable, environmentally-minded corporation. For example, Hino's corporate mission is "[t]o make the world a better place to live by helping people and goods get where they need to go—safely, economically and with environmental responsibility—while focusing on sustainable development." Hino's Message from the President promised that "Hino is also playing its part to reduce the environmental burden of transportation and logistics, [including by] reducing environmental impact over the entire vehicle lifecycle";
 - (d) The Vehicles would live up to a particular level of fuel economy. For example, Hino's website advertises the Hino 268 as "providing the lowest cost of ownership in its class" due to its "outstanding fuel economy." The website goes on to flaunt that "Hino engines deliver dependable, fuel efficient power." After describing its technology, including the SCR system, Hino represents that "[t]he result is fuel-efficient compliance with 2010 EPA regulations";
 - (e) The Vehicles met certain specified fuel economy ratings and that those ratings had been accurately reported to regulators and to the public;
 - (f) The Vehicles had durable emission control systems and engines. For example, a March 7, 2018, press release for the launch of the Hino XL

Series (Vehicles) represents that “The Hino XL7 and XL8 models are powered by Hino’s legendary A09 turbo diesel 8.9-liter inline 6-cylinder engine boasting a B10 life of 1,000,000,000 miles”;

(g) The Vehicles provided superior performance while emitting a low level of pollutants and emissions.

46. In addition, Hino failed to disclose relevant information to the Class, including:

(a) the Vehicles were not compliant with the relevant Emissions Standards;

(b) the Vehicles had received regulatory approval due to Hino’s Fraudulent Conduct and therefore were illegal to import or sell in Canada, including British Columbia; and

(c) the Defective ECSs would result in increased maintenance and repair costs.

47. The representations and omissions in paras. 45-46 above (collectively, “**Representations**”) were made by Hino to the Plaintiff and the Class.

48. Hino knew or ought to have known that the Representations were false, or Hino was otherwise reckless as to the truth of the Representations.

49. The Representations were made to induce individuals to purchase or lease the Vehicles and were objectively capable of being relied upon given Hino’s greater knowledge of the Vehicles’ emissions, regulatory representations, and quality of components than the Class.

50. The Defendants ensured that regulators, the Plaintiff and the Class would not discover that the Representations were false by actively concealing the Fraudulent Conduct.

51. The Plaintiff and the Class relied on the Representations in purchasing or leasing the Vehicles.

52. The Class had no way of knowing the Representations were false and misleading because they did not have access to the Defendants' emissions certification test vehicles or the Defendants' submissions to regulators. The Class did not and could not unravel the Defendants' deception on their own.

Warranty Provisions

53. The Defendants expressly or impliedly warranted to the Plaintiff and Class that the Vehicles were designed, built and equipped to conform at the time of sale with the Emissions Standards.
54. The Defendants provided the Plaintiff and Class with a uniform written warranty that covered any repair connected to a manufacturer's defect in material or workmanship for all components that comprise the emissions system, which includes the Vehicles' OBDs. The Defendants cannot comply with this warranty because of design flaws inherent to the Vehicles.
55. Pursuant to s. 157 of the *CEPA*, the Defendants were required to provide the Plaintiff and Class notice that the Vehicles did not comply with Emissions Standards.
56. Despite and contrary to the foregoing warranties, the Vehicles did not comply with Emissions Standards and are equipped with Defective ECSs in breach of the Defendants' warranty. The Defendants did not provide the Plaintiff and Class with notice that the Vehicles did not comply with Emissions Standards and are equipped with Defective ECSs, contrary to s. 157 of the *CEPA*.

The Defendants Conspired

57. The Defendants and others, including their officers, directors, agents and co-conspirators that are known to the Defendants but unknown to the Plaintiff, conspired among themselves in Japan, the United States and Canada to:
- (a) intentionally perpetrate the Fraudulent Conduct;

