

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

No. _____
Vancouver Registry

FEB 01 2021

In the Supreme Court of British Columbia

Between



TREVOR STONE

Plaintiff

and

**DR. ING. H.C. F. PORSCHE AG, PORSCHE CARS
CANADA, LTD., and VOLKSWAGEN AG**

Defendants

BROUGHT UNDER THE CLASS PROCEEDINGS ACT RSBC 1996, C. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

Overview

1. This case exposes another emissions and fuel-economy cheating scheme within the Volkswagen corporate family. The plaintiff alleges the defendants fraudulently manipulated regulatory testing results for Porsche-branded vehicles sold in Canada, causing those vehicles to emit more pollution and obtain worse fuel economy on the road than in regulatory testing. The plaintiff seeks to bring a class proceeding on his own behalf, and on behalf of the Class Members, to recover damages caused by the defendants' deceitful conduct.

The Plaintiff and the Class

2. This action is brought on behalf of members of the class (the "**Class Members**"), consisting of the plaintiff and all residents of Canada who purchased or leased a

model year 2007 – 2017 Porsche-branded gasoline vehicle sold in Canada (the “**Class Vehicles**”), except for authorized Porsche new car dealerships.

3. The plaintiff, Dr. Trevor Stone, a resident of Vancouver, British Columbia, purchased a used 2011 Porsche Cayman S in British Columbia in September 2012 from Weissach Performance Ltd. The Class Vehicle is equipped with Sport Plus mode. The plaintiff decided to purchase the Class Vehicle based in part on Porsche’s representations regarding the vehicle’s fuel economy, emissions, and/or performance. At the time of purchase, the plaintiff did not know that the Class Vehicle was designed to deceive regulators and the public, that its advertised fuel economy was fraudulent and overstated, and that it emitted more pollutants than represented. The plaintiff has also paid more for fuel during his possession of the vehicle than he would have had it achieved the represented fuel economy.

The Defendants

4. Volkswagen AG (“**VW AG**”) is a German corporation with its principal place of business in Wolfsburg, Germany. VW AG is one of the largest automobile manufacturers in the world, and is in the business of designing, developing, manufacturing, and selling automobiles. VW AG is the parent corporation of Porsche AG. VW AG reviewed and approved Porsche’s vehicle designs, testing strategies, and marketing materials, including the Class Vehicles. VW AG is jointly and severally liable for the liability of the other defendants.
5. Dr. Ing. h.c.F. Porsche AG (“**Porsche AG**”) is a German corporation with its principal place of business located in Stuttgart, Germany. Porsche AG designs, develops, manufactures, and sells luxury automobiles. Porsche AG is a wholly-owned subsidiary of the defendant Volkswagen AG. Porsche AG engineered, designed, developed, manufactured, and installed the software on the Class Vehicles and exported these vehicles with the knowledge and understanding that they would be sold throughout Canada. Porsche AG also reviewed and approved the marketing and advertising campaigns designed to sell the Porsche-branded Class Vehicles.

6. Porsche Cars Canada, Ltd. ("**Porsche Canada**") is a Canadian corporation with a registered office at 150-165 Yorkland Blvd, Toronto, Ontario. Porsche Canada is a wholly-owned subsidiary of Porsche AG, and it engages in business, including the advertising, marketing and sale of Porsche automobiles, including Class Vehicles, in Canada.
7. The businesses of each of the defendants VW AG, Porsche AG and Porsche Canada are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, and sale of the Class Vehicles sold in Canada.
8. At all material times, including during the Class Period, VW AG, Porsche AG and Porsche Canada, acted pursuant to a common design to develop, manufacture, seek regulatory authorization for, market, and sell the Class Vehicles in Canada.

Canadian Emissions Laws, Regulations and Policies

9. The Class Vehicles and their engines are required to meet the regulations on vehicle and engine emissions set out in Title 40, Chapter 1, subchapter C, of the *Code of Federal Regulations of the United States* ("**CFR**"), and made under the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c.33, ("**CEPA**"), in the On-Road Vehicle and Engine Emission Regulations, SOR/2003-2 (the "**Emissions Standards**") in order to be sold, used or licensed in Canada. The Emissions Standards are closely aligned with those of the United States of America.
10. Vehicles and/or engines that have been issued a certificate of conformity ("**COC**") to U.S. federal standards by the United States Environmental Protection Agency (the "**EPA**") under Title 40, chapter 1, subchapter C, part 86 of the CFR, are eligible for sale and use in Canada as set out in the regulations under the CEPA.
11. At all material times, the defendants were required to comply with, and knew or should have known that the Class Vehicles were required to comply with Canadian law, regulations and policy with respect to Emissions Standards, including those

imposed pursuant to CEPA and the regulations thereto, and to Provincial and Territorial emissions legislation and regulations.

