

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE BELOBABA

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THURSDAY, THE 29<sup>th</sup>  
DAY OF JUNE, 2017

**B E T W E E N :**

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, and the decision reserved to this day.

**ON 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 this action be and is hereby certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
2. **THIS COURT ORDERS AND DECLARES** that the Class is defined as:

All persons in Canada, except for Excluded Persons, who own, owned, lease or leased one of the Vehicles.

**"Excluded Persons"** are:

- (i) the Defendants and their officers and directors;
- (ii) the authorized motor vehicles dealers of the Defendants and the officers and directors of those dealers; and
- (iii) the heirs, successors and assigns of the persons described in paragraphs (i) and (ii).

the **"Vehicles"** are:

the following diesel-powered Mercedes 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 years.

3. **THIS COURT ORDERS** that the within action be certified on the basis of the following common issues:

- (i) Do some or all of the Vehicles contain a Defeat Device (as defined in the Statement of Claim, appended as Schedule "A" hereto)?
- (ii) Did the Defendants make some or all of the Representations (as defined in the Statement of Claim)? If so, which Representations, when and how?
- (iii) Did the Defendants misrepresent to the Canadian government that the Vehicles met Emissions Standards (as defined in the Statement of Claim)?
- (iv) Was the importation of the Vehicles into Canada unlawful and in contravention of the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33?

- (v) Did the Defendants contravene Part VI of the *Competition Act*, R.S.C. 1985, c. C-34?
- (vi) Did the Defendants know that the Representations were false when they were made to the Plaintiff and other Class Members?
- (vii) Were the Defendants reckless as to whether the Representations were false when they were made to the Plaintiff and other Class Members?
- (viii) When making the Representations to the Plaintiff and other Class Members:
  - (A) Did the Defendants owe a duty of care to the Plaintiff and other Class Members?
  - (B) If so, did the Defendants breach their duty? How?
  - (C) In the circumstances of this case, can the reliance of the Plaintiff and other Class Members on the Representations be inferred?
- (ix) Does the *Consumer Protection Act, 2002*, S.O. 2002, c. 30 or the Equivalent Consumer Protection Statutes (as defined in the Statement of Claim) (collectively the “CP Legislation”) apply to the Defendants? If so, which Defendants?
- (x) Does the CP Legislation apply to the claims of the Plaintiff and all other Class Members?
- (xi) Did the Defendants, or any of them, make any false, misleading or deceptive representations within the meaning of the CP Legislation? If so:
  - (A) Were any such representations unconscionable?
  - (B) Are the Class Members, or any of them, entitled to damages?

- (xii) If one or more of the common issues are answered affirmatively, has the conduct of the Defendants resulted in an unjust enrichment to the Defendants?
- (xiii) If one or more of the common issues are answered affirmatively, can and/or should a remedy be granted with respect to the financing, lease or other agreements related to the Vehicles?
- (xiv) By virtue of waiver of tort, are the Defendants:
  - (A) Liable to account to any of the Plaintiff and Class Members on a restitutionary basis, for any part of the proceeds of the sale of the Vehicles?

4. **THIS COURT ORDERS AND DECLARES** that Yogesh Kalra is hereby appointed as the representative Plaintiff for the Class.

5. **THIS COURT ORDERS AND DECLARES** that Koskie Minsky LLP and Lenczner Slaght Royce Smith Griffin LLP are hereby appointed as class counsel ("Class Counsel").

6. **THIS COURT ORDERS** that the Defendants shall pay costs in the amount of \$225,000 to Class Counsel before September 1, 2017.

Palobaba, J.  
Rev Penel, J.

CLERK OF THE COURT  
100 KING STREET WEST  
TORONTO, ONTARIO M5X 1C5  
CANADA

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REC/PAR *pr*