

Court File No. CV-15-539855-00-CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**REBECCA ROMEO, JOE ROMEO, DIANE BÉLAND,  
ELYSE CHOINIERE, LINDA GOODMAN, AND TRACY CORSI**

Plaintiffs

- and -

**FORD MOTOR COMPANY and  
FORD MOTOR COMPANY OF CANADA, LIMITED**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**AFFIDAVIT OF ELIZABETH MAGEE (Sworn April 7, 2017)**

I, Elizabeth Magee, of the city of Calgary, in the Province of Alberta, make oath and say:

**BACKGROUND**

1. I am 31 years old and live in Calgary, Alberta. I work as an associate with Spa Kidz, providing child care services.
2. I had owned a black 2014 Ford Fiesta S sedan (the “Car”), which was equipped with a Dual Clutch Transmission. I no longer own the Car, as it was a total “write-off” following an accident, discussed below.

3. I purchased the Car brand new on January 21, 2015, from Advantage Ford Sales Ltd. (“Advantage”), an authorized Ford dealership in Calgary, Alberta. Attached hereto as **Exhibit “A”** is a copy of my purchase agreement.
4. I paid \$15,775.46 for the Car, inclusive of taxes, which I financed through Ford Credit. Included in this purchase price was a Ford Extended Service Plan, which cost \$2035, plus tax. Attached hereto as **Exhibit “B”** is the service plan contract.
5. I briefly test drove the Car when I bought it. The Car drove smoothly, and I did not experience any transmission problems or other performance problems when test driving the Car.
6. Included with my purchase was a new vehicle warranty.

#### **TRANSMISSION PROBLEMS**

7. I began to experience problems with my Car about three months after purchasing it. It began lurching forward when I would accelerate from a complete stop, such as at stop signs or stoplights. Other times, when I depressed the gas pedal, there would be hesitation or a pause before the Car started to accelerate.
8. The Car would shudder when accelerating, which means that the Car would noticeably vibrate or shake.
9. I also experienced a lack of performance when driving up inclines. The Car did not seem to have enough power. It was always a struggle. I would have to push down harder on the gas pedal, but the Car did not respond the way I would expect climbing inclines even

when I did press down on the gas. It was as if there was a disconnect between me pressing on the gas pedal and the engine responding.

10. In addition, the Car generally drove poorly. I could experience when the car shifted gears because it had a jerking sensation.
11. At first, these transmission problems would occur sporadically, but over time increased in frequency.

#### **UNSUCCESSFUL ATTEMPTS TO FIX THE TRANSMISSION**

12. On March 3, 2016, I brought the Car to Advantage Ford and described to the service centre staff the transmission problems I had been experiencing, including the shuddering when accelerating. The dealership reprogrammed the powertrain control module (“PCM”) and transmission control module (“TCM”), and then tested for shuddering. The dealership confirmed that there was shuddering, noting in the service invoice “FOUND A SLIP OF 314RPM IN CLUTCH”. They ordered a replacement clutch, but informed me that it would take three months to get the parts, as they were on back order. Attached hereto as **Exhibit “C”** is the service invoice. As the repairs were under warranty, I was not charged.
13. I was not provided with a rental car while I waited for the replacement clutch. The service centre staff told me that the Car was still safe to drive. The transmission problems only worsened while I waited to bring the Car back to Advantage Ford for the repairs.
14. Advantage Ford had called me sometime in July to let me know that they had received the replacement parts. On September 21, 2016, I brought the Car back to Advantage Ford

to have the replacement clutch installed. I believe they had called me sometime in July, but I had to wait to bring it in until I had a couple days off of work to be without a Car. I had asked the service centre staff if I could get a rental car so that I could still get to work while my Car was getting repaired, but they only offered me one at my own expense. I could not afford to pay for one myself, and as such had to wait until I had a couple days off to get the Car repaired. Advantage Ford replaced the clutch and seals, and then reprogrammed the TCM and PCM, and performed an Adaptive Relearn Procedure, as noted in the service invoice, attached hereto as **Exhibit "D"**. The work was performed under warranty, and as such I was not charged.

15. The Car drove more smoothly following the repairs. About one month after the repairs, I began to experience transmission problems again, including the Car jerking when shifting gears.
16. In October, 2016, Advantage Ford called me to book an appointment to have my window replaced. I described to the staff member that I was also having transmission problems, and asked for them to inspect my Car for these problems when I bring it in to fix my window. I booked an appointment to have the window replaced and my Car inspected for transmission problems on November 14, 2016.

## **ACCIDENT**

17. On October 26, 2016, I was stopped at a red light. The light changed to green, and the car in front of me started to go. He stopped almost immediately after moving forward. I had pressed my foot on the gas pedal to slowly accelerate, but my Car lunged forward and rear-ended the car in front of me.

