

NOTICE OF FILING

Details of Filing

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File Title: LEAH MAREE GREENTREE & Ors v JAGUAR LAND ROVER
AUSTRALIA PTY LTD ACN 004 352 238
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 33
Rule 16.32

Defence

Federal Court of Australia
District Registry: New South Wales
Division: General

No. NSD 1010/2022

Leah Maree Greentree and others

Applicants

Jaguar Land Rover Australia Pty Ltd (ACN 004 352 238)

Respondent

A. PARTIES

A.1. The Applicants and Group Members

1. In answer to paragraph 1 of the Consolidated Statement of Claim (**CSOC**), the Respondent:
 - (a) admits that the Applicants bring this proceeding on their own behalf claiming loss or damage in relation to their purchase and use of the vehicles described in paragraphs 3 and 3A of the CSOC;
 - (b) admits that the Applicants purport to bring this claim as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on behalf of persons described as Group Members in paragraph 1 of the CSOC;
 - (c) says that the Applicants' claims give rise to issues of law or fact that are not common to all Applicants or Group Members, including for the reasons set out in paragraph 42 of the Defence;
 - (d) does not know and cannot admit the specific circumstances of acquisition or use of an "Affected Vehicle" (as that term is defined in paragraph 1(a) of the CSOC) by any Group Member, or any alleged loss or damage, which will be individual to each Group Member;
 - (e) otherwise denies the allegations in paragraph 1 of the CSOC;
 - (f) says further that, in this Defence, the Respondent uses the term "**JLRA Vehicle**" to mean a Jaguar or Land Rover motor vehicle:

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- (i) having a diesel combustion engine;
 - (ii) having a diesel exhaust after-treatment system designed to comply with Euro 6 Standards (as that term is defined in paragraph 1(a)(ii) of the CSOC);
 - (iii) having a 'D8', 'D7u', 'D7a', 'PTA' or 'MLA' vehicle platform; and
 - (iv) acquired (by way of purchase or lease) in Australia on or after 1 July 2015 but before the date on which the CSOC was filed (**the Relevant Period**, as defined in paragraph 1(a) of the CSOC) other than by way of sale by auction and other than for the purpose of re-supply;
- (g) says further that:
- (i) not all models or configurations of the types of vehicles making up the JLRA Vehicles were imported to or available for supply to consumers in Australia; and
 - (ii) **Annexure A** to this Defence identifies the model lines and model years, by vehicle platform of the JLRA Vehicles, which the Respondent imported into Australia during the Relevant Period.
2. In answer to paragraph 2 of the CSOC, the Respondent does not know and cannot admit the allegations contained in that paragraph.
3. In answer to paragraph 3 of the CSOC, the Respondent:
- (a) admits that, on or around 15 February 2017, the First Applicant entered into a contract to purchase a Land Rover Discovery Sport 2.0L TD4 150 SE (**Greentree Vehicle**) from Port Macquarie Land Rover for the total price of \$65,000.01; and
 - (b) otherwise does not know and cannot admit the allegations contained in that paragraph.

Particulars

- A. Used Vehicle Purchase Contract No. 32396 between Mrs Leah Maree Greentree and Port Macquarie Land Rover, by the Company Tuntrent Pty Ltd Trading as John Oxley Land Rover, ABN 14 273 951 711, dated 15 February 2017. The purchase contract shows that the vehicle VIN is SALCA2AN8HH652371.
- B. Tax Invoice No. 521555 from Port Macquarie Land Rover, by the Company Tuntrent Pty Ltd Trading as John Oxley Land Rover, ABN 14 273 951 711, to Mrs Leah Maree Greentree, dated 15 February 2017.

- C. The purchase price of the vehicle included the vehicle retail price, dealer delivery charges, add-ons and other accessories, registration and transfer fees and NSW stamp duty.

3A. In answer to paragraph 3A of the CSOC, the Respondent:

- (a) says that, on or about 25 May 2021, the Third Applicant entered into a written contract to purchase a MY20 Land Rover Discovery Sport S 2.0D I4 150PS AWD Auto SUV (**Jennings Vehicle**) from Rockhampton Land Rover for the total price of \$79,990.00;

Particulars

- A. Contract / Tax Invoice for the Sale of a Pre-Owned Motor Vehicle Contract ID 72797 between Michelle Jennings and Ian Weigh Motors Pty Ltd (Rockhampton Land Rover) dated 25 May 2021. The purchase contract shows the vehicle VIN is SALCA2AN1LH830887 and that the odometer reading was recorded as 15,584 km at the time of purchase.
- B. The purchase price of the vehicle included the vehicle retail price (including a dealer discount), luxury car tax, stamp duty, registration and transfer fees and a 5 year Land Rover Service Plan.
- (b) says that, on about 28 May 2021, the Third Applicant entered into a financing arrangement with Toyota Finance for the amount of \$81,370.00, for a term of 60 months and at an interest rate of 6.86%; and

Particulars

- A. Estimated Repayment Schedule: Business Vehicle Loan for LAND ROVER DISCOVERY SPORT D150S (110kW) 4D Wagon: Reference No. AP-499689.
- B. The amount of \$81,370.00, being the subject of the financing arrangement, included the purchase price of \$79,990.00 and additional dealer and finance administration fees.
- (c) otherwise does not know and cannot admit the allegations contained in that paragraph.

A.2. The Respondent

4. In answer to paragraph 4 of the CSOC, the Respondent:

- (a) admits paragraph 4(a) of the CSOC;
- (b) admits paragraph 4(b) of the CSOC;

- (c) in answer to paragraph 4(c) of the CSOC, at all times during the Relevant Period:
- (i) admits that it was a deemed manufacturer of JLRA Vehicles within the meaning of section 7(1)(e) of the Australian Consumer Law (**ACL**, being Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (CCA));
 - (ii) admits that it did not manufacture any of the JLRA Vehicles;
 - (iii) says that Jaguar Land Rover Limited (**JLR (UK)**) manufactured the JLRA Vehicles and that JLR (UK) did not have a place of business in Australia;
 - (iv) admits that, other than vehicles imported by private importers, it imported the JLRA Vehicles into Australia;
 - (v) says that it supplied the JLRA Vehicles, in trade or commerce, to independently owned authorised dealerships (**JLRA Dealers**) for the purposes of resupply by the JLRA Dealers, but did not supply JLRA Vehicles directly to end customers; and
 - (vi) otherwise denies the allegations contained in that sub-paragraph.

B. DESIGN OF THE DIESEL EXHAUST AFTER-TREATMENT SYSTEMS IN JLRA VEHICLES

B.1. Overview

5. The Respondent admits the allegations contained in paragraph 5 of the CSOC.
6. In answer to paragraph 6 of the CSOC, the Respondent:
- (a) admits that a diesel combustion engine generates emissions in its operation, which include carbon monoxide (**CO**), certain oxides of nitrogen (**NO_x**; including nitrogen dioxide (**NO₂**) and nitric oxides (**NO**)), hydrocarbons (**HC**) and particulate matter (which is mainly soot i.e. carbon) (defined in this Defence as **Regulated Emissions**);
 - (b) says further that a diesel combustion engine also generates non-regulated emissions, including carbon dioxide (**CO₂**) which is the engine's primary gaseous emission; and
 - (c) otherwise denies the allegations in that paragraph.
7. In answer to paragraph 7 of the CSOC, the Respondent:
- (a) admits that, throughout the Relevant Period, the JLRA Vehicles were required to comply with applicable emissions standards (**the Australian Vehicle Standards**), as in force at the time of the importation of the JLRA Vehicles to, and first supply of the vehicles in, Australia;
 - (b) relies on the Australian Vehicle Standards for their full force and effect; and

- (c) says further that the limits for Regulated Emissions set by the Australian Vehicle Standards in force throughout the Relevant Period, each of which adopted United Nations Regulation UN-R83 Revision 4, known as "Euro 5" emissions standards, were higher than the limits for Regulated Emissions set by the Euro 6 Standards, with which each of the diesel exhaust after-treatment systems in the various JLRA Vehicles were designed to comply (paragraph 1(f)(ii) of the Defence); and
- (d) otherwise denies the allegations in that paragraph.

