

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE E.M. MORGAN) *MONDAY*, THE
) *12th* DAY OF *MARCH*, 2018

BETWEEN:

YOGESH KALRA

Plaintiff

- and -

MERCEDES-BENZ CANADA INC., DAIMLER AG, MERCEDES-BENZ USA LLC, AND
MERCEDES-BENZ FINANCIAL SERVICES CANADA CORPORATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an order certifying this action as a class proceeding, was heard on June 12, 2017, at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

WHEREAS, by order of this Court dated June 29, 2017, this action has been certified as a class proceeding (the "**Certification Order**"); and

UPON READING the motion records of the Plaintiff and the Defendants and on hearing the submissions of the lawyers for the Plaintiff and the Defendants;

1. **THIS COURT ORDERS** that capitalized terms used but not defined herein shall have the meaning given to them in the Certification Order.



2. **THIS COURT ORDERS** that members of the Class (“**Class Members**”) shall be notified by the Administrator (as defined below) that this proceeding has been certified as a class proceeding, as follows:

- (a) by sending the Short Form Notice (attached at **Schedule “A”**), by May 18, 2018:
 - (i) by e-mail to the last known e-mail address of Class Members for whom the Defendants have a valid e-mail address, or who have contacted Class Counsel and provided an e-mail address; or
 - (ii) by regular mail to the last known mailing address of Class Members for whom the Defendants have a valid mailing address, or who have contacted Class Counsel and provided only a mailing address as their contact information;
- (b) by sending the Long Form Notice (attached at **Schedule “B”**) by e-mail to any person who may request it;
- (c) by making available the Short Form Notice, or a summary thereof, orally by recorded message at a toll-free hotline; and
- (d) by posting the Long Form Notice on the Mercedes class action website already created by Class Counsel (<https://kmlaw.ca/cases/mercedes-bluetec-class-action>).

3. **THIS COURT ORDERS** that the Defendants shall provide the e-mail addresses and mailing addresses referred to in paragraph 2, above, to the Administrator by March 30, 2018;

4. **THIS COURT ORDERS** that the expense of the notices in paragraph 2 and the responsibilities of the Administrator (defined below) herein shall be shared equally by the Plaintiff and the Defendants;

5. **THIS COURT ORDERS** that Crawford & Company (Canada) Inc. o/a Crawford Class Action Services be and is hereby appointed as the Administrator. The Administrator shall, inter alia, receive opt out forms from the Class.

6. **THIS COURT ORDERS** that a Class Member may opt out of the class proceeding by delivering by registered mail a signed opt-out form (attached at **Schedule “C”**), or an opt out letter, by July 20, 2018 (the **“Opt Out Deadline”**), sent to the Administrator at the following address:

Crawford and Company
3-505, 133 Weber St. North
Waterloo, ON N2J 3G9
Attention: Mercedes-Benz BlueTEC Class Action

7. **THIS COURT ORDERS** that no Class Member may opt out of the class proceeding after the Opt Out Deadline, except with leave of the Court.

8. **THIS COURT DECLARES** that this notice program satisfies the requirements of section 17 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

9. **THIS COURT ORDERS** that the Administrator shall serve on the parties and file with the Court, within thirty (30) days of the expiry of the Opt Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.



Morgan J.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

MAR 12 2018

PER / PAR:



SCHEDULE A

LEGAL NOTICE OF CERTIFICATION OF MERCEDES-BENZ BLUETEC CLASS ACTION

The Nature of the Lawsuit

On April 5, 2016, Koskie Minsky LLP and Lenczner Slaght Royce Smith Griffin LLP commenced an action on behalf of the Representative Plaintiff, Yogesh Kalra, in the Ontario Superior Court of Justice against Mercedes-Benz Canada Inc., Daimler AG, Mercedes-Benz USA, LLC and Mercedes-Benz Financial Services Canada Corporation (collectively, the "**Defendants**")

The lawsuit alleges Mercedes-Benz BlueTEC diesel vehicles contain a defect or a 'defeat device' that turns off the emission control system. The lawsuit alleges that the Defendants misrepresented the nature of the Vehicles to purchasers. The Defendants intend to defend against them.

The action was brought on behalf of a class consisting of all persons in Canada who own, owned, lease or leased a Mercedes-Benz BlueTEC vehicle.

By order of the Honourable Justice Belobaba dated June 29, 2017, the action was certified as a class proceeding and Yogesh Kalra appointed as representative plaintiff for the class.

The Court has not taken a position as to the likelihood of recovery for the representative plaintiff or the Class, or with respect to the merits of the claims or defences asserted by either side.

Participation in the Class Action

If you own, owned, lease or leased a Mercedes-Benz BlueTEC vehicle in Canada, you are automatically included as a member of the class unless you opt out. All members of the class will be bound by the judgment of the Court, or any settlement reached by the parties and approved by the Court.

