

Original filed August 8, 2023  
Amended pursuant to Rule 6-1(1)(a)



No. S-235551  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between

**FREDERICK MARK ROWAN**

Plaintiff

and

**MERCEDES-BENZ GROUP AG and MERCEDES-BENZ  
CANADA INC.**

Defendants

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

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**AMENDED NOTICE OF CIVIL CLAIM**

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This action has been started by the plaintiff(s) 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(s),

- (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**

### **Nature of the Action**

1. This action relates to defective rear subframes on certain vehicles designed, developed, engineered, manufactured, marketed, distributed, sold, and warranted by the defendants. The defects are dangerous safety defects in that

~~they~~the rear subframes and surrounding parts prematurely corrode from the inside out. The corrosion can result in a sudden and unexpected loss of control for the drivers of the vehicles, and reduces the crashworthiness of the vehicles, exposing the occupants of the vehicles to extreme risk of severe personal injury.

### **The Plaintiff and the Proposed Class**

2. The plaintiff, Frederick Mark Rowan, is a resident of West Vancouver, British Columbia, who purchased a used 2012 Mercedes-Benz C300 4-matic on August 10, 2015 in Port Coquitlam, British Columbia. The plaintiff decided to purchase his vehicle based in part on Mercedes-Benz's representations regarding the vehicle's safety, quality, and longevity. At the time of the purchase, the plaintiff was not aware of, warned, or given any notice from Mercedes-Benz of any dangerous defects, or the frailties of the rear-subframe. The plaintiff had no reasonable means of discovering the defects in the rear-subframe and relied upon representations as to safety and quality made by Mercedes-Benz.
3. The plaintiff brings this action on behalf of members of the class (the "Class Members" or the "Class") consisting of the plaintiff and all persons in Canada, except for authorized Mercedes-Benz new car dealerships, who purchased or leased a new or used Mercedes-Benz-branded vehicle of the following model years and classes:
  - (a) 2001-2022 Mercedes-Benz C-Class;
  - (b) 2010-2022 Mercedes-Benz E-Class;
  - (c) 2010-2015 Mercedes-Benz GLK-Class;
  - (d) 2010-2022 Mercedes-Benz CLS-Class;
  - (e) 2005-2022 Mercedes-Benz SLK/SLC-Class;
  - (f) 2016-2022 Mercedes-Benz GLC-Class;

(g) 2010-2022 Mercedes-Benz SL-Class;

(h) 2002-2010 Mercedes-Benz CLK-Class;

(the "Class Vehicles").

### **The Defendants**

4. Mercedes-Benz Group AG is a German corporation with its principal place of business in Stuttgart, Germany. Mercedes-Benz Group AG and its wholly owned subsidiaries designed, developed, engineered, manufactured, marketed, distributed, sold, and warranted the Class Vehicles.
5. Mercedes-Benz Canada Inc. is a federally incorporated company with its principal place of business in Toronto, Ontario. Mercedes-Benz Canada is a wholly-owned subsidiary of Mercedes-Benz Group AG. Mercedes-Benz Canada Inc. distributes the Class Vehicles in Canada. Mercedes-Benz Canada is also involved with providing input on the design, development, engineering, manufacture, marketing, distribution, and warranty of the Class Vehicles in Canada.
6. The business of each of Mercedes-Benz Group AG and Mercedes-Benz Canada Inc. is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the design, development, engineering, manufacture, marketing, distribution, and warranty of the Class Vehicles in Canada. At all material times, Mercedes-Benz Group AG and Mercedes-Benz Canada Inc. (collectively, "Mercedes") acted pursuant to a common design to design, develop, engineer, manufacture, market, distribute, and warrant the Class Vehicles in Canada.

### **Rear Subframes**

7. The Class Vehicles all have a rear subframe, which is an essential component of the vehicle.

8. The rear subframe, which is sometimes referred to as the suspension cross-member or the rear axle carrier, is an integral component of a vehicle's structure. It is located on the back undercarriage and spans the width of the vehicle, in-between the two rear wheels. It is physically connected by links (called control arms) to various components in the vehicle, such as suspension, [breaking](#) and steering components.
9. The rear subframe plays an important role in providing stability to the vehicle and safety to the drivers of the vehicle. Through the control arms, the rear subframe holds the rear suspension and the rear wheels to securely to the vehicle. Also, in a crash, the rear subframe helps to absorb the impact and channel the collision forces to the side of the vehicle not directly impacted.
10. [Rear subframes are not designed to be easily replaced. It is industry standard for rear subframes to last the full life of a vehicle.](#)
11. [Mercedes knew or ought to have known that the Class Vehicles – and their rear subframes and ancillary parts specifically – would be exposed to rain, salt, freezing temperatures and gravel through ordinary use. Mercedes knew or ought to have known that the Class Vehicles' subframes and ancillary parts would rust and corrode if they were not properly designed or manufactured, and that this would create a substantial likelihood of harm to Class Members.](#)