12. The defendants are prohibited from assembling, manufacturing, importing and/or selling into Canada vehicles, engines or equipment unless the Emissions Standards are met.

Nature of this Action

13. With respect to the Class Vehicles, the defendants engaged in an extensive scheme implemented with the common goal of artificially decreasing emissions test results and increasing fuel economy results to evade fleet-wide and vehicle-specific emissions regulations and to deceive the plaintiff and the Class Members about the true nature of the Class Vehicles. This scheme manifested in at least three ways, and affects thousands of Porsche vehicles sold in Canada. The three prongs of the scheme are as follows:

- (a) The defendants submitted materially different versions of the Class Vehicles for regulatory testing than those the defendants sold or leased to Class Members. The defendants physically altered the hardware (the gears connecting the drive shaft and rear axle) and manipulated the software in Class Vehicles used for regulatory testing so that the testing vehicles would emit fewer pollutants and be more fuel-efficient than the versions the defendants sold or leased to consumers (the "**Axle Ratio Fraud**").
- (b) The defendants installed secret software in the electronic control unit ("**ECU**") of Class Vehicles, causing them to perform differently in testing than on the road. During regulatory testing, the software caused the Class Vehicles to use less fuel and emit fewer emissions (including less CO₂). The software was de-activated under normal, on-road driving conditions, resulting in increased fuel consumption and emissions outside of testing conditions (the "**Testing Software Fraud**").

- (c) The defendants falsely attested to regulators that the Class Vehicles' high-performance driving mode, known as "Sport+" or "Sport Plus", met emissions requirements. The Sport Plus mode exceeded legal limits of certain pollutants, making vehicles with this feature illegal to import or sell in Canada (the "**Sport Plus Fraud**").

(collectively, the "**Frauds**")

Axle Ratio Fraud

14. The Axle Ratio Fraud involved submitting testing results to regulators from vehicles that differed in material ways from the production models Porsche ultimately sold and leased to consumers in Canada.
15. The ratio between the gears on the drive shaft and gears on the axle (in the differential) affects both the performance and fuel economy of a vehicle. Vehicles with a lower ratio can spin the axle, and propel the vehicle forward, at lower revolutions per minute ("**RPMS**"), using less gasoline and emitting fewer pollutants. Vehicles with a higher ratio can, under certain circumstances, achieve a sportier performance, but they do so at the expense of increased emissions and fuel consumption.
16. Porsche engineered specific vehicles for emissions and fuel economy testing that contained a different differential (a lower gear ratio) than the vehicles it mass produced and sold in Canada. The test-specific vehicles were less sporty, but emitted up to 8% less CO₂ and obtained correspondingly better fuel economy than the vehicles Porsche actually sold and leased to Canadian consumers.
17. The defendants' Axle Ratio Fraud was both deceptive and illegal. Vehicles used in regulatory testing must be materially identical to those sold to consumers. The EPA issued COCs for the vehicles as tested (which rendered the vehicles eligible for sale and use in Canada as set out in the regulations under the CEPA), and not as ultimately sold and leased to consumers.

18. The Class Vehicles affected by the Axle Ratio Fraud emitted more CO₂ and obtained worse fuel economy than represented.
19. Based on testing conducted in the United States, the Axle Ratio Fraud affects at least the following Class Vehicles: MY 2009-2016 Porsche Boxster and Boxster S; MY 2009-2016 Porsche Cayman and Cayman S; MY 2012 – 2016 Porsche 911 Carrera and 911 Carrera S; and MY 2010 – 2013 Porsche Panamera S.