Particulars

The applicable Australian Vehicle Standards were:

- A. Vehicle Standard (Australian Design Rule 79/03 - Emission Control for Light Vehicles) 2011 (**ADR 79/03**), for vehicles manufactured on or after 1 November 2013 but before 1 November 2016; and
- B. the Vehicle Standard (Australian Design Rule 79/04 - Emission Control for Light Vehicles) 2011 (**ADR 79/04**), for vehicles manufactured on or after 1 November 2016.

- 8. In answer to paragraph 8 of the CSOC, the Respondent:
 - (a) admits that each of the JLRA Vehicles imported into Australia and supplied by the Respondent (as described in paragraph 4 of the Defence) was fitted with a diesel exhaust after-treatment system designed to capture and convert engine-out emissions, which include the Regulated Emissions;
 - (b) admits that the diesel exhaust after-treatment systems for all JLRA Vehicles used a combination of filtration, combustion and chemical reactions;
 - (c) says that the applicable emissions standards were the Australian Vehicle Standards; and
 - (d) otherwise denies the allegations contained in that paragraph.

B.2. Key components of the diesel exhaust after-treatment systems

- 9. In answer to paragraph 9 of the CSOC, the Respondent says that:
 - (a) the JLRA Vehicles are mechanically complex goods, of which the diesel exhaust after-treatment system forms a part;
 - (b) the diesel exhaust after-treatment systems in the JLRA Vehicles comprise both physical (hardware) and software (calibration) components;

- (c) the diesel exhaust after-treatment system in a JLRA Vehicle cannot be considered in isolation from the rest of the vehicle, the design of which necessarily requires a balancing of relevant attributes;

Particulars

Relevant attributes for a JLRA Vehicle include vehicle performance, safety, meeting emissions standards, fuel consumption and customer experience.

- (d) the way in which each JLRA Vehicle operates in practice, including the diesel exhaust after-treatment system, requires consideration of the driving history of the vehicle;
- (e) the software components are part of the Powertrain Control Module or **PCM** in the JLRA Vehicles, which is an electronic device that controls the diesel combustion engine and diesel exhaust after-treatment system in each vehicle, using inputs from various chemical and physical models and multiple sensors;
- (f) the hardware components of the diesel exhaust after-treatment systems in JLRA Vehicles include:
- (i) a diesel particulate filter (**DPF**) or a Selective Catalytic Reduction Filter (**SCRf**), which is a porous monolith wall-flow filter, designed to trap particulate matter from the exhaust and support the oxidation of that particulate matter captured and stored in the DPF or SCRf through the process of regeneration;

Particulars

- A. JLRA Vehicles with a DPF have a catalysed DPF (**cDPF**), which refers to a coating of precious metals designed to support chemical reactions to manage Regulated Emissions within and using the diesel exhaust after-treatment systems. In these JLRA Vehicles, the Selective Catalytic Reduction (**SCR**) catalysts are housed separately and downstream from the DPF.
- B. JLRA Vehicles with an SCRf have a wash coat of SCR catalysts applied to the DPF.
- C. **Annexure B** to this Defence sets out the JLRA Vehicles with a cDPF or SCRf.
- (ii) the Diesel Oxidation Catalyst (**DOC**), which comprises a honeycomb flow-through monolith substrate with a catalyst coating, which facilitates oxidation of carbon monoxide and hydrocarbons in the exhaust. JLRA Vehicles having a 'D7a', 'D7u' or 'MLA' vehicle platform from model year (**MY**) 2019 onwards, and JLRA Vehicles having a 'PTA' vehicle platform from MY2021 onwards, do not utilise a DOC, but include a lean NO_x trap (**LNT**), primarily designed to treat NO_x emissions;

- (iii) the Exhaust Gas Recirculation (**EGR**) pipes, which involves the diversion of some exhaust gas back to the engine combustion chamber, and which facilitates both high pressure EGR and low pressure EGR, which serve different purposes; and
- (iv) SCR catalysts, which react with an aqueous solution of urea (known as Diesel Emissions Fluid (**DEF**)) introduced into the exhaust upstream of the SCR catalysts, to convert NO_x into nitrogen and water;
- (g) the hardware components of the diesel exhaust after-treatment systems described in this paragraph 9 work together with other components of the hardware and software in the JLRA Vehicles, including the PCM, engine, turbocharger/s, DEF injector, sensors and exhaust pipe; and
- (h) the diesel exhaust after-treatment system in each of the JLRA Vehicles has specific material design features and characteristics, which vary between JLRA Vehicles having a D8, D7u, D7a, PTA or MLA platform, and between different models of JLRA Vehicles having the same platform and between different model years of those different models of JLRA Vehicles having the same platform;

Particulars

The specific material design features and characteristics which vary between JLRA Vehicles include:

- A. the configuration of the diesel exhaust after-treatment system, including what hardware and software components are utilised and in what arrangement. For example, in JLRA Vehicles having a cDPF (including JLRA Vehicles having a 'D7u', 'MLA' and 'D7a' vehicle platform, other than those JLRA Vehicles having a 'D7a' vehicle platform with an AJ21-D4M engine), SCR catalysts are typically housed downstream of (after) the cDPF. In JLRA Vehicles having an SCRf (including JLRA Vehicles having a 'D8', 'PTA' and 'D7a' vehicle platform, other than those JLRA Vehicles having a 'D7a' vehicle platform with an engine other than an AJ21-D4M engine), a wash coat of SCR catalysts is applied to the DPF, and additional SCR catalysts may also be separately included in the diesel exhaust after-treatment system;
- B. the orientation and type of the engine used in the vehicle, noting that:
 - 1) in JLRA Vehicles having a 'D8' and 'PTA' vehicle platform, the engine is in a transverse (east-west) orientation;
 - 2) in JLRA Vehicles having a 'D7u', 'D7a' or 'MLA' vehicle platform, the engine is in a longitudinal (north-south) orientation; and

- 3) JLRA Vehicles having different vehicle platforms, in some cases, use the same type of engine as one another and, in other cases, use different types of engines to one another;
 - 4) similarly, JLRA Vehicles having the same vehicle platform, in some cases, use the same type of engine as one another and, in other cases, use different types of engines to one another;
 - 5) the different types of engine used in JLRA Vehicles include:
 - a) AJ20-D4M;
 - b) AJ20-D4H;
 - c) AJ20-D6H;
 - d) AJ21-D4M;
 - e) TDV6;
 - f) TDV8;
- C. whether the diesel exhaust after-treatment system used a DPF (also described as cDPF) or an SCRf (see paragraph 9(f)(i) of the Defence and Particulars to that paragraph);
- D. the capacity of the DPF or SCRf, being the volume expressed in litres, that the DPF or SCRf is capable of capturing and storing when it is "full", noting specifically that:
- 1) the capacity of the SCRf used in JLRA Vehicles having a 'D8' platform and in MY2020 JLRA Vehicles having a 'PTA' vehicle platform is approximately 4.3L;
 - 2) the capacity of the SCRf used in JLRA Vehicles having a 'PTA' vehicle platform from MY2021 is approximately 3.0L;
 - 3) the capacity of the cDPF or SCRf used in JLRA Vehicles having a 'D7u', 'D7a' or 'MLA' vehicle platform is approximately 3.1L;
- E. whether the diesel exhaust after-treatment system used an LNT to support NO_x after-treatment by treating NO_x emissions, noting that JLRA Vehicles having a 'D7a', 'D7u' or 'MLA' vehicle platform from MY2019 onwards, and JLRA Vehicles having a 'PTA' vehicle platform from MY2021 onwards, do not utilise a DOC, but include an LNT;