## **The Defects**

12. ~~40.~~ The rear subframes of the Class Vehicles have dangerous safety defects.
13. ~~41.~~ Mercedes did not properly protect the Class Vehicles, including the rear subframes [and ancillary parts](#), from [corrosion or](#) rust. In particular, Mercedes: [\(through its role in designing the Class Vehicles or its role in overseeing the manufacturing of the Class Vehicles' components\) failed to ensure the rear subframes and ancillary parts would be durable in normal, expected driving conditions. Because of Mercedes' failings, the Class Vehicles:](#)

- (a) ~~Failed to adequately coat them with a~~ were equipped with subframes that were not properly applied anti-corrosion agent galvanized; and
- (b) were equipped with rear subframes and other components that have an inadequate type or amount of anti-corrosion coating to withstand ordinary and expected use; and
- (c) ~~(b) Failed to design them with~~ were equipped with rear subframes that lack adequate drainage to prevent moisture from becoming trapped or pooling on or in the component

(the "Defects").

14. Additionally or in the alternative, Mercedes failed to exercise care when implementing or overseeing the manufacturing of the Class Vehicles' rear subframes and ancillary parts, resulting in the Defects. In particular, Mercedes:

- (a) Failed to maintain adequate quality control procedures;
- (b) Failed to adequately test or inspect the Class Vehicles' rear subframes and ancillary parts for quality and durability;
- (c) Failed to comply with industry standards or regulations regarding the quality and durability of the Class Vehicles' rear subframes and ancillary parts; and
- (d) Failed to properly investigate prior incidents and failures in the Class Vehicles related to the subframe and ancillary parts.

15. ~~12.~~ As a result of the Defects:

- (a) Water and salt collect on the interior of the rear subframes, prematurely corroding them from the inside out;
- (b) The rear subframes ~~(and the components on the underside of the Class Vehicles, ancillary parts~~ (including the brake lines, suspension springs,

exhaust system, gas lines, and rear axle) experience premature severe corrosion;

- (c) The structural integrity of the rear subframes (~~and the components on the underside of the Class Vehicles,~~ ancillary parts) (including the brake lines, suspension springs, exhaust system, gas lines, and rear axle) is compromised by corrosion, making them unstable and prone to failure;
- (d) The rear subframes (~~and the components on the underside of the Class Vehicles,~~ ancillary parts) (including the brake lines, suspension springs, exhaust system, gas lines, and rear axle) fail before the expected lifetime of the vehicle.

16. ~~13.~~ The Defects are dangerous safety defects that affect the drivability and crashworthiness of the Class Vehicles. They can result in a sudden and unexpected loss of control for the driver of the Class Vehicle, exposing the vehicle occupants to extreme and imminent risk of severe personal injury. The Defects also increase the likelihood that drivers and passengers will be injured in a collision by reducing the crashworthiness of the Class Vehicles. In particular:

- (a) Failure of the connection between the rear subframe and the suspension components results in a loss of control of the vehicle and an inability to bring the vehicle to a safe stop;
- (b) Failure of the control arms can lead to loss of vehicle handling and drivability;
- (c) Failure of the control arms that are near other components such as the wheels, gas tank, or torsion bar can cause serious, hazardous damage to those components;
- (d) Failure of the rear subframe can cause the vehicle to suddenly veer to one side or fishtail ~~and lose,~~ resulting in a loss of control;

- (e) Corrosion of the rear subframe renders it unable to absorb and evenly distribute forces from impact in the event of a crash; and
- (f) Corrosion of the brake lines, suspension springs, exhaust system, gas lines, and/or rear axle can result in loss of control.

### The Defects Create an Imminent Risk of Harm

17. Because of the Defects, the subframes and ancillary parts in all Class Vehicles experience premature severe corrosion that is difficult to detect before they fail.

