

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N<sup>o</sup> : 500-06-000768-156

**SUPERIOR COURT**  
**(Class Action)**

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**9225-3509 Québec Inc.**, a legal person [REDACTED]  
[REDACTED]

*Petitioner*

**BOGDAN ROMAN**, [REDACTED]  
[REDACTED];

*Designated Person*

-vs-

**DAIMLER A.G.**, a legal person having its principal place of business at Mercedesstraße 137, Stuttgart, Germany, 70327;

-and-

**MERCEDES-BENZ CANADA INC.**, a legal person having its principal place of business at 98 Vanderhoof Avenue, Toronto, Ontario, M4G 4C9.

-and-

**HONDA CANADA, INC.**, a legal person having its principal place of business at 180 Honda Boulevard, Markham, Ontario, L6C 0H9.

-and-

**HONDA MOTOR CO., LTD.**, a legal person having its principal place of business at 1-1-2 Chome Minami-Aoyama, Minato-Ku, Tokyo, 107-8556, Japan

-and-

**AMERICAN HONDA MOTOR CO., INC.**, a legal person having its principal place of business at 1919 Torrance Boulevard, Torrance, California, 90501-2746, United States of America

-and-

**MAZDA CANADA INC.**, a legal person having its principal place of business at 55 Vogell Road, Richmond Hill, Ontario, L4B 3K5

-and-

**MAZDA MOTOR CORPORATION**, a legal person having its principal place of business at 3-1 Shinchu, Fuchu-cho, Aki-gun, Hiroshima, 730-8670, Japan.

-and-

**MITSUBISHI MOTORS CORPORATION**, a legal person having its principal place of business at 33-8, Shiba 5-chome Minato-ku, Tokyo 108-8410, Japan

-and-

**MITSUBISHI MOTOR SALES OF CANADA, INC.**, a legal person having its principal place of business at BCE Place, Suite 4400, Bay Wellington Tower, 181 Bay Street, Toronto, Ontario, M5J 2T3

*Respondents*

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**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO ASCRIBE  
THE STATUS OF REPRESENTATIVE  
(Art. 1002 C.C.P. and following)**

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**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF  
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER  
STATES THE FOLLOWING:**

## **GENERAL PRESENTATION**

1. The Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

- All persons in Quebec who, since January 1, 2004, own or have owned, or lease or have leased, one or more Mazda, Honda, or Mercedes-Benz vehicles equipped with diesel engines;

(hereinafter, referred to as “**Class Vehicles**” or “**Subject Vehicles**”)

(hereinafter, referred to as “**Class Member(s)**”, “**Group Member(s)**”, the “**Group**”, the “**Class**”, the “**Member(s)**”);

### The Respondents

2. The Respondent, Daimler A.G., is a German multinational automotive manufacturing company headquartered in Stuttgart, Germany. It designs, manufactures and distributes passenger and commercial vehicles. Daimler A.G. conducts business in Canada, including in Quebec;
3. The Respondent, Mercedes-Benz Canada Inc., (“**Mercedes-Benz Canada**”) is the Canadian subsidiary of Daimler A.G. and is headquartered at 98 Vanderhoof Avenue, Toronto, Ontario, M4G 4C9. Mercedes-Benz Canada conducts business in Canada, including in Quebec;
4. The Respondent, Honda Motor Co. (“**Honda Japan**”), is a Japanese multinational automotive manufacturing company headquartered in Tokyo, Japan. It designs, manufactures and distributes passenger and commercial vehicles. Honda Japan conducts business in Canada, including in Quebec;
5. The Respondent, American Honda Motor Co., Inc. (“**Honda USA**”) is the American subsidiary of Honda Japan, headquartered at 1919 Torrance Boulevard, Torrance,

California, 90501-2746, United States of America. Honda USA conducts business in Canada, including Quebec;