18. The car I hit had minimal damage, but my Car went under their bumper and had very significant damage. The air bag did not deploy.
19. My Car was not drivable, so I called my insurance company, Certas Home and Auto Insurance Company, to ask what I should do. They suggested I call the police, and that the insurance company would call a tow truck for me.
20. I asked the driver of another car involved in the accident whether I needed to call 911 or another number, and I was visibly shaken. I believe the driver called 911 or the non-emergency response line. He headed home, and I waited for the police and tow truck to arrive.
21. I provided a witness statement to the police officer after he arrived at the scene of the accident, and my car was towed away. Attached hereto as **Exhibit "E"** are copies of the Collision Report Form and my Collision Report Witness Statement.
22. I did not go to the hospital, as I did not believe I had any injuries that needed urgent care. I already had an appointment booked with my family doctor, and he referred me to the Accident Rehabilitation Centre in Calgary. I have received and continue to receive treatment for neck, back and leg pain as a result of the accident.
23. My insurance company told me that my Car was a "total loss"; the policy paid out \$13,215.37. One of the staff from my insurance company suggested I contact Ford to ask them to investigate the problems with my Car, as she happened to have a Ford Focus and had similar transmission problems. I called Ford Company of Canada, Limited "Ford Canada" customer service, but they only told me to speak with my insurance company.

24. I decided to call Transport Canada, and I filed a safety complaint regarding my Car and the accident. The Transport Canada investigator asked for pictures of my Car, and I provided some to him. I later received a call from another investigator, Tyler Gerrtsen, who asked me for more details on the accident. He told me that he was in touch with my insurance company to see if he could get access to the Car to run diagnostic tests. I believe the investigation is still ongoing at the time of swearing this affidavit.

### **CURRENT SITUATION**

25. I tried to buy a Honda to replace my totaled Car, but my credit was not good enough to qualify for a new vehicle. The finance manager at the Honda dealership suggested I go back to Ford, as they may be willing to work with me.
26. I reluctantly went back to Advantage Ford. They suggested a 2016 Ford Fiesta because it was the only car that I could qualify for financing at their dealership. I was hesitant to buy another Fiesta given my experience, but the sales associate told me that this car did not appear to have any problems. I agreed to test drive the 2016 Fiesta, but had an anxiety attack during the test drive.
27. The staff at Advantage Ford recommended I go to Woodridge Ford Lincoln, a Ford dealership in Calgary, as they could lease me a car on terms that would work with my credit and budget. I went to Woodridge Ford Lincoln and leased a 2015 Chrysler 200 sedan, which I am still driving.

28. Based on my experience, I do not believe my Car was safe to drive due to the transmission problems described above. I did not feel in control of the Car at all times, as the Car could unexpectedly lurch or fail to accelerate.
29. As noted above, I was, in fact, in an accident in my Car and believe that the lurching forward of the Car contributed to that accident.

### **BREACH OF WARRANTY**

30. I believe the Car was not fit for the purpose of being a reliable and safe form of transportation. It did not perform the way a car normally performs. There were chronic transmission problems, discussed above, which posed very real safety issues. Advantage Ford tried to fix the transmission problems on the occasions noted above, and despite these attempts, the transmission issues and safety issues continued. I do not believe that the defendants are capable of permanently fixing the Car so that it would have been fit for its purpose.
31. Simply put, the Car was a lemon. I did not receive a Car that was fit for driving.

### **BREACH OF FAIR TRADING ACT, R.S.A. 2000 C. F-2**

32. When I began looking for a new car in 2015, I was only interested in vehicles with automatic transmissions. I do not know how to drive a car with a manual transmission.
33. All of the Ford marketing material that I read prior to purchasing the Car indicated that my model of Ford Focus was available with either a manual transmission or an “automatic” PowerShift transmission. The Ford window sticker on the Car denotes that it

has a 6-speed automatic transmission: “6-SPD AUTO TRANS GFT (DPS6)”. I therefore chose to purchase the Car in part because I believed it to be an automatic transmission vehicle. Attached as **Exhibit “F”** is a copy of the window sticker.


34. Consequently, I believed that the “PowerShift” name was merely Ford branding, and that the Car’s Dual Clutch Transmission was a regular automatic transmission which would shift the gears of the Car in a manner similar to that of other vehicles equipped with regular automatic transmissions.
35. When I purchased the Car, the Ford marketing materials, including the window sticker, did not explain that the PowerShift automatic transmission is a Dual Clutch Transmission, which is, in fact, more akin to two manual transmissions that are shifted automatically.
36. Further, there was no mention in the Ford marketing materials of the transmission problems caused by the Dual Clutch Transmission.
37. I would never have purchased a car with a manual transmission. If I had known that the Dual Clutch transmission would not operate similar to traditional automatic transmissions and would cause the transmission issues, I would not have purchased the Car.
38. Assuming the transmission problems I have described are, as indicated by Ford, somehow normal for the Car, I would never have purchased the Car had I known about them. Ford did not disclose the transmission problems in its marketing material or manual.




39. I am the former owner of a 2014 Ford Fiesta, a prospective Class Vehicle, and as such have personal knowledge of the facts in this affidavit. Where my knowledge is based on information obtained from others, I have so indicated and believe that information to be true.

40. I swear this affidavit in support of the motion for certification of this action as a class action, and for no other or improper purpose.

SWORN BEFORE ME at the )  
 )  
City of Calgary, in the Province of )  
 )  
Alberta, via videoconference this 7<sup>th</sup> day )  
 )  
of April, 2017. )

  
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Elizabeth Magee

  
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(A Commissioner, etc.)  
Glenn Brandy  
LSUC # 676850