18. ~~14.~~ The ~~Defects are difficult to detect.~~ The rear subframe is made of tubular carbon steel and is mounted underneath the vehicle. Due to the design of the subframes, the rust or corrosion begins on the inside of the subframe, which means it is not detectable on visual inspection unless the subframe is removed. As a result, corrosion does not appear on the exterior until the rear subframe is ~~close to failure~~ unable to properly perform its safety role in a collision and can fail under normal driving conditions, for example if the driver brakes sharply. Furthermore, the vehicle underbody shields also ~~block~~ blocks portions of the subframe and ancillary parts from view, creating another barrier to detection.

19. Mercedes has not implemented an adequate inspection process that allows dealerships or mechanics to reliably detect and monitor the Defects before they become dangerous.

### **Mercedes' Knowledge of Defects**

20. ~~15.~~ Mercedes was aware, or should have been aware, of the Defects based on the following:

- (a) Pre-release design, manufacturing, engineering, and testing data, including weathering tests, corrosion tests, and a soap test, that was performed or ought to have been performed;

- (b) Data gathered from dealers indicating a large number of subframe repairs;
- (c) The large number of replacement rear subframes being ordered; and
- (d) Consumer complaints.

21. ~~16.~~ Mercedes demonstrated their awareness of the Defects through the following:

- (a) Service centre employees who encounter the Defects while working on Class Vehicles;
- (b) Service bulletins sent to dealerships advising service technicians of potential rear subframe corrosion;
- (c) Acknowledging complaints regarding the Defects in statements to automobile magazines;
- (d) Statements put out by foreign regulatory bodies for motor vehicles, including Germany's Kraftfahrt-Bundesamt; ~~and~~
- (e) Rear subframe warranty extensions in the United States covering certain Class Vehicles; and
- (f) Service information directing mechanics to treat new subframes with an anti-corrosion agent before replacing them.

22. It was feasible to design or manufacture the Class Vehicles without the Defects. For example, the defendants could have used different coatings or a different coating technique, or the steel used for the subframe could have been galvanized.

## Representations

23. ~~17.~~ Mercedes markets the Class Vehicles to purchasers via nationwide multimedia advertising campaigns on television, the internet, billboards, print publications, and through other mass media. Specifically, Mercedes' advertisements and marketing material contain representations that:

- (a) The Class Vehicles are reliable;
- (b) The Class Vehicles are fit for the purpose of transportation;
- (c) Mercedes is committed to safety;
- (d) The Class Vehicles are extremely safe and cars you can trust;
- (e) The Class Vehicles are free from Defects;
- (f) Mercedes applies stringent internal safety standards;
- (g) Mercedes engineers are able to detect and eliminate any possible weak points in the Class Vehicles;
- (h) Mercedes is doing everything possible to make the Class Vehicles safer;
- (i) Mercedes' design and manufacturing complies with all laws and rating requirements;
- (j) Mercedes' design and use of materials in the Class Vehicles ensures quality and longevity;
- (k) The Class Vehicles are manufactured with technology to prevent corrosion; and
- (l) The Class Vehicles are designed with effective corrosion protection for a long vehicle life

(the “Representations”).

24. ~~18.~~ In its marketing, Mercedes omitted and concealed material facts relating to the intrinsic quality of the Class Vehicles. In particular, notwithstanding the Representations, the Class Vehicles suffered from dangerous safety Defects which Mercedes was aware of, or should have been aware of, and Mercedes did not take adequate steps to fix the Defects or inform Class Members about the Defects. The Representations were untrue, inaccurate, and misleading. However, Mercedes continued to make the Representations, and manufacture and sell the Class Vehicles, while concealing the serious safety and reliability impacts of the Defects.

### Repairs

25. Rear subframes are not designed to be easily replaced. Removing a rear subframe undermines the integrity of the attached parts, which includes critical components such as the rear brake lines. Replacing a rear subframe results in the need to replace other vehicle components that would not have otherwise needed replacing.

### **Damages**

26. ~~19.~~ The Class has suffered losses and has continuing losses related to:

- (a) Out-of-pocket costs to inspect and repair the Class Vehicles, which includes the cost of repairing or replacing ancillary parts that were undermined in the process of repairing or replacing a rear subframe;
- (b) Cost of future inspections and repairs to the Class Vehicles, which includes the cost of repairing or replacing ancillary parts that were undermined in the process of repairing or replacing a rear subframe;

(c) Reduction in the value of the Class Vehicles; and

(d) Loss of use of the Class Vehicles

(the "Damages").