- F. whether the DPF or SCRf was 'near-coupled' or 'close-coupled' with the engine, noting that:
- 1) this refers to the location of the DPF or SCRf with respect to the engine;
 - 2) a 'close-coupled' DPF or SCRf is closer to the engine than a 'near-coupled' component;
 - 3) JLRA Vehicles having a 'D8' vehicle platform, and MY2020 JLRA Vehicles having a 'PTA' vehicle platform, have a 'near-coupled' SCRf;
 - 4) other JLRA Vehicles have a close-coupled cDPF or SCRf; and
- G. the calibration used to support timing and heat strategies for Active Regeneration, including because of the different configurations and components described above. The PCM in each JLRA Vehicle interprets modelling (including calculating engine-out emission generation) and sensor inputs (temperature and differential pressure sensors) to determine the soot mass captured in the DPF, to trigger information and warning lights, and to initiate, run and complete an Active Regeneration.
- (i) further, each of the hardware and software components of the JLRA Vehicles, including the diesel exhaust after-treatment systems, require maintenance in order to remain fit and safe for use. These components will wear or degrade over time, may require updating, repair or replacement during each JLRA Vehicle's respective lifetime. The timing and type of maintenance and servicing of the JLRA Vehicle or specific components:
- (i) will depend in will depend in part on the driving history of the vehicle; and
 - (ii) must also be considered in the context of information provided or otherwise made available to purchasers and potential purchasers of JLRA Vehicles in the Relevant Period, including:
 - A. the fact, as known by consumers, that from time to time matters may be brought to the attention of JLRA Dealers or consumers in respect of a JLRA Vehicle, to be addressed through appropriate action such as repairs, servicing or other in-field actions being conducted in relation to the JLRA Vehicle;
 - B. the user manuals made available by the Respondent to JLRA Dealers, consumers and the general public, which described the operation of the vehicles, information and warning lights which might be illuminated on the instrument panel, and what steps should be taken to address those;

- C. the information made available from time to time to JLRA Dealers, consumers and the general public about the design and operation of the diesel exhaust after-treatment systems in JLRA Vehicles, including the DPF or SCRf; and

Particulars

The Respondent repeats the particulars to paragraph 45 below.

- (j) otherwise denies the allegations contained in that paragraph.

Particulars

Annexure C to this Defence provides diagrams of the diesel exhaust after-treatment system in examples of JLRA Vehicles.

B.3. Other features of the diesel exhaust after-treatment systems

10. In answer to paragraph 10 of the CSOC, the Respondent:

- (a) repeats and relies on paragraph 9 of the Defence;
- (b) says that in-engine measures such as fuel injection timing and EGR assist to reduce the generation of Regulated Emissions, including NO_x emissions;
- (c) says that the primary function of the DPF or SCRf is to capture and store particulate matter from the engine-out exhaust gases as part of a diesel exhaust after-treatment system;
- (d) says that steps to reduce engine-out NO_x emissions involve trade-offs within a diesel exhaust after-treatment system with steps designed to reduce engine-out particulate matter; and
- (e) otherwise denies the allegations contained in that paragraph.

11. In answer to paragraph 11 of the CSOC, the Respondent:

- (a) repeats and relies on paragraph 10 of the Defence;
- (b) says that other aspects of the diesel exhaust after-treatment systems in JLRA Vehicles (described in paragraph 9 of the Defence) are relevant to the levels of emissions, particulate matter and temperature of the exhaust generated by the JLRA Vehicle's engine; and
- (c) otherwise denies the allegations contained in that paragraph.

B.4. Accumulation of particulate matter in the DPF or SCRf

12. In answer to paragraph 12 of the CSOC, the Respondent:

- (a) admits the allegations in the paragraph; and
 - (b) says further that it is a common feature of DPFs or SCRfs used in light-duty (passenger) diesel vehicles that such DPFs and SCRfs (including those used in JLRA Vehicles) have a finite capacity for capture and storage of particulate matter.
13. In answer to paragraph 13 of the CSOC, the Respondent:
- (a) repeats and relies on paragraphs 12 and 20 to 34 of the Defence;
 - (b) says that it is a common feature of light-duty (passenger) diesel vehicles having a DPF or SCRf, including the JLRA Vehicles, that particulate matter in the DPF or SCRf may accumulate through operation of the vehicle over time;
 - (c) says that the diesel exhaust after-treatment systems in light-duty (passenger) diesel vehicles including the JLRA Vehicles utilise a range of information or warning lights on the instrument panel, which are designed to alert the driver that the DPF or SCRf has reached pre-determined limits for particulate matter;

Particulars

- A. An amber DPF warning light is raised on the instrument panel to inform the driver that the particulate matter in the DPF or SCRf has reached a pre-determined limit, and what the driver should do in response, as shown in the examples below.



17MY to current MY



- B. A red DPF warning light is raised on the instrument panel to inform the driver that the particulate matter in the DPF has reached a pre-determined limit (higher than the limit for the amber warning), and what the driver should do in response, as shown in the examples below.

Up to 17MY



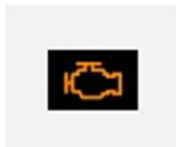
17MY to current MY



- (d) says further that, if the driver disregards the information or warning lights on the instrument panel, the DPF or SCRf may become full;
- (e) says that light-duty (passenger) diesel vehicles including the JLRA Vehicles also utilise an amber “check engine” light or “malfunction indicator light” (**MIL**) which may illuminate on the instrument panel to indicate that an issue has been detected; and

Particulars

The MIL may illuminate when an emissions-related diagnostic trouble code (**DTC**) is detected within the PCM. The MIL is required by legislation governing on-board diagnostics. It may signal that a level of particulate matter is passing to the atmosphere that is greater than the legal threshold and directs the driver to promptly seek qualified assistance. The MIL is demonstrated in the image below.



(f) otherwise denies the allegations contained in that paragraph.

14. In answer to paragraph 14 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 9, 12, 13, 35 and 36 of the Defence; and
- (b) otherwise denies the allegations contained in that paragraph.

B.5. Regeneration

15. In answer to paragraph 15 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 12, 13 and 20 to 34 of the Defence; and
- (b) otherwise denies the allegations contained in that paragraph.

16. In answer to paragraph 16 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 12 and 20 to 34 of the Defence; and
- (b) otherwise admits the allegations contained in that paragraph.

17. In answer to paragraph 17 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 20 to 34 of the Defence;
- (b) says that the DPF or SCRf is a component of diesel exhaust after-treatment systems in the JLRA Vehicles; and
- (c) otherwise admits that regeneration of the DPF or SCRf, as described in paragraphs 18 and 20 to 34 of the Defence, is a common feature and critical function of diesel exhaust after-treatment systems in vehicles having a DPF or SCRf, including the JLRA Vehicles.

18. In answer to paragraph 18 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 20 to 34 of the Defence below;
- (b) says that there are two types of regeneration which occur in the JLRA Vehicles, described as "Passive" and "Active" Regeneration, although neither requires direct intervention by the driver;

- (c) says that Passive Regeneration and Active Regeneration involve two different chemical reactions:
 - (i) "Passive Regeneration" is generally used to describe the NO_x reaction between nitrogen dioxide (NO_2) and carbon (see paragraph 21 of the Defence below); and
 - (ii) "Active Regeneration" is generally used to describe the oxygen reaction between oxygen (O_2) and carbon (see paragraph 28 of the Defence below);
- (d) says that it is a common feature of light-duty (passenger) diesel vehicles including the JLRA Vehicles that:
 - (i) the primary method of regeneration is Active Regeneration; and
 - (ii) Passive Regeneration is a secondary mode of regeneration which contributes only to a reduction in the rate at which particulate matter accumulates or is stored within the DPF or SCRf; and
- (e) otherwise denies the allegations contained in that paragraph.

19. In answer to paragraph 19 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 18 and 20 to 34 of the Defence;
- (b) says that, in JLRA Vehicles, the ECM is referred to as a PCM; and
- (c) otherwise denies the allegations contained in that paragraph.

B.5.1 Regeneration

20. In answer to paragraph 20 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 21 to 25 of the Defence; and
- (b) otherwise admits the allegations contained in that paragraph.

21. In answer to paragraph 21 of the CSOC, the Respondent:

- (a) admits paragraphs 21(a) to (d) of the CSOC;
- (b) says, in answer to paragraph 21(e) that:
 - (i) NO_2 oxidation converts NO_2 and particulate matter into carbon dioxide and NO ;
 - (ii) NO is then emitted from the exhaust pipe as NO or N_2 (if further reduced by the SCR); and

(c) otherwise denies the allegations contained in that paragraph.