- (b) coordinate a strategy to conceal the Fraudulent Conduct, despite having knowledge of these frauds and defects since at least 2016;
 - (c) make the Representations to mislead Canadian consumers and regulators;
and
 - (d) coordinate a marketing strategy to mislead the Class about the environmental effects and regulatory compliance of the Vehicles.
58. The Defendants' predominant motivation and purpose was a desire to mislead the Class and regulators. The Defendants intended to cause harm to the Plaintiff and the Class and to enrich themselves. The Defendants knew the Class would not pay the selling or lease price for the Vehicles if the Class were aware of the Fraudulent Conduct. The purpose and result of the conspiracy was to deceive the Plaintiff and Class and cause them to purchase or lease the Vehicles at an inflated price and to thereby increase the Defendants' profits at the expense of the Class. The Defendants knew or ought to have known that the Class would be injured by the conspiracy.
59. To carry out the conspiracy, the Defendants acted in concert with one another and each directed their own and each others' agents and employees to knowingly or unknowingly carry out unlawful and wrongful acts in order to circumvent the Emissions Standards and deceive regulators.
60. The Defendants all formed one group of companies with coordinated design, manufacturing, engineering, marketing, distribution and regulatory compliance for Hino-branded vehicles, including the Vehicles.
61. Senior employees of the Defendants corresponded through telephone conversations, emails, reports and in-person meetings in Canada, the United States, Japan and elsewhere to implement the Fraudulent Conduct.

Hino was Unjustly Enriched at the Class Members' Expense

62. But for the Defendants' conduct, the Plaintiff and Class would not have purchased or leased the Vehicles, or they would have paid less for their Vehicles. This overcharge was transferred to the Defendants through the distribution channel and enriched them.
63. The Plaintiff and Class suffered a corresponding deprivation by paying more money for the Vehicles than they would have if they had been aware of the Fraudulent Conduct or that the Representations were false.
64. There is no juristic reason justifying the Defendants' enrichment and the Class's corresponding deprivation. Any contract between the members of the Class and the seller of a Vehicle is void as a result of the Defendants' conduct.
65. Members of the Class are entitled to restitution and/or a disgorgement of profits as a result of the Defendants' unjust enrichment.

Damages

66. The Plaintiff and Class did not receive the vehicles they paid for and reasonably expected to receive. But for the Defendants' conduct, the Class would not have purchased or leased the Vehicles, or they would have paid less for their Vehicles. As a result, the Class has suffered damages, including but not limited to:
 - (a) additional fuel costs required by the reduced fuel economy performance of the Vehicles;
 - (b) increased repair costs due to the Defective ECSs as well as the lost time and inconvenience of these additional repairs; and
 - (c) overpaying for the Vehicles because they do not comply with the Emissions Standards, have less fuel efficiency than represented, and contain Defective ECSs, which require expensive maintenance.

(Collectively, "**Damages**")

67. The Damages were sustained in British Columbia and in the rest of Canada.

PART 2: RELIEF SOUGHT

68. The Plaintiff, on its own behalf and on behalf of the Class, seeks:

- (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative Plaintiff;
- (b) a declaration that the Defendants, and each of them, made fraudulent or negligent misrepresentations;
- (c) a declaration that the Defendants engaged in a conspiracy to violate the Emissions Standards, to import and/or assemble the Vehicles and/or components of Vehicles into Canada, and to market and sell them unlawfully in Canada, to the detriment of the Plaintiff and Class;
- (d) a declaration that the Defendants violated *CEPA* by importing, assembling and/or selling the Vehicles and/or components of Vehicles into Canada;
- (e) a declaration that the Defendants violated s. 52 of the *Competition Act*, RSC 1985, c C-34 ("**Competition Act**");
- (f) a declaration that the Defendants breached the express and implied warranties in relation to the Vehicles;
- (g) a declaration that the Defendants have each been unjustly enriched by the receipt of the increased prices on the sale of the Vehicles;
- (h) an order that the Defendants account for and make restitution to the Plaintiff and the Class;
- (i) general and special damages;
- (j) statutory damages pursuant to *CEPA* and the *Competition Act*;
- (k) damages for breach of warranty;

- (l) punitive damages;
- (m) a reference to decide any issues not decided at the trial of the common issues;
- (n) the costs of administering and distributing an aggregate damage award;
- (o) costs of the prosecution of this proceeding pursuant to s. 40 of *CEPA*;
- (p) costs of the investigation and prosecution of this proceeding pursuant to s. 36 of the *Competition Act*;
- (q) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (r) such further and other relief as this Honourable Court may deem just.