Fees and Disbursements

You do not need to pay any legal fees out of your own pocket. Koskie Minsky and Lenczner Slaght have been retained on a contingency fee basis,

whereby they will only be paid legal fees in the event of a successful result in the litigation or a Court approved settlement. The fees payable to the lawyers for the class will be paid out of any judgment or settlement and will not be paid directly by class members. Any fee paid to lawyers for the class is subject to the Court's approval.

You will not be responsible for the Defendants' legal costs if the class action is unsuccessful.

Opt Out

If you wish to exclude yourself from this class proceeding you must complete and return the Opt Out Form by no later than **July 20, 2018**. The Opt Out form may be downloaded at: [INSERT]

If you choose to opt out within the above-noted deadline, you will not take part in any settlement or award by the Court. If you do not choose to opt out by the prescribed deadline, you will be bound by any judgment ultimately obtained in these proceedings, whether favourable or not, or by any settlement if approved by the court. You may wish to obtain independent legal advice with respect to this matter.

Contact Information

If you have any questions or concerns, please visit website of the Administrator, Crawford Class Action Services at [INSERT], or call their toll-free hotline (pre-recorded message with the option to leave a voicemail message) at [INSERT].

You may contact the Administrator a number of different ways:

By email at: [INSERT]

By mail at the following address: [INSERT]

By fax at: [INSERT]

SCHEDULE B

**NOTICE OF CERTIFICATION
MERCEDES-BENZ BLUETEC CLASS ACTION**

***OFFICIAL COURT COMMUNICATION – DO NOT DISCARD
A COURT AUTHORIZED THIS NOTICE – YOU ARE NOT BEING SUED***

**IF YOU OWN, OWNED, LEASE, OR LEASED ONE OF THESE
VEHICLES, A CLASS ACTION MAY AFFECT YOUR RIGHTS**

- You could be affected by a class action against Mercedes-Benz Canada Inc.; Daimler AG; Mercedes-Benz USA, LLC; and Mercedes-Benz Financial Services Canada Corporation (collectively, the “Defendants”).
- The Court has not decided whether the Defendants did anything wrong, and there still has to be a court case about whether the Defendants did anything wrong. There is no money available now in respect of this action and no guarantee money will be available. However, your rights are affected and you have a choice to make now. This notice is designed to help you make that choice.

**NOTICE OF CERTIFICATION
MERCEDES-BENZ BLUETEC CLASS ACTION**

**OFFICIAL COURT COMMUNICATION – DO NOT DISCARD
A COURT AUTHORIZED THIS NOTICE – YOU ARE NOT BEING SUED**

YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
DO NOTHING	<p>Stay in the lawsuit and wait for the outcome. Share in possible benefits from the outcome but give up certain individual rights.</p> <p>By doing nothing, you keep the possibility of getting money or other benefits that may come from a trial or settlement. But, you give up any rights to sue the Defendants on your own about the same legal claims in this lawsuit.</p>
REMOVE YOURSELF (OPT OUT)	<p>Get out of this lawsuit and receive no benefits from it. Keep your rights.</p> <p>If you ask to be removed (opt out) and money or benefits are later awarded, you won't share in those amounts. But, you keep any rights to sue the Defendants on your own about the same legal claims in this lawsuit.</p>

- Lawyers must prove the claims against the Defendants at trial or a settlement must be reached. If money or benefits are obtained, you will be notified about how to ask for your share.
- Your options are explained in this notice. To be removed from the lawsuit you must ask to be removed by **July 20, 2018**.

**NOTICE OF CERTIFICATION
MERCEDES-BENZ BLUETEC CLASS ACTION**

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NOTICE OF CERTIFICATION MERCEDES-BENZ BLUETEC CLASS ACTION

**OFFICIAL COURT COMMUNICATION – DO NOT DISCARD
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BASIC INFORMATION

1. Why is there a notice?

This lawsuit has been “certified” as a Class Action. This means that the lawsuit meets the procedural requirements for class actions and may proceed to trial. If you are included, you may have legal rights and options before the Court decides whether the claims being made against the Defendants on your behalf are correct. This notice explains the class action process and is designed to help you make a decision.

The Honourable Justice Belobaba, of the Ontario Superior Court of Justice, is currently overseeing this case. The case is known as *Kalra v. Mercedes-Benz Canada Inc. et al.*, Court File No. CV-16-550271-00CP. The person who started this lawsuit is called the Plaintiff. The corporations being sued are called the Defendants and they are: Mercedes-Benz Canada Inc.; Daimler AG; Mercedes-Benz USA, LLC; and Mercedes-Benz Financial Services Canada Corporation (collectively referred to as the “Defendants”).

2. What is this lawsuit about?

This Plaintiff alleges that all Mercedes-Benz BlueTEC vehicles (the “**Vehicles**”) contain a defect or a “defeat device” that turns off the emission control system . The Plaintiff alleges that the Defendants misrepresented the nature of the Vehicles to purchasers.

The Defendants intend to defend against them.