## **PART 2 RELIEF SOUGHT**

27. ~~20.~~ The plaintiff claims on his own behalf and on behalf of other Class Members for:

(a) An order pursuant to the *Class Proceedings Act*, RSBC 1996, c 50 certifying this action as a class proceeding and appointing the plaintiff as the representative plaintiff;

(b) Damages for negligent design, negligent manufacture, and failure to warn;

(c) [A declaration that the defendants breached their warranty of quality under s. 1726 of the Quebec Civil Code;](#)

(d) ~~(e)~~ Damages for breaches of consumer protection statutes;

(e) ~~(d)~~ A declaration that Mercedes engaged in an act or practice that contravened the consumer protection statutes;

~~(e) An injunction restraining Mercedes from contravening the consumer protection statutes;~~

(f) A restoration order;

(g) An order that Mercedes advertise to the public particulars of any judgment, declaration, order, or injunction granted;

(h) A declaration that the defendants are in breach of s. 52 of the *Competition Act*, RSC 1985, c C-34 (the "*Competition Act*");

- (i) Damages pursuant to s. 36 of the *Competition Act*;
- (j) Investigation costs pursuant to s. 36 of the *Competition Act*;
- (k) A declaration that the defendants account for and make restitution to Class Members in an amount equal to the excess profits derived;
- (l) Punitive damages;
- (m) The costs of administering and distributing a damages award;
- (n) Interest pursuant to the *Court Order Interest Act*, RSBC, 1996, c 79; and
- (o) Such further and other relief as this Honourable Court deems just.

## **PART 3 LEGAL BASIS**

### **Negligent Design, Negligent Manufacture, and Failure to Warn**

28. ~~21.~~ Mercedes designed, developed, engineered, manufactured, marketed, distributed, sold, and warranted the Class Vehicles.

29. ~~22.~~ As such, Mercedes owed a duty of care to owners and lessees of Class Vehicles to ensure that the Class Vehicles were safe to operate and free of the Defects, and to communicate risks in connection with the Class Vehicles.

30. ~~23.~~ The Class Vehicles contained dangerous safety defects that could result in a sudden and unexpected loss of control for drivers of the Class Vehicles, as well as reduced crashworthiness, exposing the vehicle occupants to extreme risk of severe personal injury. The Defects create an imminent risk of harm through normal and expected use of the Class Vehicles. As such, the Class Vehicles are not reasonably safe for their intended purposes. As set out above, there exists an alternative design that is safer and economically feasible to manufacture.

31. ~~24.~~ Mercedes breached the standard of care by:

- (a) failing to properly design, develop, engineer, and manufacture the Class Vehicles to ensure that they were free of the Defects;
- (b) failing to oversee the manufacturing process for the Class Vehicles' subframes to ensure they are free from the Defects;
- (c) ~~(b)~~ failing to adequately monitor the safety and performance of the Class Vehicles;
- (d) ~~(e)~~ failing to provide Class Members and the relevant regulatory bodies, including Transport Canada, with complete and accurate information regarding the Class Vehicles before and after their purchases;
- (e) ~~(d)~~ failing to take adequate, or any, steps to guard against foreseeable risks of corrosion;
- (f) ~~(e)~~ failing to warn of dangers and the Defects in the Class Vehicles; and
- (g) ~~(f)~~ continuing to manufacture and market the Class Vehicles when Mercedes knew of the Defects.

32. ~~25.~~ Had Mercedes properly manufactured and designed the Class Vehicles, or appropriately warned of the Defects, then the Class Members' losses and damages would have been avoided, as:

- (a) The Class Vehicles would not have been in the stream of commerce;
- (a) A safe version or a version free of the Defects would have been developed; or
- (b) The Class Members would not have purchased the Class Vehicles for the same purchase price.

33. ~~26.~~ As a result of Mercedes' breaches, the Class suffered the Damages and, along with all vehicle occupants, were exposed to imminent and extreme risk of severe personal injury.

### **Consumer Protection Statutes**

34. ~~27.~~ The Class Members plead and rely on consumer protection legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Prince Edward Island, and Newfoundland and Labrador.