Testing Software Fraud

20. Class Vehicles were equipped with secret software in the vehicles' ECUs that, in many calibrations, caused the vehicles to perform differently in a testing environment than in comparable real-world driving.
21. Porsche's special test mode was activated by certain entry and exit conditions. In certain calibrations, the test mode was designed to be activated for some or all of regulatory testing (during which the vehicle would use less fuel and emit less CO₂) and de-activated under normal, on-road driving conditions (resulting in increased fuel consumption and emissions).
22. Section 11(3) of the On-Road Vehicle and Engine Emission Regulations defines a "defeat device" as "an auxiliary emission control device that reduces the effectiveness of the emission control system under conditions that may reasonably be expected to be encountered in normal vehicle operation and use. Section 11(2) provides that no vehicle shall be equipped with a defeat device.
23. The Testing Software Fraud is a defeat device and is a violation of the On-Road Vehicle and Engine Emissions Regulations.

Sport Plus Fraud

24. Porsche offers consumers a variety of driving modes in its vehicles. Different modes allow the customers to customize their driving experience. The highest performing mode is the "Sport Plus" mode. Sport Plus mode is a standard feature on some Class Vehicles, and an optional configuration for others.

25. The ultra-high performance enabled by Sport Plus mode comes at the cost of higher emissions and greater fuel consumption. The pollutants emitted in Sport Plus mode exceed legal limits, making the vehicles unlawful to import or sell.
26. Vehicle manufactures are not always required to submit test cycle results for all of a vehicle's driving modes. However, manufacturers must attest to the EPA that each driving mode in every vehicle meets certification requirements before the vehicles are approved for importation and sale. This includes attesting that vehicles do not exceed the statutory limit for nitrogen oxides ("**NOx**") emissions in any driving mode.
27. Porsche attested to the EPA, and represented to consumers, that each of its gasoline vehicles complied with the statutory limits for emissions in every mode, including Sport Plus mode. This attestation was fraudulent.
28. Porsche's internal investigations have confirmed that when certain vehicles operate in Sport Plus mode, they emit pollutants, including NOx, in excess of legal limits.
29. Based on testing conducted in the United States, the Sport Plus Fraud affects at least the following Class Vehicles: MY 2013 Porsche Boxster / Cayman S; MY 2014 Porsche Panamera Turbo; MY 2015 Porsche 911 S; MY 2016 Porsche Cayenne GTS; and MY 2017 Porsche Cayenne S.

The Representations

30. The defendants made, approved, used, or authorized a number of consistent, common and uniform representations in, among other things, their written warranties, vehicle manuals, television, radio, internet and print/media advertising, websites, sales brochures, posters, dealership displays and other marketing materials in relation to the Class Vehicles.
31. Throughout the Class Period, the defendants represented, among other things, that:

- (a) the Class Vehicles met certain specified fuel economy ratings and that those ratings had been accurately reported to regulators and to the public;
- (b) the CO₂ ratings reported to the regulator for the Class Vehicles were accurate;
- (c) the Class Vehicles with Sport Plus mode met regulatory standards in Canada; and
- (d) the Class Vehicles provided a superior driving experience, including by virtue of their fuel economy and emissions.

(the "**Representations**").

- 32. The Representations were false and misleading, and were made intentionally.
- 33. The defendants knew, or ought to have known, that the Representations were false, or the defendants were otherwise reckless as to the truth of the Representations. The defendants ensured that regulators, the plaintiff and the Class would not discover that the Representations were false by actively concealing the Frauds.
- 34. The defendants made the Representations to induce individuals to purchase the Class Vehicles. The defendants knew the Representations would be important to the consumers who were deciding whether to purchase or lease the Class Vehicles.
- 35. The Class Members relied on the Representations in purchasing the Class Vehicles.
- 36. The Class Members had no way of knowing the Representations were false and misleading because they did not have access to the defendants' emissions certification test vehicles and the defendants' emissions-related hardware and software was extremely sophisticated technology. The Class Members did not and could not unravel the defendants' deception on their own.

Porsche was Aware of the Frauds

37. In or around September 2015, in the wake of the Volkswagen diesel scandal that involved cheating on regulatory testing, Porsche undertook a review of its gasoline fleet to determine whether these vehicles had also been involved in emissions cheating. This review revealed that Porsche had been engaging in the Frauds for years.
38. In or around November 2015, if not before, Porsche engineers explained the Frauds to Porsche's senior management. Porsche did not disclose the cheating to regulators. Instead, Porsche:
- (a) actively concealed the Frauds;
 - (b) continued to perpetuate the Frauds;
 - (c) undertook an extensive marketing campaign for the Class Vehicles that, in addition to the Representations, contained claims regarding the Class Vehicles' environmental impact that Porsche knew or ought to have known were false or misleading; and
 - (d) sold and leased non-compliant Class Vehicles to consumers in Canada without disclosing the Frauds.