22. In answer to paragraph 22 of the CSOC, the Respondent:

- (a) admits paragraph 22(a) of the CSOC;
- (b) repeats and relies on paragraph 18(d) of the Defence;
- (c) says further that, for Passive Regeneration to treat particulate matter captured and stored in the DPF or SCRf, there must be a high excess of NO_x in the exhaust compared with particulate matter;
- (d) says that the conditions required for Passive Regeneration to occur require suitable exhaust gas temperatures in the DPF or SCRf, which may vary between vehicle platforms;
- (e) says that it is a common feature of light-duty (passenger) diesel vehicles, including the JLRA Vehicles, that Passive Regeneration is a secondary mode of regeneration, which contributes to a reduction in the rate of particulate accumulation within the DPF or SCRf;
- (f) says further that some limited contribution of Passive Regeneration to regeneration of the DPF or SCRf is taken into account in the calibration of JLRA Vehicles; and
- (g) otherwise denies the allegations contained in that paragraph.

23. In answer to paragraph 23 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 10, 11 and 20 to 22 of the Defence; and
- (b) otherwise denies the allegations contained in that paragraph.

24. In answer to paragraph 24 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 20 to 23 of the Defence;
- (b) says that it is unclear what it meant by “difficult to achieve”; and
- (c) otherwise denies the allegations contained in that paragraph.

25. In answer to paragraph 25 of the CSOC, the Respondent:

- (a) repeats and relies on paragraph 24 of the Defence; and
- (b) otherwise denies the allegations contained in that paragraph.

B.5.2 Active Regeneration

26. In answer to paragraph 26 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 15 to 18 and 22 of the Defence; and
 - (b) otherwise denies the allegations contained in that paragraph.
27. In answer to paragraph 27 of the CSOC, the Respondent:
- (a) repeats and relies on paragraphs 18(c)(ii) and 28 to 30 of the Defence; and
 - (b) otherwise admits the allegations contained in that paragraph.
28. In answer to paragraph 28 of the CSOC, the Respondent:
- (a) says that Active Regeneration in the JLRA Vehicles involves the oxidation of particulate matter through a process of thermal oxidation within the DPF or SCRf when the temperature of the DPF or SCRf reaches a sufficiently high temperature; and
 - (b) otherwise denies the allegations contained in that paragraph.
29. In answer to paragraph 29 of the CSOC, the Respondent:
- (a) admits paragraph 29(a) of the CSOC;
 - (b) says that Active Regeneration will be initiated by the PCM in JLRA Vehicles only when certain conditions are present, including by reference to the level of particulate matter in or likely to be in the DPF or SCRf;
 - (c) says further that the timing of when the PCM in a JLRA Vehicle can initiate an Active Regeneration, and when and how the Active Regeneration will take place, is based on a specific set of inputs, including the level of particulate matter in, or likely to be in, the DPF or SCRf, having regard to inputs from sensors within the diesel exhaust after-treatment system and pre-determined limits set during calibration; and
 - (d) otherwise denies the allegations contained in that paragraph.
30. In answer to paragraph 30 of the CSOC, the Respondent:
- (a) admits that paragraphs 30(a) to (g) of the CSOC provide a general summary of how Active Regeneration takes place in light-duty (passenger) diesel vehicles, including the JLRA Vehicles;
 - (b) repeats and relies on paragraphs 18 and 26 to 29 of the Defence;
 - (c) repeats and relies on paragraph 9 of the Defence and says that there are differences between the components and operation of the exhaust after-treatment systems in each JLRA Vehicle, depending on the platform, engine, vehicle model and model year, and that these differences will also be taken into account for the purposes of calibration;

- (d) says that the temporary changes in the engine settings initiated by the PCM in Active Regeneration in JLRA Vehicles are designed to raise temperatures within the DPF or SCRf quickly and efficiently;
 - (e) says further that the fuel injection strategies involved in Active Regeneration in JLRA Vehicles, including timing and quantity of fuel, are set as part of the calibration of JLRA Vehicles, and accordingly may vary between vehicle platforms and vehicle models; and
 - (f) otherwise denies the allegations in that paragraph.
31. In answer to paragraph 31 of the CSOC, the Respondent:
- (a) repeats and relies on paragraphs 18 and 30 of the Defence;
 - (b) in answer to paragraph 31(a) of the CSOC:
 - (i) says that the accumulation of small amounts of fuel in oil (**FIO** or "Oil Dilution") is a common feature of the operation of light-duty (passenger) diesel vehicles, including the JLRA Vehicles, and is an expected consequence of Active Regeneration;
 - (ii) says that the accumulation of FIO over time during operation of the JLRA Vehicles and as a consequence of Active Regeneration is taken into consideration in the design of the diesel exhaust after-treatment systems in the JLRA Vehicles and that sensors and internal controls which form part of the JLRA Vehicles' design monitor FIO and signal to a driver when an engine oil change is recommended, in accordance with pre-determined limits;
 - (c) in answer to paragraph 31(b) of the CSOC:
 - (i) says that it is a common feature of the operation of light-duty (passenger) diesel vehicles, including the JLRA Vehicles that the engine oil may capture small amounts of particulate matter and it is an expected consequence of Active Regeneration that particulate matter in the engine oil may increase, over time and depending on use conditions;
 - (ii) says that sensors and internal controls which form part of the JLRA Vehicles' design monitor for particulate matter in the engine oil and signal to a driver when an engine oil change is recommended, in accordance with pre-determined limits;
 - (d) in answer to paragraph 31(c) of the CSOC:
 - (i) says that it is a common feature of light-duty (passenger) diesel vehicles, including the JLRA Vehicles, that those vehicles will experience a small temporary increase in fuel consumption during the period in which Active Regeneration is occurring, as a

consequence of heating exhaust as it flows through the diesel exhaust after-treatment system to the DPF or SCRf;

- (ii) says that fuel consumption both during and not during Active Regeneration is measured as part of emissions testing requirements for JLRA Vehicles; and
 - (e) otherwise denies the allegations contained in that paragraph.
32. In answer to paragraph 32 of the CSOC, the Respondent:
- (a) admits that Active Regeneration in the JLRA Vehicles will cease once the DPF or SCRf has been regenerated, as determined by the PCM;
 - (b) admits that Active Regeneration in the JLRA Vehicles will cease if the engine ceases to operate;
 - (c) says further that Active Regeneration in the JLRA Vehicles may cease if a pre-determined 'exit condition' is met in the PCM (i.e. if the conditions in the system no longer support Active Regeneration); and
 - (d) otherwise denies the allegations contained in that paragraph.
33. In answer to paragraph 33 of the CSOC, the Respondent:
- (a) admits that the rate at which oxidation of particulate matter captured and stored in the DPF or SCRf occurs during Active Regeneration in the JLRA Vehicles is dependent on the temperature of the exhaust in the DPF or SCRf;
 - (b) says that there are other factors which may influence the rate at which oxidation of particulate matter captured and stored in the DPF or SCRf occurs during Active Regeneration in the JLRA Vehicles, including oxygen content in the DPF or SCRf;
 - (c) says further that the duration of an Active Regeneration cycle in a JLRA Vehicle will depend on a number of factors, including the rate of oxidation, the calculated soot mass (which is the pre-determined amount of particulate matter predicted within the DPF or SCRf) at the time Active Regeneration is initiated, the capacity of the filter, the thermal inertia of the diesel exhaust after-treatment system and whether the Active Regeneration cycle is interrupted; and
 - (d) otherwise denies the allegations contained in that paragraph.
34. In answer to paragraph 34 of the CSOC, the Respondent:
- (a) repeats and relies on paragraphs 18, 30 and 33 of the Defence; and

- (b) otherwise denies the allegations contained in that paragraph.

C. THE ALLEGED VEHICLE DEFECTS

35. In answer to paragraph 35 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 5 to 34 of the Defence; and
- (b) otherwise denies the allegations contained in that paragraph.