#### ***British Columbia***

35. ~~28.~~ Mercedes is a "supplier", and Mercedes' solicitation, offer, advertisement, promotion and supply of the Class Vehicles to the Class Members for purposes that were primary personal, family or household were "consumer transactions" within the meaning of s. 1 of the *Business Practices and Consumer Protection Act*, SBC 2004, c. 2 (the "BC *BPCPA*").

36. ~~29.~~ The Representations made by Mercedes had the capability, tendency or effect of deceiving or misleading the Class Members in that they were untrue, inaccurate, and misleading, and Mercedes concealed the serious safety and reliability impacts of the Defects. As such, Mercedes engaged in "deceptive acts or practices" within the meaning of s. 4 of the BC *BPCPA*.

37. ~~30.~~ Mercedes also engaged in "unconscionable acts or practices" within the meaning of s. 8 of the BC *BPCPA* because Mercedes knew, or ought to have known, the serious safety and reliability impacts of the Defects, Mercedes concealed the Defects, and Mercedes continued to make Representations that were untrue-inaccurate, or misleading.

38. ~~31.~~ As a result of the unfair practices, the Class Members are entitled to recovery of the Damages pursuant to s. 171 of the BC *BPCPA*. Further, the Class Members are entitled to an order pursuant to s. 172(1)(a) for a declaration

that Mercedes engaged in an act or practice in contravention of the BC *BPCPA* and an order pursuant to s. 172(1)(b) for an injunction restraining Mercedes from contravening the BC *BPCPA*.

39. ~~32.~~ Further, the Class Members seek restoration pursuant to s. 172(3)(a) of the BC *BPCPA* on basis that Mercedes acquired money through the purchase of the Class Vehicles, the Class Members are the source of that money, and the Class Members have an interest in that money.

40. ~~33.~~ Further, the Class Members seek an order pursuant to s. 172(3)(c) that Mercedes advertise to the public particulars of any judgment, declaration, order or injunction granted.

### ***Alberta***

41. ~~34.~~ Mercedes is a “supplier”, and Mercedes’ supply of Class Vehicles to Class Members were “consumer transactions” within the meaning of s. 1(1) of the *Consumer Protection Act*, RSA 2000, c C-26.3 (the “Alberta *CPA*”).

42. ~~35.~~ The Representations made by Mercedes were untrue, inaccurate, and misleading, and Mercedes concealed the serious safety and reliability impacts of the Defects. As such, Mercedes engaged in “unfair practices” within the meaning of s. 6 of the Alberta *CPA*.

43. ~~36.~~ The Class Members suffered loss or damage due to the unfair practices and are entitled to restitution of the purchase price paid for the Class Vehicles or, in the alternative, damages, pursuant to ss. 7(1), 13(2) and s. 142.1(2) of the Alberta *CPA*.

44. ~~37.~~ Pursuant to s. 7.2(3) of the Alberta *CPA*, it is in the interest of justice of the Court to disregard the notice requirements.

### ***Saskatchewan***

45. ~~38.~~ Mercedes is a “supplier”, and Mercedes’ supply of Class Vehicles to Class Members were “transactions involving goods or services” within the meaning of s. 2 and s. 5 of *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2 (the “Saskatchewan *CPBPA*”).
46. ~~39.~~ The Representations made by Mercedes were untrue, inaccurate, and misleading, and Mercedes concealed the serious safety and reliability impacts of the Defects. As such, Mercedes engaged in “unfair practices” within the meaning of s. 6, 7(a), 7(c), and 7(o) of the Saskatchewan *CPBPA*.
47. ~~40.~~ The Class Members suffered loss or damage due to the unfair practices and are entitled to restitution of the purchase price they paid or, in the alternative, damages, pursuant to s. 93(1) of the Saskatchewan *CPBPA*.

### **Manitoba**

48. ~~41.~~ Mercedes is a “supplier”, and Mercedes’ supply of Class Vehicles to Class Members were “consumer transactions” within the meaning of s. 1 of *The Business Practices Act*, CCSM c B120 (the “Manitoba *BPA*”).
49. ~~42.~~ The Representations made by Mercedes were untrue, inaccurate, and misleading, and Mercedes concealed the serious safety and reliability impacts of the Defects. As such, Mercedes engaged in “unfair business practices” within the meaning of s. 2(1), 2(3)(a), 2(3)(c), and 2(3)(p) of the Manitoba *BPA*.
50. ~~43.~~ The Class Members suffered loss or damage due to the unfair practices and are entitled to repayment of the full purchase price paid or, in the alternative, damages pursuant to s. 23(2) of the Manitoba *BPA*.