PART 3: LEGAL BASIS

Fraudulent Misrepresentation

- 69. The Representations are false. Hino made the Representations knowing they were false or without an honest belief in their truth, or recklessly as to whether they were true or false.
- 70. Hino made the Representations intending to deceive the Plaintiff and the Class.
- 71. The Representations were material to the Plaintiff and Class's decision to purchase or lease the Vehicles. This can be determined on a class-wide basis because the Representations are inextricably linked to the Hino's deception of regulators. Without committing the Fraudulent Conduct the Vehicles could not have been leased or sold in British Columbia, or anywhere else in Canada.
- 72. The Plaintiff and Class suffered the Damages as a result of the Representations.

Negligent Misrepresentation

73. In the alternative, the Defendants were in a proximate and special relationship with the Plaintiff and Class that gave rise to a duty of care by virtue of, among other things:
- (a) their design and manufacture of the diesel engines and Vehicles in question;
 - (b) their skill, experience and expertise in the design and manufacturing of automotive diesel engines and vehicles generally;
 - (c) their complete control over the submissions made to regulators and their participation in regulatory testing of the Vehicles; and
 - (d) the Defendants' complete control over the promotion and marketing of the Vehicles, and the need for the Class to rely on the Representations and integrity of the Defendants in respect of the Vehicles and their attributes.
74. The Representations are untrue, inaccurate, or misleading and the Defendants made the Representation negligently. The Plaintiff and Class reasonably relied on the Representations when purchasing or leasing the Vehicles. As stated above, this can be determined on a class-wide basis.
75. The Plaintiff and Class suffered the Damages as a result of the Representations.

Conspiracy

76. The Defendants and others, including the Defendants' officers, directors and agents, and co-conspirators that are known to the Defendants but unknown to the Plaintiff, conspired from 2003 to 2021 in Japan, the U.S. and Canada, to deceive regulators and intentionally designed, manufactured, distributed, marketed, promoted, advertised, and sold the Vehicles, which do not comply with Emissions Standards.

77. The Defendants' predominant purpose for engaging in the conspiracy was to obtain regulatory approval for the Vehicles so that they could sell them and profit. The Defendants intended to cause harm to the Plaintiff and the Class by selling them the Vehicles, which the Defendants knew or ought to have known did not comply with Emissions Standards and would cause the Class to suffer the Damages.
78. To carry out the conspiracy, the Defendants acted in concert with one another and each directed their own and each other's agents, servants and employees to knowingly or unknowingly carry out unlawful and wrongful acts including:
 - (a) coordinating a design and manufacturing strategy to equip the Vehicles with engine systems that are not durable or fuel-efficient, and that emit more emissions than the Emissions Standards allow;
 - (b) coordinating a regulatory compliance strategy that involved deliberately misleading and lying to regulators about the Vehicles in order to unlawfully import, assemble and/or sell the Vehicles in Canada including British Columbia; and
 - (c) coordinating a marketing strategy to mislead the Class about the performance, health and environmental effects and regulatory compliance of the Vehicles.
79. Hino Canada implemented, in whole or part, directives, instructions, intimations of policy or other communications from Hino Motors for the purpose of giving effect to the conspiracy.
80. The purpose and result of the conspiracy was to deceive the Plaintiff and Class into purchasing or leasing the Vehicles at an inflated price and to thereby increase the Defendants' profits at the expense of the Class. The Defendants knew or ought to have known that the Class would not pay the selling or lease price for the Vehicles if they were aware of the Fraudulent Conduct. The Defendants knew or ought to have known that the Class would be injured by the conspiracy.

Unjust Enrichment

81. The Plaintiff and the Class are entitled to claim and recover based on equitable and restitutionary principles.
82. The Defendants caused the Plaintiff and Class to pay money for a defective or illegal product that they should not have been offered for sale or, in the alternative, for which they should have paid less than they did.
83. As a result, the Defendants were enriched by the payment or overpayment.
84. The Plaintiff and Class suffered a deprivation corresponding to the Defendants' enrichment.
85. Since the premium paid by the Class on the price of the Vehicles resulted from the Defendants' unlawful acts, there is no juristic reason for the Defendants' enrichment and the Plaintiff's and Class's corresponding deprivation. The Plaintiff and Class are entitled to restitution for the Defendants' unjust enrichment.