36. In answer to paragraph 36 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 5 to 35 of the Defence;
- (b) says that the diesel exhaust after-treatment systems in JLRA Vehicles include sensors and utilise modelling, which are designed to identify when a driver may need to take action in relation to their vehicle by displaying an information or warning light or message on the instrument panel. Such information or warning lights or messages may indicate that action is recommended or necessary to resolve an issue or avoid damage to the vehicle;
- (c) says that FIO (Oil Dilution), "wear and tear" of vehicle components and contamination of oil with particulate matter or minute particles of metal are expected consequences of using a vehicle over time and are not unique to light-duty (passenger) diesel vehicles or the JLRA Vehicles. Each of these may be affected by a range of factors, including the age of a vehicle and its driving history;
- (d) repeats and relies on paragraph 9(f)(ii) of the Defence and says further in respect of DOC Face Plugging that DOC Face Plugging may be observed in markets where the fuel quality is low or in vehicles which have an additional fuel injector in the exhaust, which is not the case for the JLRA Vehicles having a DOC; and
- (e) otherwise denies the allegations contained in that paragraph.

37. In answer to paragraph 37 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 35 and 36 of the Defence; and
- (b) otherwise denies the allegations contained in that paragraph.

38. In answer to paragraph 38 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 1 and 35 to 37 of the Defence;
- (b) does not know and cannot admit the circumstances in which each JLRA Vehicle was allegedly supplied to a Group Member; and

(c) otherwise denies the allegations contained in that paragraph.

39. In answer to paragraph 39 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 1 and 35 to 38 of the Defence; and

(b) otherwise denies the allegations contained in that paragraph.

40. In answer to paragraph 40 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 35 to 39 of the Defence;

(b) denies that the matters described in paragraphs 35 and 36 of the CSOC, defined in paragraph 37 as the 'Vehicle Defects', (which are denied) are or were required to be remedied;

(c) does not know and cannot admit whether any alleged 'Vehicle Defects' as defined (which are denied) have ever been present in the Greentree Vehicle, the Jennings Vehicle or any Group Member's JLRA Vehicle;

(d) says that the service history of a JLRA Vehicle, including whether the Applicants or a Group Member serviced their JLRA Vehicle in accordance with the recommended service schedule, and whether and to what extent later service or repair remedied any identified concerns alleged by the Applicants or Group Members, is relevant to determining whether any alleged 'Vehicle Defects' have ever been present in that Vehicle; and

(e) otherwise denies the allegations contained in that paragraph.

D. THE APPLICANTS' VEHICLES

41. In answer to paragraph 41 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 35 to 40 of the Defence; and

(b) otherwise denies the allegations contained in that paragraph.

42. In answer to paragraph 42 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 35 to 40 of the Defence;

(b) admits that, between the period January 2020 and February 2022, the First and Second Applicants made written complaints to an authorised dealer of the Respondent, Port Macquarie Land Rover, about the Greentree Vehicle;

(c) admits that, between the period May 2018 and February 2022, the Greentree Vehicle was inspected and serviced by Port Macquarie Land Rover on a number of occasions;

Particulars

Documents recording inspections and services include:

- A. Greentree Repair Order – 110573 dated 4 May 2018
 - B. Greentree Repair Order – 125510 dated 21 March 2019
 - C. Greentree Repair Order – 131220 dated 6 August 2019
 - D. Greentree Repair Order – 137354 dated 8 January 2020
 - E. Greentree Repair Order – 153489 dated 4 March 2020
 - F. Greentree Repair Order – 146938 dated 17 September 2020
 - G. Greentree Repair Order – 157807 dated 23 June 2021
 - H. Greentree Repair Order – 166722 dated 22 February 2022
- (d) says that, during its production due to a manufacturing error, the Greentree Vehicle was manufactured with an SCRf, which was installed in the incorrect orientation; and

Particulars

- A. In certain JLRA Vehicles which had an SCRf which was manufactured between 13 July 2016 and 12 September 2017, the SCRf was installed in the incorrect orientation (**Impacted SCRf**). Vehicles with an Impacted SCRf may have experienced an increase in amber or red SCRf warning and information lights and/or other SCRf-related problems. Service actions (including replacement of the SCRf) and calibration updates were made available to and implemented for affected JLRA Vehicles with an Impacted SCRf.
- (e) says that the SCRf was replaced in the Greentree Vehicle on about 26 July 2018, 11 January 2020 and 6 July 2021, on each occasion in response to detection of a diagnostic trouble code (P2463-00), which also caused the red DPF warning light to illuminate on the instrument panel;

Particulars

- A. Greentree Repair Order – 110573 dated 4 May 2018
- B. Greentree Repair Order – 137354 dated 8 January 2020
- C. Greentree Repair Order – 157807 dated 23 June 2021

- (f) admits that between December 2021 and December 2022, the Third Applicant made written complaints to an authorised dealer of the Respondent, Rockhampton Land Rover, to the Respondent and to the Queensland Office of Fair Trading, about the Jennings Vehicle;
- (g) says that, on about 21 November 2022, the Respondent made a goodwill offer of an ex-gratia payment representing two months of vehicle lease payments, in the amount of \$3,227.70, which was accepted and subsequently paid to the Third Applicant in about December 2022. The payment was processed by Rockhampton Land Rover on behalf of the Respondent;

Particulars

- A. Letter from the Respondent to the Third Applicant dated 21 November 2022, titled "RE: 2020MY LAND ROVER DISCOVERY SPORT - VIN: SALCA2AN1LH830887".
 - B. Jennings Claims Record - 010227A dated 25 July 2022
- (h) admits that between October 2021 and October 2022, the Jennings Vehicle was inspected and serviced by Rockhampton Land Rover on a number of occasions;

Particulars

Documents recording inspections and services include:

- A. Jennings Claims Record - 008926A dated 15 November 2021
 - B. Jennings Claims Record - 009179A dated 6 December 2021
 - C. Jennings Claims Record - 009179B dated 27 January 2022
 - D. Jennings Claims Record - 009187A dated 31 January 2022
 - E. Jennings Claims Record - 009675A dated 28 June 2022
 - F. Jennings Claims Record - 009753A and 009753B dated 23 July 2022
- (i) says that the SCRf was replaced in the Jennings Vehicle on about 16 December 2021 and 28 July 2022, on each occasion in response to detection of a diagnostic trouble code (P2002-92), which also caused the amber malfunction indicator light (**MIL** or 'check engine' light) to illuminate on the instrument panel; and

Particulars

- A. Jennings Claims Record - 008926A dated 15 November 2021

B. Jennings Claims Record - 009675A dated 28 June 2022

(j) otherwise denies the allegations contained in that paragraph.

43. In answer to paragraph 43 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 35, 36 and 42 of the Defence;

(b) does not know and cannot admit whether any alleged 'Vehicle Defects' as described (which are denied) are present in the Greentree Vehicle or were present in the Jennings Vehicle at the time it was sold by the Third Applicant; and

(c) otherwise denies the allegations contained in that paragraph.

E. RESPONDENT'S ALLEGED REPRESENTATIONS

44. In answer to paragraph 44 of the CSOC, the Respondent:

(a) repeats and relies on paragraph 4 of the Defence;

(b) admits that, during the Relevant Period, the Respondent advertised and marketed, and otherwise published information about, the JLRA Vehicles to consumers, the general public and the JLRA Dealers in Australia;

Particulars

Advertising and marketing included television and website advertising and brochures.

Particulars of the materials published in Australia may be provided after discovery.

(c) says that the Respondent imported and distributed new JLRA Vehicles to JLRA Dealers in Australia for re-supply to consumers;

(d) says that the Respondent did not distribute materials to, supply JLRA Vehicles in Australia to, or have any relationship or control over, retailers (such as used car dealers) other than the JLRA Dealers; and

(e) otherwise denies the allegations contained in that paragraph.