The Defendants Conspired to Commit the Frauds

39. The defendants and others, including their officers, directors, agents and co-conspirators that are known to the defendants but unknown to the plaintiff, conspired among themselves, in Germany, the United States and Canada to:
- (a) intentionally perpetrate the Axle Ratio Fraud, the Testing Software Fraud and the Sport Plus Fraud;
 - (b) coordinate a strategy to conceal the Frauds, despite having knowledge of the Frauds since at least 2015;

- (c) make the Representations to mislead Canadian consumers and Regulators; and
 - (d) coordinate a marketing strategy to further mislead the Class about the environmental effects and regulatory compliance of the Class Vehicles.
40. The defendants' predominant motivation and purpose was a desire to mislead the Class Members and regulators. The defendants intended to cause harm to the plaintiff and the Class Members and to thereby enrich themselves.
41. To carry out the conspiracy, the defendants acted in concert with one another and each directed their own and each others' agents and employees to knowingly or unknowingly carry out unlawful and wrongful acts in order to circumvent emissions standards and deceive regulators.
42. The defendants all formed one group of companies with coordinated design, manufacturing, engineering, marketing, distribution and regulatory compliance for Porsche-branded vehicles, including the Class Vehicles.
43. Senior employees of the defendants corresponded through telephone conversations, emails, reports and in-person meetings in Canada, the United States, Germany and elsewhere to implement the Axle Ratio, Testing Software and Sport Plus Frauds.
44. The defendants knew that the Class Members would not pay the selling price for the Class Vehicles if the Class Members were aware of their fraudulent conduct. The purpose and result of the conspiracy was to deceive the plaintiff and Class Members and cause them to purchase the Class Vehicles at an inflated price and to thereby increase the defendants' profits at the expense of the Class Members. The defendants knew or ought to have known that the Class Members would be injured by the conspiracy.
45. As a result of the defendants' conduct, the Class Members suffered damages.

Investigation by German Motor Transportation Authority

46. In or around June 2020, a whistleblower at Porsche reported at least one suspected defeat device in certain Porsche gasoline vehicles through an internal reporting system. While the defendants had prior knowledge of the conduct described above, the defendants only reported their findings to the German Motor Transportation Authority (the "KBA") and the EPA following the whistleblower's report.
47. In or around August 2020, the KBA announced it had opened an investigation into the defendants' conduct. The Stuttgart public prosecutor has also opened a criminal investigation.

Porsche was Unjustly Enriched at the Class Members' Expense

48. The defendants have been unjustly enriched as a result of Class Members paying increased prices for the Class Vehicles due to the Representations.
49. The plaintiff and other Class Members have suffered a corresponding deprivation by paying more money for the Class Vehicles than they would have if they had been aware of the defendants' fraudulent conduct and the fact that the Representations were false.
50. There is no juristic reason justifying the defendants' enrichment and the Class Members' corresponding deprivation. Any contract between the Class Members and the seller of a Class Vehicle is void as a result of the defendants' fraudulent conduct.
51. The Class Members are entitled to restitution and/or a disgorgement of profits as a result of the defendants' unjust enrichment.

Damages

52. The plaintiff and the Class Members have suffered damages and loss due to the defendants' conduct as described at paragraphs 13-51 above. Each Class Member has suffered lower fuel economy with respect to their Class Vehicle than

what was represented by the Defendants. As a result, Class Members have paid for greater amounts of fuel, at a higher cost than they would have had they purchased an alternative vehicle.

53. The Class Members have or will have lost time and suffered inconvenience and special damages.
54. The Class Members' damages were sustained in British Columbia and in the rest of Canada.

PART 2: RELIEF SOUGHT

55. The plaintiff, on his own behalf, and on behalf of the Class Members, claims against the defendants for:
 - (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff;
 - (b) a declaration that the defendants, and each of them, made false representations as alleged;
 - (c) a declaration that the defendants, and each of them, knew that the representations were false, or alternatively that the defendants, and each of them, were reckless as to whether the representations were true or false;
 - (d) general damages for fraudulent and/or negligent misrepresentation and conspiracy;
 - (e) a declaration that the defendants committed deceptive acts or practices contrary to the *Business Practice and Consumer Protection Act*, S.B.C. 2004, c. 2 ("**BPCPA**") and similar provisions under the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A; *Consumer Protection Act*, CQLR c P-40.1; *Consumer Protection Act*, RSA 2000, c C-26.3; *The Business Practices Act*, CCSM c B120; *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *Business Practices Act*, RSPEI 1988, c B-7, and,