### **Ontario**

51. ~~44.~~ Mercedes is a “supplier”, and Mercedes’ supply of Class Vehicles to Class Members were “consumer transactions” within the meaning of s. 1 the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A (the “Ontario *CPA*”).

52. Mercedes operates a dealer network that sold and leased the Class Vehicles to Class Members in Ontario. Mercedes' relationship with its authorized dealers are governed by contracts that either expressly or implicitly establish the dealerships as agents for Mercedes when selling and leasing Class Vehicles. This satisfies the privity requirement between consumers and suppliers under the Ontario CPA.

53. ~~45.~~—The Representations made by Mercedes were untrue, inaccurate, and misleading, and Mercedes concealed the serious safety and reliability impacts of the Defects. As such, Mercedes engaged in “unfair practices” within the meaning of s. 14 and s. 15 of the Ontario *CPA*.

54. ~~46.~~—The Class Members suffered loss or damage due to the unfair practices and are entitled to repayment of the full purchase price paid or, in the alternative, damages pursuant to s. 18 of the Ontario *CPA*.

55. ~~47.~~—Pursuant to s. 101 of the Ontario *CPA*, it is in the interest of justice of the Court to disregard the notice requirements under s. 18.

### **Quebec**

56. ~~48.~~—Mercedes is a “merchant”, a “manufacturer”, and an “advertiser” within the definitions of s. 1 of the *Consumer Protection Act*, CQLR c P-40.1 (the “Quebec *CPA*”). Class Members who purchased Class Vehicles for purposes other than their business are “consumers” within the meaning of s. 1 of the “Quebec *CPA*”.

57. ~~49.~~—Mercedes failed to provide Class Vehicles that are fit for their ordinary use, and that conformed with the advertisements regarding them, as required pursuant to ss. 39 and 41 of the Quebec *CPA*.

58. ~~50.~~—The Representations made by Mercedes were untrue, inaccurate, and misleading, and Mercedes concealed the serious safety and reliability impacts of the Defects. As such, Mercedes imposed obligations that are excessive, harsh,

or unconscionable within the meaning of s. 8 of the Quebec *CPA*, and engaged in “prohibited practices” within the meaning of s. 215, 219, 221, and 222(d) of the Quebec *CPA*.

59. ~~51.~~ As a result of Mercedes’ failures to fulfil obligations imposed by the Quebec *CPA*, the Class Members are entitled to remedy, including repayment of the full purchase price paid or, in the alternative, damages, pursuant to s. 272.

### ***Prince Edward Island***

60. ~~52.~~ Class Members who purchased Class Vehicles other than in the course of business are “consumers” within the meaning of s. 1 of the *Business Practices Act*, RSPEI 1988, c B-7 (the “PEI *BPA*”). The Representations constitute “consumer representations” within the meaning of s. 1 of the PEI *BPA*.

61. [Mercedes operates a dealer network that sold and leased the Class Vehicles to Class Members in PEI. Mercedes’ relationship with its authorized dealers are governed by contracts that either expressly or implicitly establish the dealerships as agents for Mercedes when selling and leasing Class Vehicles. This satisfies the privity requirement between consumers and suppliers under the PEI BPA.](#)

62. ~~53.~~ The Representations made by Mercedes were untrue, inaccurate, and misleading, and Mercedes concealed the serious safety and reliability impacts of the Defects. As such, Mercedes engaged in “unfair practices” within the meaning of s. 2(a) and s. 2(b) of the PEI *BPA*.

63. ~~54.~~ As a result of the unfair practices, Class Members are entitled to rescission of the sales agreements between the defendants and the Class members and return of the purchase price paid or, in the alternative, damages pursuant to s. 4(1) of the PEI *BPA*.