E.1. Alleged Vehicle Representations

45. In answer to paragraph 45 of the CSOC, the Respondent:

(a) denies making the alleged Vehicle Representations in the terms pleaded;

(b) says further that the terms of any representations about the JLRA Vehicles conveyed by the documents particularised in paragraph 45 of the CSOC require consideration of:

- (i) the nature and characteristics of the JLRA Vehicles, including that they were mechanically complex goods which require maintenance in order to remain fit and safe for use, and frequently have parts repaired or replaced during their lifetime; and
- (ii) the fact, as known by consumers, that from time to time matters may be brought to the attention of JLRA Dealers or consumers in respect of a JLRA Vehicle, to be addressed through appropriate action such as repairs, servicing or other in-field actions being conducted in relation to the JLRA Vehicle; and
- (iii) the full context provided by the particularised documents and such other documents and information provided or otherwise made available to purchasers and potential purchasers of JLRA Vehicles in the Relevant Period, including:
 - A. the user manuals made available by the Respondent to JLRA Dealers, consumers and the general public, which described the operation of the vehicles, information and warning lights which might be illuminated on the instrument panel, and what steps should be taken to address those;
 - B. the information made available from time to time to JLRA Dealers, consumers and the general public about the design and operation of the vehicles, and the diesel exhaust after-treatment systems in JLRA Vehicles, including the DPF or SCRf; and

Particulars

Examples of information made available by the Respondent from time to time include:

- 1) webpages assisting prospective purchasers choosing between diesel and petrol engines, including:
 - a) Jaguar: <https://www.jaguar.com.au/ownership/choose-your-engine/index.html#:~:text=Jaguar's%20new%20diesel%20vehicles%20deliver,cost%2Deffective%20choice%20for%20you>
 - b) Land Rover: <https://www.landrover.com.au/ownership/your-choice-of-power.html>
- 2) webpages explaining how diesel engines and DPF systems specifically work, including:
 - a) Jaguar: <https://www.jaguar.com.au/ownership/choose-your-engine/jaguar-diesel-particulate-filter.html>

- b) Land Rover: <https://www.landrover.com.au/ownership/our-range-of-hybrid-petrol-or-new-diesel-suvs/land-rover-diesel-particulate-filter.html>
- 3) sections within owners' manuals explaining DPF design and operation, maintenance requirements and warning symbols and instructions;
- 4) bulletins issued to JLRA Dealers explaining DPF design and operation and/or instructions or advice to be given to prospective purchasers

Particulars of the materials published in Australia may be provided after discovery.

- C. materials that were also published during the Relevant Period by third parties, which informed consumers and the general public about the design and operation of diesel exhaust after-treatment systems in light-duty (passenger) diesel vehicles, including the DPF or SCRf; and

Particulars

Examples of materials published during the Relevant Period by third parties include:

- 1) media publications;
- 2) social media posts; and
- 3) materials published by other manufacturers of light-duty (passenger) diesel vehicles.

Particulars of such materials may be provided after discovery or use of third-party processes.

- (c) otherwise denies the allegations contained in that paragraph.

46. In answer to paragraph 46 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 44 and 45 of the Defence; and
- (b) otherwise denies the allegations contained in that paragraph.

47. In answer to paragraph 47 of the CSOC, the Respondent:

- (a) repeats and relies on paragraph 44 to 46 of the Defence; and
- (b) otherwise denies the allegations contained in that paragraph.

48. In answer to paragraph 48 of the CSOC, the Respondent:
- (a) repeats and relies on paragraphs 44 to 47 of the Defence; and
 - (b) otherwise denies the allegations contained in that paragraph.

E.2. Alleged Future Vehicle Representations

49. In answer to paragraph 49 of the CSOC, the Respondent:
- (a) denies that it made the alleged Future Vehicle Representations in the terms pleaded;
 - (b) refers to and repeats paragraph 45(b) of the Defence above; and
 - (c) otherwise denies the allegations contained in that paragraph.

50. In answer to paragraph 50 of the CSOC, the Respondent:
- (a) repeats and relies on paragraphs 44, 45 and 49 of the Defence; and
 - (b) otherwise denies the allegations contained in that paragraph.

51. In answer to paragraph 51 of the CSOC, the Respondent:
- (a) repeats and relies on paragraphs 44, 49 and 50 of the Defence; and
 - (b) otherwise denies the allegations contained in that paragraph.

52. In answer to paragraph 52 of the CSOC, the Respondent:
- (a) repeats and relies on paragraphs 44 and 49 to 51 of the Defence; and
 - (b) otherwise denies the allegations contained in that paragraph.

53. In answer to paragraph 53 of the CSOC, the Respondent:
- (a) repeats and relies on paragraphs 44 and 49 to 52 of the Defence; and
 - (b) otherwise denies the allegations contained in that paragraph.

F. RESPONDENT'S ALLEGED OMISSIONS

54. In answer to paragraph 54 of the CSOC, the Respondent:
- (a) repeats and relies on paragraphs 35 to 37, 44 and 45 of the Defence; and
 - (b) otherwise denies the allegations contained in that paragraph.

55. In answer to paragraph 55 of the CSOC, the Respondent:

- (a) repeats and relies on paragraph 54 of the Defence; and
- (b) otherwise denies the allegations contained in that paragraph.

G. STATUTORY GUARANTEE AS TO ACCEPTABLE QUALITY

56. The Respondent admits the allegations contained in paragraph 56 of the CSOC.

57. In answer to paragraph 57 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 1, 3 and 3A of the Defence;
- (b) says that:
 - (i) the matters pleaded in paragraphs 1, 3, 3A and 56 of the CSOC do not in each case correspond to the criteria necessary in order for a person to be a “consumer” within the meaning of s 3 of the ACL; and
 - (ii) therefore it is not by reason of each of the matters pleaded in paragraph 1, 3, 3A and 56 of the CSOC that the persons pleaded in paragraphs 57(a) and (b) of the CSOC are consumers; and
- (c) otherwise admits the allegations contained in that paragraph.

58. In answer to paragraph 58 of the CSOC, the Respondent:

- (a) repeats and relies on paragraph 1 of the Defence; and
- (b) otherwise admits the allegations contained in that paragraph.

59. In answer to paragraph 59 of the CSOC, the Respondent:

- (a) repeats and relies on paragraph 1 and 56 to 58 of the Defence; and
- (b) otherwise admits the allegations contained in that paragraph.

60. In answer to paragraph 60 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 3 and 3A of the Defence; and
- (b) otherwise admits the allegations contained in that paragraph.

61. In answer to paragraph 61 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 3, 3A, 56, 57 and 60 of the Defence; and

(b) otherwise admits the allegations contained in that paragraph.

62. In answer to paragraph 62 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 1, 3, 3A, 35 to 38 and 45 to 55 of the Defence; and

(b) otherwise denies the allegations contained in that paragraph.

63. In answer to paragraph 63 of the CSOC, the Respondent:

(a) repeats and relies on paragraph 62 of the Defence; and

(b) otherwise denies the allegations contained in that paragraph.

H. MISLEADING OR DECEPTIVE CONDUCT

64. In answer to paragraph 64 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 44 to 55 of the Defence; and

(b) otherwise denies the allegations contained in that paragraph.

65. In answer to paragraph 65 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 5 to 40 and paragraphs 44 to 55 of the Defence; and

(b) otherwise denies the allegations contained in that paragraph.

66. In answer to paragraph 66 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 49 to 53 of the Defence; and

(b) says further that, if (which is denied) it made the alleged Future Vehicle Representations in the terms pleaded, it had reasonable grounds for doing so; and

Particulars

A. The matters pleaded in paragraphs 35 to 40 above are repeated.

B. Further and better particulars may be provided following the service of evidence.

(c) otherwise denies the allegations contained in that paragraph.

67. In answer to paragraph 67 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 35 and 36 and paragraph 54 and 55 of the Defence; and

(b) otherwise denies the allegations contained in that paragraph.

68. In answer to paragraph 68 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 44 to 53 and 64 of the Defence; and

(b) otherwise denies the allegations contained in that paragraph.

69. In answer to paragraph 69 of the CSOC, the Respondent:

(a) repeats and relies on paragraph 64 to 68 of the Defence; and

(b) otherwise denies the allegations contained in that paragraph.

L. LOSS OR DAMAGE ALLEGEDLY SUFFERED BY THE APPLICANTS AND GROUP MEMBERS

70. In answer to paragraph 70 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 56 to 63 of the Defence; and

(b) otherwise denies the allegations contained in that paragraph.

71. In answer to paragraph 71 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 64 to 69 of the Defence; and

(b) otherwise denies the allegations contained in that paragraph.

72. In answer to paragraph 72 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 56 to 63 of the Defence;

(b) says that insofar as any action by the Group Members pursuant to section 54 of the ACL has not been commenced pursuant to sections 271 and 272 of the ACL, within 3 years after the day on which the affected person first became aware, or ought reasonably to have become aware, that the guarantee to which the action relates had not been complied with for the purposes of section 273 of the ACL (which is denied), then any claim for relief is time barred; and

(c) otherwise denies the allegations contained in that paragraph.