The Consumer Protection and Business Practices Act, SS 2013, c C-30.2 (collectively the “**Equivalent Consumer Protection Statutes**”);

- (f) a permanent injunction pursuant to s. 172(1)(b) of the *BPCPA* and Equivalent Consumer Protection Statutes restraining the defendants from engaging or attempting to engage in the deceptive acts or practices;
- (g) an order directing the defendants to advertise any adverse findings against them pursuant to s. 172(3)(c) of the *BPCPA* and Equivalent Consumer Protection Statutes;
- (h) damages pursuant to s. 171 of the *BPCPA* and Equivalent Consumer Protection Statutes;
- (i) a declaration that the defendants are in breach of s. 52 of the *Competition Act*, R.S.C. 1985, c. C-34;
- (j) damages and investigation costs pursuant to s. 36 of the *Competition Act*;
- (k) a declaration that the defendants breached the express and/or implied warranties in relation to the Class Vehicles;
- (l) general damages for breach of warranty;
- (m) a declaration that the defendants have each been unjustly enriched by the receipt of the increased prices on the sale of Class Vehicles;
- (n) an accounting, disgorgement and restitution;
- (o) special damages;
- (p) punitive damages;
- (q) the costs of administration of a plan of distribution of the recovery in this action and notice pursuant to the *Class Proceedings Act*, RSBC 1996, c.50, plus applicable taxes;

- (r) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and
- (s) such further and other relief as to this Honourable Court may seem just.

PART 3: LEGAL BASIS

Fraudulent Misrepresentation

- 56. The defendants made the Representations to the plaintiff and the Class Members as the core of a uniform and consistent sales, advertising and marketing campaign.
- 57. The defendants made the Representations despite knowing that the Representations were false. Alternatively, the defendants were reckless as to whether the Representations were true or false.
- 58. The Representations were untrue, inaccurate and misleading.
- 59. The plaintiff and the Class Members relied on the Representations when they purchased their Class Vehicles.
- 60. The Representations were intended to be and were capable of being relied upon and it was reasonable for the plaintiff and other Class Members to rely upon the Representations when they purchased their Class Vehicles.
- 61. The Class Members' reliance on the Representations is established, among other things, by their purchase or lease of the Class Vehicles. If the Class Members had known that the Representations were false, they would not have purchased or leased the Class Vehicles, or alternatively, they would have paid less for the Class Vehicles.
- 62. The plaintiff and the Class Members' reliance on the Representations caused them to suffer damages as described above.

Breach of Consumer Protection Laws

- 63. The plaintiff and the defendants are located in British Columbia for the purposes of the *BCPCA*. The plaintiff is a consumer, the defendants are suppliers, and the

sale or lease of the Class Vehicles are consumer transactions for the purposes of the *BCPCA*.

64. The Class Members in British Columbia who purchased or leased Class Vehicles for personal, family or household purposes are consumers for the purposes of the *BCPCA*.
65. The Class Members resident in Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Prince Edward Island, and Newfoundland and Labrador, who purchased or leased the Class Vehicles for personal, family or household purposes and/or not for resale or for the purpose of carrying on business (as those concepts apply in the various Provinces), are consumers located in those provinces for the purposes of the Equivalent Consumer Protection Statutes.
66. The defendants carried on business in those Provinces and were, among other things, suppliers for the purposes of the Equivalent Consumer Protection Statutes.
67. The Representations constituted unfair, unconscionable and/or otherwise prohibited practices under the *BCPCA* and Equivalent Consumer Protection Statutes, given that, among other things, the defendants knew, or ought to have known, that:
 - (a) the Representations were false, misleading and deceptive;
 - (b) Class Vehicles did not have the performance characteristics, uses, benefits or qualities as set out in the Representations;
 - (c) Class Vehicles were not of the particular standard, quality or grade as set out in the Representations;
 - (d) the Representations used exaggeration, innuendo and/or ambiguity as to a material fact and failed to state a material fact in respect of the Class Vehicles;

