

STATE OF INDIANA
IN THE MARION COUNTY SUPERIOR/CIRCUIT COURT

CAUSE NO. _____

STATE OF INDIANA,

Plaintiff,

v.

MERCEDES-BENZ USA, LLC
and MERCEDES-BENZ GROUP AG,

Defendants.

**COMPLAINT
FOR INJUNCTION,
RESTITUTION, CIVIL
PENALTIES, AND COSTS**

The State of Indiana, by Attorney General Theodore E. Rokita and Deputy Attorneys General Mark M. Snodgrass, brings this action against defendants, Mercedes-Benz USA, LLC (“Mercedes-Benz USA”) and Mercedes-Benz Group AG (“Mercedes AG”) (collectively, “Defendants”), and states as follows:

**I.
INTRODUCTION**

1. From 2008 through 2017, Mercedes deceptively certified, marketed, and sold more than 200,000 light-duty trucks and passenger vehicles with BlueTEC diesel engines (the “Diesel Vehicles”) in the United States, including approximately 16,521 Diesel Vehicles in Indiana, that failed to comply with state and federal laws and regulations governing vehicle emissions and certifications, resulting in thousands of tons of excess air pollution. The Diesel Vehicles include sport utility

vehicles, minivans, cargo vans, and sedans that employed Mercedes's BlueTEC diesel engine system across model years ("MY") 2009 through 2016¹.

2. Specifically, Mercedes designed, deployed, and then concealed from the public and state and federal regulators software allegedly intended to circumvent federal and state emissions standards so that emissions would appear to be within legal limits, while reducing emission controls outside of those test cycles (off-cycle) in normal, real-world operations. Mercedes also failed to disclose to regulators other software functions—auxiliary emission control devices ("AECDs")—some of which significantly affected the Diesel Vehicles' emissions control systems.

3. As a result of Mercedes's conduct, in real-world operations, versus in emissions tests, the Diesel Vehicles can emit many times the legal limits of nitrogen oxides (NO_x), a harmful pollutant that causes respiratory illness and premature death and that contributes to the formation of smog and particulate matter pollution, which also cause severe harm to human health.

4. Mercedes engaged in this unlawful conduct to: (a) obtain through deceptive means the certification they needed from federal and state regulators to market and sell the Diesel Vehicles in the United States, including within Indiana; (b) conceal the fact that the Diesel Vehicles did not comply with applicable state and federal emission standards, subjecting residents of Indiana and others to the health risks of added air pollution; and (c) mislead consumers into believing that the Diesel Vehicles were a good option for purchase by environmentally conscious consumers.

¹ The Diesel Vehicles are listed in Appendix A.

5. In light of the Defendants' scheme, the State of Indiana seeks restitution, civil penalties, such injunctive and other equitable relief as may be determined to be appropriate in order to remedy, redress, and prevent additional harm from Defendants' unlawful conduct, and its reasonable costs of investigation and litigation, including attorney's fees, pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*

II. PARTIES

6. The plaintiff, the State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief under Ind. Code § 24-5-0.5-4(c).

7. Defendant Mercedes AG is an international automotive company that designs, engineers, manufactures, imports, distributes, sells, and leases motor vehicles under brands including Mercedes-Benz. Mercedes AG is organized under the laws of Germany and is headquartered in Stuttgart, Baden-Württemberg, Germany. Mercedes AG owns and controls defendant Mercedes-Benz USA.

8. Defendant Mercedes-Benz USA is a Mercedes AG subsidiary that designs, engineers, manufactures, imports, distributes, sells, and leases Mercedes vehicles in the United States, including in Indiana, under the Mercedes-Benz brand and others. Mercedes-Benz USA is a Delaware limited liability company with a principal place of business and headquarters located in Sandy Springs, Georgia.

9. Defendants designed, manufactured, imported, distributed, warranted, offered for sale and/or lease, and sold and made available for lease the Diesel Vehicles with the knowledge and intent to market and sell them in all 50 states and

the District of Columbia, including through its car dealership agents in the State of Indiana.