### ***Newfoundland and Labrador***

64. ~~55.~~ Mercedes is a “supplier”, and Mercedes’ supply of Class Vehicles to Class Members were “consumer transactions” within the meaning of s. 2 of the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 (the “NL *CPBPA*”).
65. Mercedes operates a dealer network that sold and leased the Class Vehicles to Class Members in Newfoundland and Labrador. Mercedes’ relationship with its authorized dealers are governed by contracts that either expressly or implicitly establish the dealerships as agents for Mercedes when selling and leasing Class Vehicles. This satisfies the privity requirement between consumers and suppliers under the NL *CPBPA*.
66. ~~56.~~ The Representations made by Mercedes were untrue, inaccurate, and misleading, and Mercedes concealed the serious safety and reliability impacts of the Defects. As such, Mercedes engaged in “unfair business practices” within the meaning of s. 7(1) of the NL *CPBPA* and “unconscionable acts” within the meaning of s. 8(1) of the NL *CPBPA*.
67. ~~57.~~ The Class Members suffered loss or damage due to the unfair business practices and are entitled to repayment of the purchase price paid or, in the alternative, damages pursuant to s. 10 of the NL *CPBPA*.

### **The Competition Act**

68. ~~58.~~ Mercedes knowingly or recklessly made, and continues to knowingly or recklessly make, the Representations while omitting and concealing material facts relating to the intrinsic ~~quality~~safety of the Class Vehicles. In particular, Mercedes did not reveal that the Class Vehicles suffered from dangerous safety Defects, and Mercedes, as the designer, manufacturer, distributor, and seller of the Class Vehicles, was under a duty to disclose the dangerous safety Defects.

69. ~~59.~~ The Representations were false or misleading in a material respect and, as such, constituted, and continue to constitute, contraventions of s. 52 of the *Competition Act*.
70. ~~60.~~ The Class Members plead and rely on s. 36 of the *Competition Act*. The Representations caused the Damages. In purchasing the Class Vehicles, ~~the~~ Classit can be inferred that Class Members relied on Mercedes' representations about the safety of the Class Vehicles and would not have purchased the Class Vehicles or would have taken steps to have Mercedes repair the subframes had they been aware of the Defects. By failing to warn Class Members about the Defects, Mercedes is liable to the Class for the cost of remediating the Defects. Further or in the alternative, Class Members acquired less value than they expected to acquire by causing them to spend more on inspections and repairs, experience loss of use of the Class Vehicles, and suffer a reduction in the value of the Class Vehicles, including resale value.
71. With respect to Class Members who purchased Class Vehicles in Quebec, a civil fault is committed whenever a person violates a statute. The plaintiff relies on Article 1457 of the *Civil Code of Québec*.

### The Québec Civil Code

72. Québec civil law provides for a claim under the warranty of quality at Article 1726 of the *Civil Code of Québec*. The warranty of quality creates presumptions that, when a product malfunctions or deteriorates prematurely: (i) the manufacturer knew about the defect and (ii) the defect was present at the time of sale.
73. With respect to Class Members who purchased Class Vehicles in Québec, the plaintiff relies on ss. 1726-1729 of the *Civil Code of Québec*.

### **Punitive Damages**

74. ~~61.~~ Mercedes' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful and in contumelious disregard of Class Members' rights, and as such renders Mercedes liable to pay punitive damages.

Plaintiff's address for service:

**CAMP FIORANTE MATTHEWS MOGERMAN**  
#400 – 856 Homer Street  
Vancouver, BC V6B 2W5

Tel: (604) 689-7555  
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Email: [service@cfmlawyers.ca](mailto:service@cfmlawyers.ca)

Place of trial: Vancouver Law Courts

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

Date: Feb 19, 2026



Signature of lawyer for the plaintiff  
CFM Lawyers LLP

Jen Winstanley

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

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75. ~~62.~~ The plaintiff, Frederick Mark Rowan, claims the right to serve this pleading on the defendants outside of 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 members of the Class plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 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 sections 10 (e) - (i) of the *CJPTA* because this proceeding:

- (a) concerns contractual obligations that, to a substantial extent, were to be performed in British Columbia;
- (b) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
- (c) concerns a tort committed in British Columbia;
- (d) concerns a business carried on in British Columbia;
- (e) is a claim for an injunction ordering a party to do something in British Columbia; and
- (f) is a claim for an injunction ordering a party to refrain from doing something 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.

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## APPENDIX

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### CONCISE SUMMARY OF NATURE OF CLAIM:

The plaintiff claims damages for negligent design, negligent manufacture, failure to warn, breaches of consumer protection legislation, and breach of the *Competition Act* in respect of defects pertaining to certain Mercedes-Benz-branded vehicles.

### 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. *Class Proceedings Act, RSBC 1996, c 50;*
2. *Competition Act, RSC 1985; and*
3. *Court Order Interest Act, RSBC 1996, c 79;*