- (e) the price for the Class Vehicles grossly exceeded the price at which similar vehicles were readily available to like consumers;
 - (f) the Class Members were unable to receive all expected benefits from the Class Vehicles;
 - (g) the consumer transactions were excessively one-sided in favour of the defendants;
 - (h) the terms of the consumer transactions were so adverse to the Class Members as to be inequitable; and/or
 - (i) because of such further conduct concealed by the defendants and unknown to the plaintiff.
68. The Representations were made on or before the plaintiffs and other Class Members entered into the agreements to purchase the Class Vehicles.
69. The plaintiff and Class Members seek an interim and a permanent injunction pursuant to s. 172(1)(b) of the *BPCPA* and Equivalent Consumer Protection Statutes restraining defendants from engaging or attempting to engage in the deceptive acts or practices described above.
70. The plaintiff and Class Members suffered damages because of the defendants' acts or practices and seek damages pursuant to s. 171 of the *BCPCA* and Equivalent Consumer Protection Statutes.
71. The plaintiff and Class Members seek an order pursuant to s.172(3)(c) of the *BPCPA* and Equivalent Consumer Protection Statutes requiring the defendants to advertise to the public the particulars of any judgment, declaration, order or injunction against it in this action on terms and conditions the court considers reasonable and just.

Breach of s.52 the Competition Act

72. The defendants breached s. 52 of the *Competition Act*, because the Representations:
- (a) were made for the purpose of promoting the defendants' business interests;
 - (b) were made to the public;
 - (c) were false and misleading in a material respect.
73. As a result of the defendants' breach of s. 52 of the *Competition Act*, the plaintiff and Class Members suffered damages.
74. The plaintiff and Class Members seek to recover those damages, as well as their costs of investigation, pursuant to s. 36 of the *Competition Act*.

Breach of Warranty

75. The defendants provided a warranty for four-years or 80,000 km (whichever comes first) on all new Class Vehicles. The warranty covers emissions repairs. The Class Vehicles share a common design defect in that they emit more pollution and consume more fuel than disclosed to regulators and consumers. The defendants are in breach of the manufacturer's warranty for failing to repair the Class Vehicles owned or leased by the plaintiff and the other Class Members in order to meet the warranted levels of emissions, performance and fuel economy.

Conspiracy

76. The defendants and others, including their officers, directors, agents and co-conspirators that are known to the defendants but unknown to the plaintiff, conspired among themselves, in Germany, the United States and Canada to:
- (a) intentionally perpetrate the Axle Ratio Fraud, the Testing Software Fraud and the Sport Plus Fraud;

- (b) coordinate a strategy to conceal the Frauds, despite having knowledge of the Frauds since at least 2015;
 - (c) make the Representations to mislead Canadian consumers and Regulators; and
 - (d) coordinate a marketing strategy to further mislead the Class about the environmental effects and regulatory compliance of the Class Vehicles.
77. The defendants' predominant motivation and purpose was a desire to mislead the Class Members and regulators. The defendants intended to cause harm to the plaintiff and the Class Members and to thereby enrich themselves.
78. To carry out the conspiracy, the defendants acted in concert with one another and each directed their own and each others' agents and employees to knowingly or unknowingly carry out unlawful and wrongful acts in order to circumvent emissions standards and deceive regulators. The defendants' unlawful conduct was intended to increase the defendants' profits and the defendants' knew that their unlawful conduct would cause harm to the Class Members.
79. The defendants all formed one group of companies with coordinated design, manufacturing, engineering, marketing, distribution and regulatory compliance for Porsche branded vehicles, including the Class Vehicles.
80. Senior employees of the defendants corresponded through telephone conversations, emails, reports and in-person meetings in Canada, the United States, Germany and elsewhere to implement the Axle Ratio, Testing Software and Sport Plus Frauds.
81. The defendants knew that the Class Members would not pay the selling price for the Class Vehicles if the Class Members were aware of their fraudulent conduct. The purpose and result of the conspiracy was to deceive the plaintiff and Class Members into purchasing the Class Vehicles at an inflated price and to thereby increase the defendants' profits at the expense of the Class Members. The

defendants knew or ought to have known that the Class Members would be injured by the conspiracy.

82. As a result of the defendants' conduct, the Class Members suffered damages.

Unjust Enrichment

83. Further, and in the alternative, the defendants have been unjustly enriched as a result of Class Members paying increased prices for the Class Vehicles due to the Representations.

84. The plaintiff and other Class Members have suffered a corresponding deprivation by paying more money for the Class Vehicles than they would have if they had been aware of the defendants' fraudulent conduct and the fact that the Representations were false.