10. At all relevant times, Defendants worked in concert with the common objective of developing, marketing, selling, and leasing the Diesel Vehicles in the United States, including within the State of Indiana, with the undisclosed AECs and defeat devices described in this complaint. Each of the Defendants was, and still is, the agent of the others for this purpose, and each has acted, and is acting, for their common goals and profit of them all. All acts and knowledge ascribed to one defendant are properly imputed to the other.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Defendants, and authority to grant the relief requested pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*

12. At all relevant times, Mercedes AG has purposefully availed itself of this forum. Among other things, Mercedes AG controlled and/or directed its wholly-owned subsidiary Mercedes-Benz USA in its design, development, certification, marketing, offer, sale, and lease of the Diesel Vehicles within the State of Indiana.

13. In addition, Mercedes-Benz USA transacted business in the State of Indiana through at least eight car dealerships, which act as Mercedes-Benz USA's agents in selling and leasing vehicles, including the Diesel Vehicles, and in disseminating marketing messaging and materials and vehicle information to

customers, including materials and information for the Diesel Vehicles. Accordingly, this Court's exercise of jurisdiction over Defendants is consistent with due process.

14. Venue for this action properly lies in Marion County, Indiana, in that the Defendants transacted business in Marion County by advertising and offering its vehicles for sale to consumers in Marion County.

**IV.
VEHICLE MANUFACTURERS MUST LIMIT HARMFUL NO_x
EMISSIONS AND DISCLOSE AECDs TO OBTAIN CERTIFICATION TO
MARKET AND SELL THEIR VEHICLES IN THE UNITED STATES.**

15. Diesel engines have inherent trade-offs between power, fuel efficiency, and emissions. Compared to gasoline engines, diesel engines generally produce greater power and higher fuel efficiency—but these benefits come at the cost of dirtier and more harmful vehicle emissions.

16. Diesel engines produce particularly high levels of NO_x, which is a key contributor to ground-level ozone and fine particulate matter pollution, both of which have significant detrimental effects on human health and the environment.

17. NO_x combines in the atmosphere with volatile organic compounds in a complicated reaction in the presence of heat and sunlight to form ozone, which, at the ground-level, is a major component of urban smog that harms the public health and damages the environment. Ground-level ozone pollution contributes to many human respiratory health problems, including chest pains, shortness of breath, coughing, nausea, throat irritation, and increased susceptibility to respiratory infections and illnesses, such as asthma, and disproportionately affects vulnerable members of society, particularly children and the elderly.

18. NO_x emissions also cause eutrophication and excess nutrient loading in coastal and other waters, reduce the diversity of fish and other life in these waters, and, along with sulfur dioxide found in the atmosphere from other sources, contribute to the creation of fine nitrate and sulfate particles.

19. Like ozone, fine particulates affect Indiana consumers by causing human respiratory distress, cardiovascular disease, and even premature mortality. Fine nitrate and sulfate particles are also toxic to aquatic life and vegetation.

20. Because of their serious health and environmental impacts, state and federal emission standards impose not-to-exceed limits on NO_x emissions. Vehicle manufacturers are required to certify to the U.S. Environmental Protection Agency (“EPA”) that their motor vehicles comply with those standards. The same standards also mandate certain durability requirements for the engine and its components.

21. Of relevance here, the EPA’s Tier 2 Bin 5 emission standards—the standards applicable to the Diesel Vehicles—imposed a NO_x emission limit of 0.05 grams per mile (“g/mi”) at a Durability Vehicle Basis of 50,000 miles and 0.07 g/mi at 120,000 miles. In other words, the regulation allowed for marginally increased emissions as the vehicles and their emission control systems aged.

22. The EPA also required vehicles be equipped with on-board diagnostics systems that monitored emissions systems for the life of the vehicle and that detected malfunctions in those emissions control systems and notified the driver when emissions exceeded certain designated levels.

A. Federal Law Required Manufacturers to Disclose AECDs and Prohibited the Use of Defeat Devices.

23. An AECD is any element of design that senses temperature, vehicle speed, engine speed, transmission gear, or any other parameter for the purpose of activating, deactivating, modulating, or delaying the operation of any part of the emission control system.