73. In answer to paragraph 73 of the CSOC, the Respondent denies the allegations contained in that paragraph.

74. In answer to paragraph 74 of the CSOC, the Respondent:

(a) repeats and relies on paragraphs 3 and 3A of the Defence; and

(b) otherwise admits the allegations contained in that paragraph.

75. In answer to paragraph 75 of the CSOC, the Respondent:

- (a) repeats and relies on paragraphs 64 to 69 of the Defence;
- (b) says that insofar as the Applicants or a Group Member seeks to recover loss or damage under section 236 of the ACL, if the action was not commenced within 6 years after the day on which the cause of action that relates to the conduct accrued for the purposes of section 236 of the ACL, that action is time barred; and
- (c) otherwise denies the allegations contained in that paragraph.

J. RELIEF CLAIMED

76. In answer to paragraph 76 of the CSOC, the Respondent:

- (a) denies that the Applicants or any Group Member is entitled to the relief claimed in the Application;
- (b) says that each Group Member must establish the fact and circumstances of their acquisition of a JLRA Vehicle;
- (c) says that the Applicants and each Group Member must establish that they have suffered loss or damage (which is denied);
- (d) says that the Applicants and each Group Member must establish that any loss or damage alleged to have been suffered was by reason of the alleged 'Vehicle Defects' (as defined in paragraph 37 of the CSOC, and which are denied); and
- (e) otherwise denies the allegations in that paragraph.

Date: 4 October 2024



.....
Signed by Adrian Shane Kuti
Lawyer for the Respondent

This pleading was prepared by Clayton Utz and settled by Matthew Darke of Senior Counsel and Imtiaz Ahmed of Senior Counsel.

Certificate of lawyer

I, Adrian Shane Kuti, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 4 October 2024



.....
Signed by Adrian Shane Kuti
Lawyer for the Respondent

Annexure A: JLRA Vehicles

<u>Brand</u>	<u>Model Name</u>	<u>Vehicle Code</u>	<u>Fuel Type</u>	<u>Platform</u>	<u>Model Years</u>
Land Rover	Defender	L663	Diesel	D7u	2020-2024 MY
	Discovery Sport	L550	Diesel	D8	2017-2019 MY
	Discovery Sport	L550	Diesel	PTA	2020-2022 MY
	Discovery	L462	Diesel	D7u	2017-2024 MY
	Range Rover Evoque	L538	Diesel	D8	2016-2019 MY
	Range Rover Evoque	L551	Diesel	PTA	2020-2022 MY
	Range Rover Sport	L494	Diesel	D7u	2017-2022 MY
	Range Rover Sport	L461	Diesel	MLA	2023-2024 MY
	Range Rover	L405	Diesel	D7u	2017-2022 MY
	Range Rover	L460	Diesel	MLA	2022-2024 MY
	Range Rover Velar	L560	Diesel	D7a	2018-2025 MY
Jaguar	E-Pace	X540	Diesel	D8	2018-2020 MY
	F-Pace	X761	Diesel	D7a	2017-2021 MY 2023-2024 MY
	XE	X760	Diesel	D7a	2016-2019 MY
	XF	X260	Diesel	D7a	2016-2020 MY

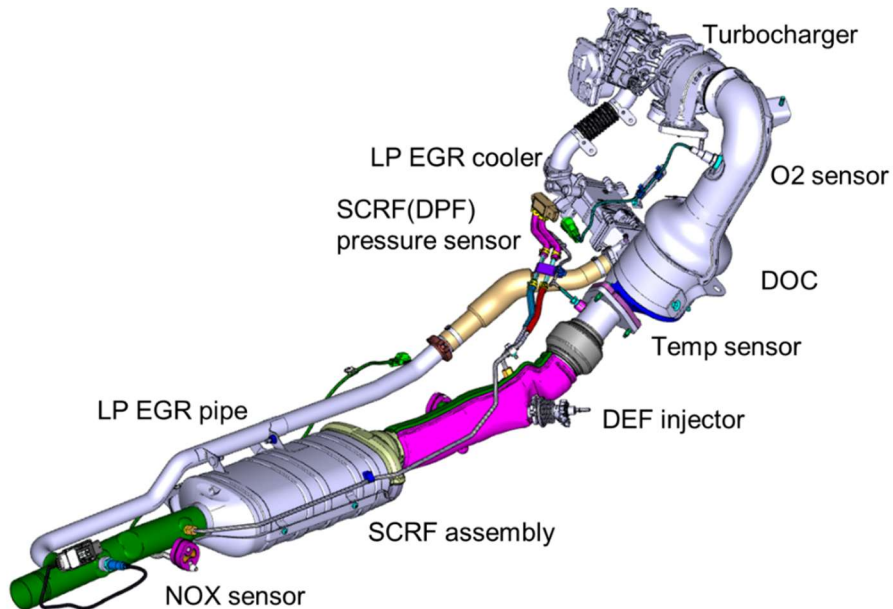
Annexure B: Key features of JLRA Vehicles on different vehicle platforms

<u>Platform</u>	<u>Model Years</u>	<u>Engine</u>	<u>Vehicle Lines</u>	<u>DPF/SCRF Attributes</u>	
D8	2016 - 2019	AJ20-D4M	L550/L538	Volume Location Type	4.3 Litres NC SCRF
	2016 - 2019	AJ20-D4H	L550/L538	Volume Location Type	4.3 Litres NC SCRF
	2018 - 2020	AJ20-D4M	X540	Volume Location Type	4.3 Litres NC SCRF
	2018 - 2020	AJ20-D4H	X540	Volume Location Type	4.3 Litres NC SCRF
PTA	2020	AJ20-D4M	L550/L551	Volume Location Type	4.3 Litres NC SCRF
	2020	AJ20-D4H	L550/L551	Volume Location Type	4.3 Litres NC SCRF
	2021 - 2022	AJ21-D4M	L550/L551	Volume Location Type	3.0 Litres CC SCRF
D7u	2017 - 2018	AJ20-D4M	L462	Volume Location Type	3.1 Litres CC cDPF
	2017 - 2020	AJ20-D4H	L462/L663/L494	Volume Location Type	3.1 Litres CC cDPF
	2017 - 2020	TDV6	L462/L405/L494	Volume Location Type	3.1 Litres CC cDPF
	2021 - 2024	AJ20-D6H	L663/L462/L405/L494	Volume Location Type	3.1 Litres CC cDPF