6. The Respondent, Honda Canada, Inc. ("**Honda Canada**"), is the Canadian subsidiary of Honda Japan and Honda USA, headquartered at 80 Honda Boulevard, Markham, Ontario, L6C 0H9. Honda Canada conducts business in Canada, including in Quebec;
7. The Respondent, Mazda Motor Corporation ("**Mazda Japan**"), is a Japanese multinational automotive manufacturing company headquartered in Hiroshima, Japan. It designs, manufactures and distributes passenger and commercial vehicles. Mazda Japan conducts business in Canada, including in Quebec;
8. The Respondent, Mazda Canada Inc. ("**Mazda Canada**"), is the Canadian subsidiary of Mazda Japan, headquartered at 55 Vogell Road, Richmond Hill, Ontario, L4B 3K5. Mazda Canada conducts business in Canada, including in Quebec;
9. The Respondent, Mitsubishi Motors Corporation ("**Mitsubishi Japan**"), is a Japanese multinational automotive manufacturing company headquartered in Tokyo, Japan. It designs, manufactures and distributes passenger and commercial vehicles. Honda Japan conducts business in Canada, including in Quebec;
10. The Respondent, Mitsubishi Motor Sales of Canada, Inc. ("**Mitsubishi Canada**"), is the Canadian subsidiary of Mitsubishi Motors Corporation, headquartered at BCE Place, Suite 4400, Bay Wellington Tower, 181 Bay Street, Toronto, Ontario, M5J 2T3;
11. Daimler A.G. and Mercedes-Benz Canada are hereinafter referred to collectively as "**Mercedes**";
12. Honda Japan, Honda USA, and Honda Canada are hereinafter referred to collectively as "**Honda**";
13. Mazda Japan and Mazda Canada are hereinafter referred to collectively as "**Mazda**";

14. Mitsubishi Japan and Mitsubishi Canada are hereinafter referred to collectively as **“Mitsubishi”**;
15. Each of Mercedes, Honda, Mazda, and Mitsubishi are hereinafter referred to as **“Respondent Groups”**;
16. The Respondent Groups are hereinafter referred to collectively as the **“Respondents”**;
17. The members of each Respondent Group shared the common purpose of designing, testing, manufacturing, marketing, sales, and distribution of the Class Vehicles in Canada;
18. The members of each Respondent Group acted in concert with each other in an organized and coordinated fashion;
19. The members of each Respondent Group were a part of one worldwide corporate entity acting together and in common ways;
20. The members of each Respondent Group created and executed a common business plan to manufacture and sell their vehicles in Quebec, in Canada, and throughout the world;
21. The business and interests of the each Respondent Group are inextricably interwoven, therefore, all members of each Respondent Group are solidarily liable for the acts and omissions of the other;
22. Neither the Petitioner nor Class Members could reasonably be expected to know which of the Respondents has committed which individual wrong because the members of each and every Respondent Group work secretly and collectively but each is responsible for the wrongdoing of the other;

General Facts:

23. At all material times, the Respondents tested, manufactured, marketed, sold,

distributed the Class Vehicles;

24. The Respondents marketed their diesel-powered cars, as being better for the environment than gasoline-fueled cars;
25. The Respondents made representations to the Petitioner, to the Class, and to government regulatory bodies as to the cleanliness and emissions levels of the Class Vehicles which it knew or ought to have known were incorrect, deceptive, and misleading;
26. The Class Vehicles are incapable of meeting the emissions levels required to pass the applicable regulatory tests;
27. Studies have established that in order to pass regulatory tests and to be able to make claims with respect to the cleanliness of their vehicles, car manufacturers including Respondents employ techniques to manipulate, in their favour, the results of emissions testing, hence deceiving third parties including Class Members into believing the Class Vehicles were cleaner than they actually are;
28. Such techniques have included, for certain car manufacturers, the use of “defeat devices” which senses whether the vehicle was presently subject to an emissions test, by tracking various parameters. If the “defeat device” determined that an emissions test was underway, the vehicles’ computer would adjust its operational parameters to produce more favourable emissions readings.
29. During regular driving, a higher-performing calibration would be used, boosting the car’s performance, and resulting in emissions levels that were much higher than testing would suggest;
30. Other common means car manufacturers use to manipulate tests emissions include but are not limited to: disconnecting the alternator, optimising the engine controls, careful lubrication and use of special lubricants, altering wheel alignment, fitting special tires with a lower rolling resistance, overinflating the tires, using higher gears, programming the rolling road with the minimum weight or inertia class, optimizing the

test drive and ambient conditions, declaring lower results than the actual test results.

31. Alternatively, during regular driving, the emissions of the Class Vehicles were materially higher than reported during testing and reported to the public, including Class Members;
32. The Petitioner and Group Members generally could not have known of deception foisted upon them by the use of said manipulation techniques, as no physical or operational difference could be seen or observed during ordinary driving of the cars;
33. Though it is not yet established that the Respondents used defeat devices, some vehicle manufacturers have admitted and acknowledged the use of defeat devices and techniques, and studies have shown a growing gap between the Respondents' testing and real-world emissions, calling into question the conduct of those manufacturers and the industry as a whole, including that of the Respondents;
34. The U.S. Environmental Protection Agency has been conducting a diesel emissions probe into the vehicles of several manufacturers, including those of the Respondents.
35. Controversy over the accuracy of emissions testing of diesel-powered automobiles has drawn significant media attention, and the credibility of the Respondents in the marketplace has been negatively impacted as a result;