24. State and federal emission regulations required vehicle manufacturers to make extensive written disclosures regarding the existence, impact of, and justification for any devices, including AECDs, that affected the operation of the emission control system.

25. The EPA's emission certification requirements and test procedures required, among other things, that vehicle manufacturers disclose in their certification applications for emission compliance all AECDs used in their vehicles, regardless of the nature and extent of the AECD's impact on emissions. Specifically, they required manufacturers to list:

- i. all AECDs installed on their vehicles, including for each a justification and a rationale for why it was not a defeat device; and
- ii. the parameters each AECD sensed and controlled.

26. The EPA's emission certification requirements and test procedures further prohibited the use of all "defeat devices."

27. Vehicles equipped with undisclosed AECDs or defeat devices may not be certified for sale in the United States.

B. Manufacturers Used Multiple Emission Control Strategies to Reduce NO_x Emissions.

28. To meet relevant emission standards, diesel vehicle manufacturers were required to balance the goal of implementing effective NO_x reduction controls and strategies, which could place strain on the engine and its components, against the goal of meeting engine durability requirements.

29. Each Diesel Vehicle featured Exhaust Gas Recirculation (“EGR”) and Selective Catalytic Reduction (“SCR”) hardware controlled by software incorporated into the engine electronic control modules supplied by Robert Bosch LLC and/or Robert Bosch GmbH (together, “Bosch”).

30. EGR refers primarily to the redirection of exhaust back into the engine’s intake system and mixing it with fresh air. This process reduces the amount of oxygen in the engine, which lowers the combustion temperature and reduces the creation of NO_x.

31. SCR refers to the injection of an aqueous ammonia solution into the exhaust stream after combustion but prior to emission from the tailpipe. This injection produces a chemical reaction that converts NO_x to nitrogen and water, thereby reducing NO_x emissions. The ammonia solution is known as diesel exhaust fluid (“DEF”).

32. While both technologies have emission-related advantages (reducing NO_x emissions), each also has drawbacks (including reduced fuel economy and increased maintenance) that impose marketing and engineering challenges.

33. As set forth in greater detail below, Defendants did not lawfully address the engineering trade-offs and challenges posed by the available diesel technology and applicable emission standards. It opted instead to employ defeat device strategies in the Diesel Vehicles to meet design and performance targets.

**V.
DEFENDANTS MADE FALSE AND MISLEADING CERTIFICATIONS AND
REPRESENTATIONS TO REGULATORS AND THE PUBLIC
CONCERNING THE DIESEL VEHICLES.**

A. Defendants Used Defeat Devices to Cheat on Official Emissions Tests.

34. Mercedes, either directly or through its predecessors and agents, designed BlueTEC engine systems that it installed in the Diesel Vehicles. Mercedes also conducted emissions testing on the Diesel Vehicles.

35. In designing the Diesel Vehicles for the U.S. market, Defendants sought to achieve design and performance goals—including increased fuel efficiency and reduced maintenance—that it was unable to meet while complying with applicable NO_x emission standards.

36. Instead of investing the time and resources needed to meet its design objectives while complying with emission standards, Mercedes implemented multiple undisclosed (or deceptively and incompletely disclosed) AECDs that operated to optimize emission controls during formal emissions tests, but to reduce the effectiveness of these controls off-cycle in real-world driving conditions. As calibrated, these undisclosed AECDs, when used alone or in combination, constituted illegal defeat devices.

37. Specifically, Mercedes employed a “dual dosing” strategy to avoid trade-offs necessary to lawfully control NO_x emissions in a lawful fashion. The company programmed the Diesel Vehicles with two modes: in “fill-level mode,” the after-treatment system operated at high capacity with sufficient exhaust fluid dosing to remove NO_x from the exhaust stream; and in “pre-control mode,” the after-treatment system operated at diminished capacity with low levels of diesel exhaust fluid dosing and resulting excess NO_x emissions.