85. There is no juristic reason justifying the defendants' enrichment and the Class Members' corresponding deprivation.

86. The Class Members are entitled to restitution and/or a disgorgement of profits as a result of the defendants' unjust enrichment.

Fraudulent Concealment

87. The defendants intentionally and fraudulently concealed the existence of their unlawful conduct from the public, including the plaintiff and the Class Members. The affirmative acts of the defendants were fraudulently concealed and carried out in a manner that precluded detection.

88. Because the defendants' conduct was kept secret, the plaintiff and the Class Members were unaware of the defendants' unlawful conduct.

Punitive Damages

89. The plaintiff asserts that the defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the plaintiff's rights and the rights of the Class Members,

and as such renders the defendants liable to pay aggravated and punitive damages.

Plaintiff's address for service:

CAMP FIORANTE MATTHEWS MOGERMAN LLP

#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555

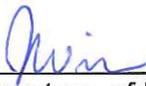
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 01/FEB/2021



Signature of lawyer
for plaintiff

Reidar Mogerman Q.C.

TO: PORSCHE CARS CANADA, LTD.
150-165 Yorkland Blvd
Toronto, Ontario

AND TO: VOLKSWAGEN AG,
Berliner Ring 2
Wolfsburg, 38440
Germany

AND TO: DR. ING. H.C. F. PORSCHE AG
Porscheplatz 1
D – 70435 Stuttgart
Germany

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The plaintiff, Dr. Trevor Stone, claims the right to serve this pleading on the defendants outside British Columbia, on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding, and the plaintiff and other Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003 Ch. 28 (the “**CJPTA**”) in respect of these defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to ss.10 (f) –(i) *CJPTA* because this proceeding:

- (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (g) concerns a tort committed in British Columbia; and
- (h) concerns a business carried on in British Columbia.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

The defendants knowingly made false representations to the class members about the emissions, performance and fuel economy of the Class Vehicles, which representations caused the class members to suffer damages. Further, the defendants participated in supplying and promoting Class Vehicles to consumers for purposes that were primarily personal, family or household. During the class period the defendants engaged in deceptive acts or practices in the supply, solicitation, offer, advertisement and promotion of the Class Vehicles contrary to provincial consumer protection legislation causing loss to the class members. Further, the defendants' representations were in breach of s. 52 of the *Competition Act* and caused loss to the class members which is recoverable under s. 36 *Competition Act*. Further, the defendants breached warranties to the class members thereby causing loss and damage.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

THIS CLAIM INVOLVES:

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

1. *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2;

2. *Competition Act*, RSC 1985, c 34;

3. *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003, c 28;
4. *Class Proceedings Act*, RSBC 1996, c.50;
5. *Consumer Protection Act*, 2002, S.O. 2002, c. 30, as amended, and the regulations thereto, sections 2, 5, 9(1), 9(2), 14, 15, 16, 17, 18, and 19;
6. *Fair Trading Act*, R.S.A. 2000, c. F-2 as amended, and the regulations thereto, sections 5, 6, 7, 7.2, 7.3, and 13;
7. *The Business Practices Act*, C.C.S.M. c. B120 as amended, and the regulations thereto, sections 2, 3, 4, 5, 6, 8, and 23;
8. *Trade Practices Act*, R.S.N.L 1990, c T-7 as amended, and the regulations thereto, sections 5, 6, 7, and 14;
9. *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31. 1 as amended, and the regulations thereto, sections 7, 8, 9, and 10;
10. *Consumer Protection Act*, C.Q.L.R. c. P-40.1 as amended, and the regulations thereto, sections 215,218,219,220,221,222,228,239,252,253,271, and 272;
11. *The Consumer Protection Act*, S.S. 1996, c. C-30.1 as amended, and the regulations thereto, sections 5, 6, 7, 8, 14, and 16;
12. *The Consumer Protection and Business Practices Act*, S.S. 2014, c. C-30.2 as amended, and the regulations thereto, sections 2, 4, 6-16, 19-22, 24-33, 36, 37, 39, 91 and 93;
13. *Business Practices Act*, RSPEI 1988, c B-7, as amended, and the regulations thereto, sections 1, 2, 3 and 4;
14. *Canadian Environmental Protection Act*, 1999, S.C. 1999, c.33; and
15. *The Consumer Protection Act*, RSNS 1989, c. 92 as amended, and the regulations thereto, section 28.