### **FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

36. The Petitioner, 9225-3509 Québec Inc., is a legal person having its principal place of business at [REDACTED];
37. Also known by the name of Montreal Best Renovators Inc., the Petitioner is a residential renovation company presided by Mr. Mihai Bogdan Roman, a resident of Quebec;
38. In or around September 2013, the Petitioner purchased a 2005 Mercedes-Benz

Dodge-branded diesel Sprinter;

39. In or around September 2014, the Petitioner purchased a second 2005 diesel Sprinter;

40. In August 2015, Petitioner purchased two additional diesel Sprinters, a 2008 Dodge-branded model and a 2011 Mercedes-Benz model (the “**Petitioner’s Vehicles**”);

41. Petitioner very recently sold the two 2005 Sprinters in order to reduce his losses in light of the investigations into the recent diesel emissions scandal;

42. The Petitioner purchased the diesel models, paying a premium, because he was misled into believing that they would be more environmentally-friendly and have fuel-economy figures as claimed by Mercedes-Benz;

43. The Petitioner did not know, and could not have known, that the claims of the Respondents regarding the Petitioner’s Vehicles’ environmental impact and fuel economy were incorrect;

44. The Petitioner would not have bought the vehicles had he known that the claims of the Respondents regarding the vehicles’ environmental impact and/or fuel economy were incorrect;

45. The Petitioner is aware that the negative press and publicity that the Respondents are receiving over emissions testing manipulation will decrease the value of his Vehicles and make it more difficult for him to sell his Vehicles in the future;

46. The Petitioner is dissatisfied with the quality of the Petitioner’s Vehicles as purchased;

47. Had the Petitioner known the truth regarding the Petitioner’s Vehicles’ environmental impact and fuel economy, he would not have paid the price he did for the vehicles;

48. The damages suffered by the Petitioner are a direct and proximate result of the Respondents’ conduct;

49. As a consequence of the foregoing, the Petitioner is justified in claiming damages;



**FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

50. Every Member of the Group owns, leases or otherwise possesses one of the motor vehicles comprised in the Class Vehicles;
51. Each Member of the Group is justified in claiming at least one or more of the following from one or more of the Respondent Groups:
- a) Resiliation of the sale or lease of the Vehicle and reimbursement of the purchase price or lease amounts paid, including but not limited to taxes, license and registration fees, security deposit, down payment, etc., or subsidiarily, damages for the diminished value (or resale value) of the Class Vehicles;
  - b) Damages for the premium paid in order to have the diesel model;
  - c) Damages for the costs associated with the defects or repairs to the Class Vehicles;
  - d) Damages for loss of use and enjoyment of their Class Vehicles;
  - e) Damages for trouble, inconvenience and loss of time;
  - f) Damages for anxiety and fear;
  - g) Punitive and/or exemplary damages;
52. All of these damages to the Group Members are a direct and proximate result of the conduct of one or more of the Respondent Groups;

**CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

**The composition of the group makes the application of Article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below:**

53. The number of persons included in the Group is estimated to be in the thousands, although the Petitioner does not know the full extent of the size of the Group;

54. The names and addresses of all persons included in the Group are not known to the Petitioner but are known to the Respondents;
55. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against the Respondents. Even if the Group Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the Court system;
56. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Class to obtain mandates and to join them in one action;
57. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Group to effectively pursue their respective rights and have access to justice;

**The questions of fact and law which are identical, similar, or related with respect to each of the Class Members:**

58. The recourses of the Group Members raise identical, similar or related questions of fact or law, namely:
  - a) Is there a latent defect in the Class Vehicles?
  - b) Did the Respondents make misleading representations relating to the environmental friendliness and emissions of the Class Vehicles?
  - c) Did the Respondents know or should the Respondents have known about these defects affecting the Class Vehicles?

- d) Did the Respondents fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or leased the Class Vehicles, or thereafter?
  - e) Have the Group Members suffered damages as a result of the defects in question?
  - f) Are the Respondents liable to pay compensatory damages to Group Members stemming from the defects?
  - g) What are the categories of damages for which the Respondents are responsible to pay to Group Members, and in what amount?
  - h) Are Respondents liable to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?
59. Notwithstanding the existence of four distinct Respondent Groups, the primary issues of law with respect to claims by Group Members from each of the Respondent Groups will be similar, if not identical;
60. The interests of justice favour that this motion be granted in accordance with its conclusions;

**NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

61. The action that the Petitioner wishes to institute for the benefit of the members of the Class is an action in damages for latent defect;
62. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