The Court has not decided whether the Plaintiff or the Defendants are right. The lawyers for the Plaintiff will have to prove the claims in Court.

3. What is a class action?

In a class action, one or more people called “representative plaintiffs” sue on behalf of people who have similar claims. All of these people with similar claims are called the “class” or “class members.” The court resolves the issues for all class members, except for those who remove themselves from the class.

The representative plaintiff in this case is Yogesh Kalra. Mr. Kalra owned one of the Vehicles.

**NOTICE OF CERTIFICATION
MERCEDES-BENZ BLUETEC CLASS ACTION**

***OFFICIAL COURT COMMUNICATION – DO NOT DISCARD
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4. Who is a member of the Class?

You are included in this lawsuit if you are in Canada and own, owned, lease or leased one of the BlueTEC Vehicles: ML320, ML350, GL320, E320, E250, S350, R320, R350, E Class, GL Class, ML Class, R Class, S Class, GLK Class, GLE Class and Sprinter of any and all model years.

Even if you meet the conditions above, you are not a class member if you are any of the following: (i) a Defendant, or one of its officers or directors; (ii) an authorized motor vehicle dealer of the Defendants, or an officer or director of those dealers; or, (iii) an heir, successor or assign of a person described in the subparagraphs (i) or (ii).

5. What is the Plaintiff asking for?

The Plaintiff is asking for money or other benefits for the Class. He is also asking for attorneys' fees and costs, plus interest.

6. Is there any money available?

No money or benefits are available now because the Court has not yet decided whether the Defendants did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits will ever be obtained. If they are, you will be notified about how to ask for a share.

YOUR OPTIONS

7. How do I include myself in the lawsuit?

You are automatically included in the lawsuit if you take no steps.

**NOTICE OF CERTIFICATION
MERCEDES-BENZ BLUETEC CLASS ACTION**

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8. How do I exclude myself from the lawsuit?

If you decide not to participate in the lawsuit, you must remove yourself – this is referred to as “opting out.” If you remove yourself, you will not receive any money or benefit that may be obtained as a result of this lawsuit. You will not be bound by any Court orders and you keep your right to sue the Defendants regarding the issues in this case. You cannot change your mind later and opt back into the class action.

To remove yourself, complete the Opt Out Form included with this notice or send a letter by registered mail that says you want to be removed from the Mercedes-Benz BlueTEC Class. Your letter must include your name, address, telephone number, email address, vehicle make and model, VIN number, and signature. The Opt Out Form or letter must be sent to Mercedes-Benz BlueTEC Class Action Administrator, c/o Crawford Class Action Services [INSERT], or by email at: [INSERT].

You can also get the Opt Out Form or complete the form online at [INSERT].

Your opt out form or letter must be received by **July 20, 2018**.

If you have any questions about how to remove yourself from the class, please visit [INSERT] or call the toll-free hotline (pre-recorded message with the option to leave a voicemail message) at [INSERT] (TTY: [INSERT]).

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in the case?

Yes. The Court has appointed Koskie Minsky LLP and Lenczner Slaght Royce Smith Griffin LLP of Toronto, Ontario to represent you and the other Class Members as “Class Counsel.” You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

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10. How will the lawyers be paid?

You will not have to pay any of these fees and expenses of Class Counsel. If the Court grants their request, the fees and expenses would be deducted from any money obtained for the Class, or paid separately by the Defendants.

A TRIAL

11. How and when will the Court decide who is right?

If the case is not dismissed or settled, the Plaintiff will have to prove his claims and the claims of the class at a trial. The trial would be in Toronto, Ontario. During the trial, a court will hear all of the evidence, so that a decision can be reached about whether the Plaintiff or the Defendants are right about the claims in the lawsuit. There is no guarantee that the Plaintiff will win any money or benefits for the Class.

12. Will I get money after the trial?

If the Plaintiff obtains money or benefits as a result of a trial or settlement, you will be notified about how to ask for a share or what your other options are at that time. Important information about the case will be posted on the administrators' website at [INSERT] as it becomes available.

GETTING MORE INFORMATION

13. How do I get more information?

You can get more information about this case and about opting out at:

Mercedes-Benz BlueTEC Class Action Administrator
[INSERT]

SCHEDULE C

OPT OUT NOTICE

TO: Crawford Class Action Services

I do not want to participate in the class action styled *Kalra v. Mercedes-Benz Canada Inc. et al.* (Court File No. CV-16-550271-00CP) regarding allegations of misrepresentations regarding the emissions control systems in Mercedes-Benz BlueTEC diesel vehicles. I understand that by opting out, I will not be eligible for any money or benefits awarded or paid in the class action.

Dated: _____

Signature

Print Name

Address

City, Province, Postal Code

Telephone

Email

Vehicle Make and Model

VIN Number

This Notice must be delivered by Registered Mail on or before **July 20, 2018** to be effective.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding under the *Class Proceedings Act, 1992*
Proceeding commenced at Toronto

ORDER

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