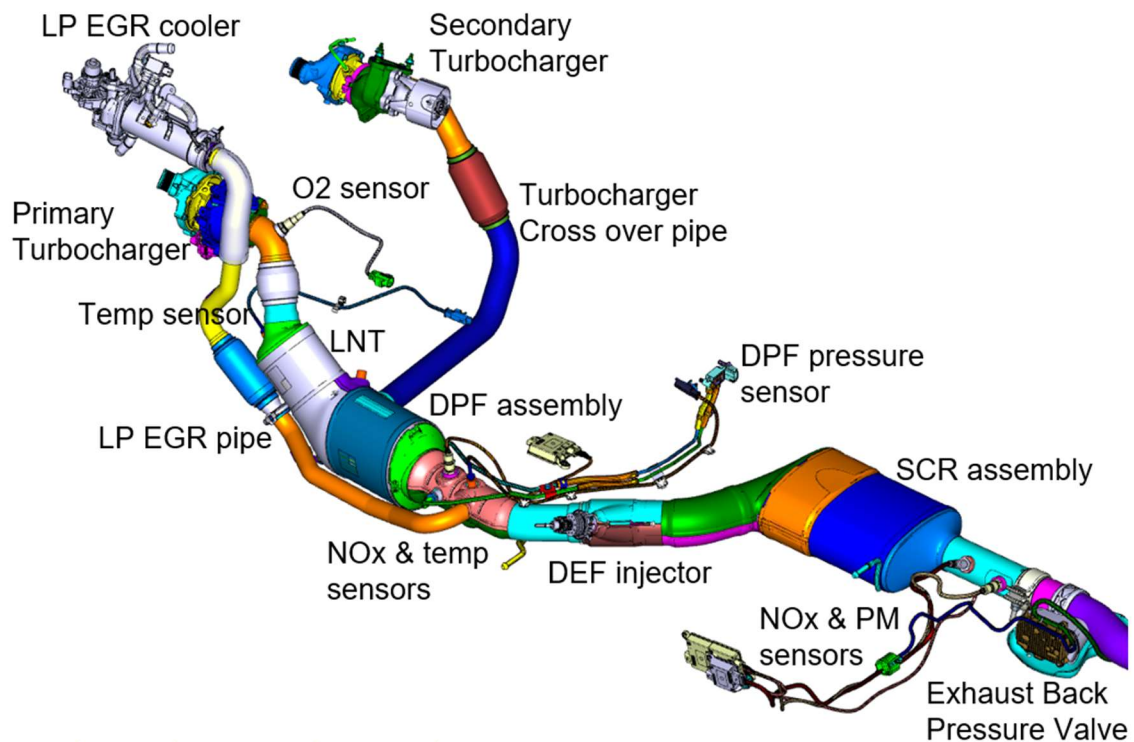
<u>Platform</u>	<u>Model Years</u>	<u>Engine</u>	<u>Vehicle Lines</u>	<u>DPF/SCRF Attributes</u>	
	2017 - 2020	TDV8	L405/L494	Volume Location Type	3.1 Litres CC cDPF
D7a	2016 - 2020	AJ20-D4M	X761/L560/X760/X260	Volume Location Type	3.1 Litres CC cDPF
	2018 - 2020	AJ20-D4H	X761/L560/X260	Volume Location Type	3.1 Litres CC cDPF
	2021 - 2022	AJ21-D4M	L560	Volume Location Type	3.0 Litres CC SCRF
	2021, 2023, 2024	AJ20-D6H	X761/L560	Volume Location Type	3.1 Litres CC cDPF
	2025	AJ20-D6H	L560	Volume Location Type	3.1 Litres CC cDPF
	2016 - 2020	TDV6	X260/X761/L560	Volume Location Type	3.1 Litres CC cDPF
MLA	2022 - 2024	AJ20-D6H	L460/L461	Volume Location Type	3.1 Litres CC cDPF

Annexure C: Diagrams of diesel exhaust after-treatment systems in examples of JLRA Vehicles

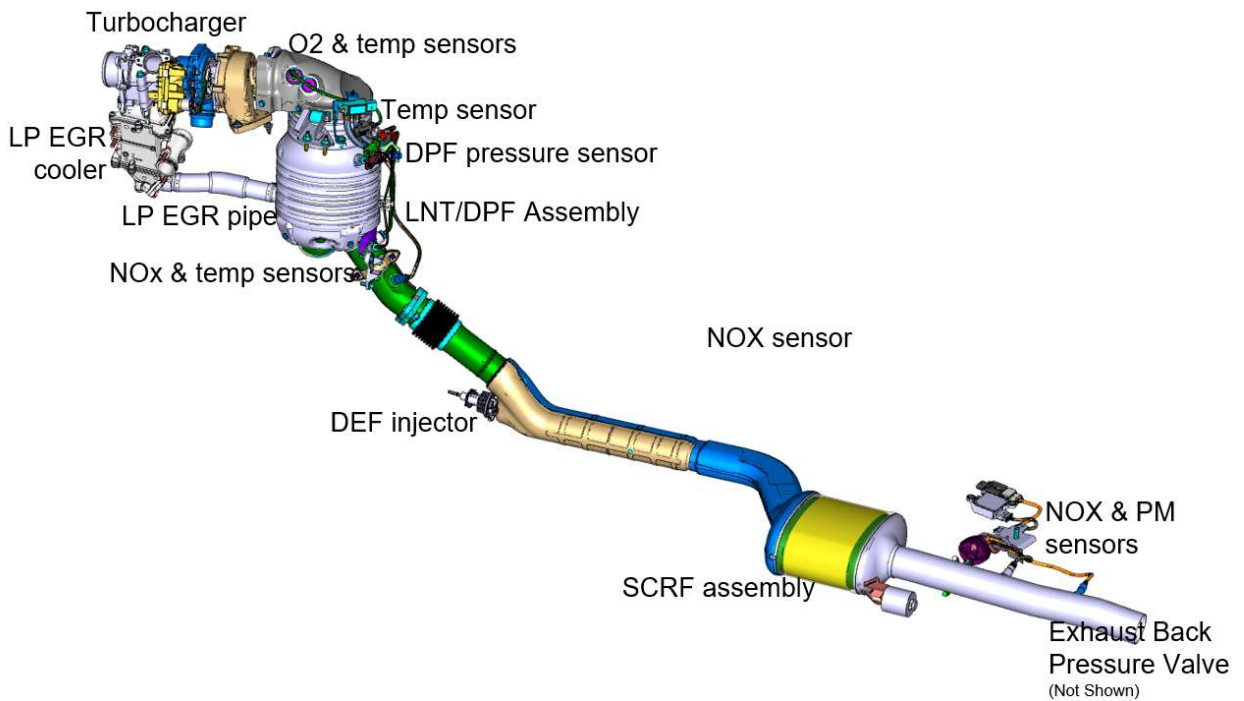
1. Land Rover Discovery Sport (MY2017), with an AJ20-D4M engine and having a 'D8' vehicle platform



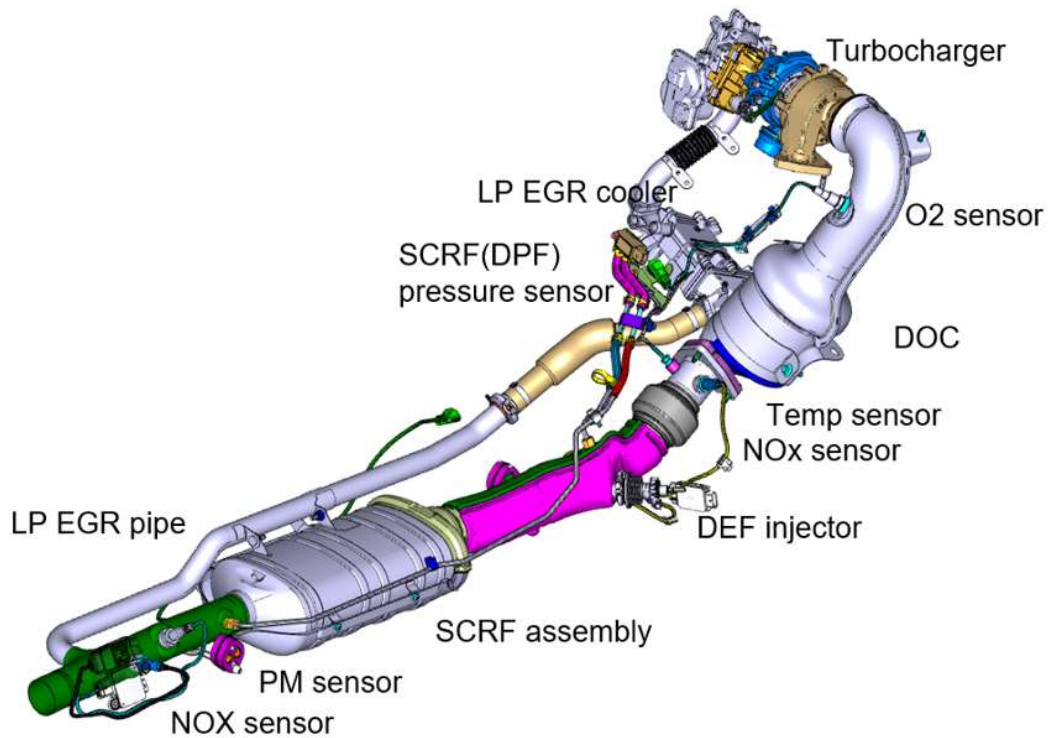
2. Land Rover Range Rover Sport (MY2019), with a V6D twin turbo engine and having a 'D7u' vehicle platform



3. Land Rover Range Rover Velar (MY2019), with an AJ20-D4M engine and having a 'D7a' vehicle platform



4. Land Rover Discovery Sport (MY2020), with an AJ20-D4M engine and having a 'PTA' vehicle platform:



5. Land Rover Range Rover (MY2022), with an AJ20-D6H engine and having a 'MLA' vehicle platform