Breach of the CEPA

86. The Defendants imported, assembled and/or sold the Vehicles into Canada in violation of the Emissions Standards, including the requirements under *CEPA*. Had the Defendants not violated *CEPA*, the Class either would not have bought the Vehicles or the Vehicles would have been free from defects that caused a diminution of their value. The Class have therefore suffered loss or damage as a result of the Defendants' contravention of *CEPA*.
87. Pursuant to s. 40 of *CEPA*, the Class suffered loss and damage as a result of the Defendants' contraventions of *CEPA* and as such, the Defendants are liable to pay an amount equal to their loss or damage arising from those contraventions.

Breach of the Competition Act

88. The Defendants breached s. 52 of the *Competition Act*, and thereby committed an unlawful act because the Representations:

- (a) were made for the purpose of promoting the supply or use of the Vehicles for the business interests of the Defendants;
- (b) were made to the public; and
- (c) were false and misleading in a material respect.

89. The Plaintiff and Class suffered the Damages as a result of the Defendants' unlawful breach of s. 52 of the *Competition Act* and seek compensation for the Damages, as well as their costs of investigation, pursuant to s. 36 of the *Competition Act*.

Breach of Express or Implied Warranty

90. The Defendants expressly or impliedly warranted to the Plaintiff and Class that the Vehicles:

- (a) were free from defects,
- (b) were designed, built and equipped to conform at the time of sale with the Emissions Standards.

91. The Defendants provided the Plaintiff and Class with a uniform written warranty that covered any repair connected to a manufacturer's defect in material or workmanship for all components that comprise the emissions system, which includes the Vehicles' OBDs.

92. Despite and contrary to the foregoing warranties, the Vehicles did not comply with the Emissions Standards, and the Defendants concealed or failed to disclose this non-compliance.

93. The OBD is a warranted part. The Vehicles are defective under the terms of the warranty and the Defendants cannot comply with their warranty obligations because the defects are inherent flaws with the Vehicles.

94. The Defendants have breached their warranties to the Class, and as a result the Class Members suffered the Damages.

Punitive Damages

95. The Plaintiff asserts that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contemptuous disregard of the Plaintiff's rights and the rights of the Class, and as such renders the Defendants liable to pay aggravated and punitive damages.

Fraudulent Concealment

96. The Defendants intentionally and fraudulently concealed the existence of their unlawful conduct from the public, including the Plaintiff and the Class. The affirmative acts of the Defendants were fraudulently concealed and carried out in a manner that precluded detection.

97. Because the Defendants' conduct was kept secret, the Plaintiff and the Class were unaware of the Defendants' unlawful conduct.


Plaintiff's address for service:

CAMP FIORANTE MATTHEWS MOGERMAN LLP
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Tel: (604) 689-7555
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Email: service@cfmlawyers.ca

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: November 30,
2023



Signature of lawyer
for Plaintiff

Reidar Mogerman K.C.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The Plaintiff, Yard Ventures Inc., claims the right to serve this pleading on the defendants outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the Plaintiff and other Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003 Ch. 28 (the “**CJPTA**”) in respect of these defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to ss.10 (f) –(i) CJPTA because this proceeding:

- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia;
- (h) concerns a business carried on in British Columbia; and
- (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

CONCISE SUMMARY OF NATURE OF CLAIM:

The defendants knowingly made false representations to the class members about the emissions, performance and fuel economy of the their vehicles, which representations caused the class members to purchase or lease such automobiles at inflated prices and suffer loss for which the class members seek damages and/or restitution. Further, the defendants participated in supplying and promoting the vehicles to consumers for purposes that were primarily personal, family or household. During the class period the defendants engaged in deceptive and/or unfair acts or practices in the supply, solicitation, offer, advertisement and promotion of the Vehicles contrary to the *Business Practices and Consumer Protection Act* and equivalent consumer protection statutes from other provinces, causing loss to the class members. Further, the defendants representations were in breach of s.52 of the *Competition Act* and caused loss to the class members which is recoverable under s.36 *Competition Act*.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

1. *Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2*
2. *Competition Act, RSC 1985, c 34; and*
3. *Court Jurisdiction and Proceedings Transfer Act, RSBC 2003, c 28.*