**GRANT** Plaintiff's action against Defendants;

**DECLARE** that the Defendants made misleading representations relating to the emissions of the named vehicles;

**DECLARE** that the misleading representations constituted a fault;

**DECLARE** that the Defendants are liable for the misleading representations;

**ORDER** the rescission of the sale or lease of the Class Vehicles purchased or leased by the Class Members;

**ORDER and CONDEMN** Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Group Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Group Members equivalent to the amount of loss of resale value or diminished value of the Class Vehicle as a result of the existence and/or repair of the defect;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Class pursuant to s. 36 of the *Competition Act* and to s. 272 of the *Consumer Protection Act*, in such sum as the Court finds appropriate for all monetary losses;

**CONDEMN** Defendants to reimburse to the Group Members any costs or fees paid in relation to the defect or repair thereof;

**CONDEMN** Defendants to pay compensatory damages to the Group Members for the loss of use and enjoyment of the Class Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

**CONDEMN** Defendants to pay punitive and/or exemplary damages to the Group Members, to be determined by the Court;

**GRANT** the class action of Petitioner on behalf of all the Members of the Group;

**ORDER** the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

63. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a) Many Group Members, including the Petitioner, are domiciled in the District of Montreal;
  - b) Many of the Class Vehicles were purchased or leased by Class Members in District of the Montreal;
  - c) The Petitioner's counsel is domiciled in the District of Montreal;
64. The Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Group, since Petitioner:
- a) has owned four Mercedes Sprinter diesel vans (two 2005 models, a 2008 model and a 2011 model), which are affected by the defect alleged above, and is thus a Member of the Group;
  - b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;
  - c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;

- d) is ready and available to manage and direct the present action in the interest of the Group Members that the Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
- e) does not have interests that are antagonistic to those of other members of the Group;
- f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
- g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;

65. The present motion is well-founded in fact and in law;

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages;

**ASCRIBE** the Petitioner the status of representative of the persons included in the Group herein described as:

- All persons in Quebec who, since January 1, 2004, own or have owned, or lease or have leased, one or more Mazda, Honda, or Mercedes-Benz vehicles equipped with diesel engines

(hereinafter, referred to as “**Class Vehicles**” or “**Subject Vehicles**”)

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Is there a latent defect in the Class Vehicles?
- b) Did the Respondents make misleading representations relating to the emissions of the Class Vehicles?
- c) Did the Respondents know or should the Respondents have known about these defects affecting the Class Vehicles?
- d) Did the Respondents fail, refuse or neglect to adequately disclose the defect to consumers before they purchased or leased the Class Vehicles, or thereafter?
- e) Have the Group Members suffered damages as a result of the defect in question?
- f) Are the Respondents liable to pay compensatory damages to Group Members stemming from the defect?
- g) What are the categories of damages for which the Respondents are responsible to pay to Group Members, and in what amount?
- h) Are Respondents liable to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**DECLARE** that the Defendants made misleading representations relating to the emissions of the named vehicles;

**DECLARE** that the misleading representations constituted a fault;

**DECLARE** that the Defendants are liable for the misleading representations;

**ORDER** the rescission of the sale or lease of the Class Vehicles purchased or leased by the Class Members;

**ORDER and CONDEMN** Defendants to reimburse the purchase price or lease amounts paid by the Class Members, and any other amounts paid by Group Members in connection with the purchase or lease, plus interest as well the additional indemnity since the date of purchase or lease;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Group Members equivalent to the amount of loss of resale value or diminished value of the Class Vehicle as a result of the existence and/or repair of the defect;

**OR SUBSIDIARILY, CONDEMN** Defendants to pay damages to the Class pursuant to s. 36 of the *Competition Act* and to s. 272 of the *Consumer Protection Act*, in such sum as the Court finds appropriate for all monetary losses;

**CONDEMN** Defendants to reimburse to the Group Members any costs or fees paid in relation to the defect or repair thereof;

**CONDEMN** Defendants to pay compensatory damages to the Group Members for the loss of use and enjoyment of the Class Vehicles, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

**CONDEMN** Defendants to pay punitive and/or exemplary damages to the Group Members, to be determined by the Court;

**GRANT** the class action of Petitioner on behalf of all the Members of the Group;

**ORDER** the treatment of individual claims of each Member of the Group in



accordance with articles 1037 to 1040 C.C.P.;

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

**THE WHOLE** with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

**DECLARE** that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

**ORDER** the publication of a notice to the Members of the Group in accordance with Article 1006 C.C.P.;

**THE WHOLE** with costs to follow.

**MONTREAL, October 09, 2015**

*(S) MERCHANT LAW GROUP LLP*

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**MERCHANT LAW GROUP LLP**

Attorneys for the Petitioner