38. Through multiple undisclosed AECDs, which acted as defeat devices, the Diesel Vehicles were designed to detect parameters consistent with formal emission test cycles and turn on the fill-level mode in these conditions—thus appearing to comply with emission standards—while otherwise reverting to pre-control mode, resulting in significant excess NO_x emissions in real-world driving conditions.

39. By using these defeat devices to revert to pre-control mode in real-world driving conditions, Mercedes avoided trade-offs in vehicle performance and maintenance that can result from proper operation of NO_x controls—thereby artificially improving vehicle performance in the form of increased torque and fuel economy, and (by reducing diesel exhaust fluid consumption) increasing the service interval for the Diesel Vehicles.

40. To further avoid detection, Mercedes used undisclosed functions in the Diesel Vehicles’ on-board diagnostic systems to prevent those systems from notifying vehicle operators and repair technicians (through the check-engine light)

of excess NO_x emissions and other emission control failures that resulted from the defeat devices.

41. In addition to the defeat devices, Mercedes also hid from and/or failed to fully disclose to regulators multiple other AECDs that affected the Diesel Vehicles' emission control systems. These included functions designed to shut down the exhaust gas recirculation system after extended use and to reduce diesel exhaust fluid dosing in the after-treatment system as the Diesel Vehicles aged—again, with the purpose of boosting performance and reducing maintenance.²

42. Although these additional undisclosed AECDs might not themselves qualify as “defeat devices” designed to detect the test cycle, these functions worked in concert with the defeat devices and—because they resulted in excess NO_x emissions—they would not have been approved by regulators if disclosed.

S-14: Request for Certificate

S-14-01: Request for Certificate

Mercedes-Benz requests that EPA issues a certificate of conformity and that ARB issues an executive order for the test group listed on the cover page of this application.

The applicable test results are listed in section 07. The test group complies with all applicable regulations contained within 40 CFR Part 86. Production vehicles are in all material respects the same as the certification test vehicles. The application is current as of this date.

43. Defendants' submissions to EPA for certification of the Diesel Vehicles did not disclose, or did not accurately disclose, the Defeat Devices.

44. Further, to obtain EPA approval, Defendants warranted that the Diesel Vehicles were designed, built, and equipped to meet emission standards.

²

45. Defendants knew, or reasonably should have known, that these certifications contained false statements or omissions related to the Diesel Vehicles' emissions or undisclosed AECDs.

B. Law Enforcement Authorities Caught Defendants in Their Deception.

46. In 2016, EPA and the California Air Resources Board ("CARB") discovered the Defeat Devices in the Diesel Vehicles through testing conducted at EPA's National Vehicle and Fuel Emissions Laboratory in Ann Arbor, Michigan and at CARB's test laboratory in El Monte, California.

47. On September 14, 2020, EPA, through the U.S. Department of Justice, and the State of California and CARB, through the California Attorney General, filed complaints against Defendants and simultaneously lodged a consent decree and partial consent decree, respectively, to address Defendants' violations of federal and California emission standards.

48. The U.S. District Court for the District of Columbia consolidated the California action with the federal action. On December 17, 2020, EPA filed its motion for an order entering a consent decree. California subsequently filed its motion for an order entering the partial consent decree. Defendants did not oppose either motion.

49. On March 9, 2021, the U.S. District Court for the District of Columbia granted EPA's and California's motions.

VI.
DEFENDANTS DECEIVED CONSUMERS BY PROMISING [“CLEAN,”
“ECO- FRIENDLY” VEHICLES], BUT THE VEHICLES IN FACT
UNLAWFULLY POLLUTED THE AIR.

50. Mercedes’s advertisements, promotional campaigns, and public statements represented, among other things, that the Diesel Vehicles had high fuel economy; produced low emissions; reduced NO_x by 90%; had lower emissions compared to other diesel vehicles; and had lower emissions compared to gasoline vehicles.

51. Specifically, Mercedes claimed that they offered consumers “the world’s cleanest diesel automobiles.” Mercedes represented to consumers that its BlueTEC Diesel Vehicles have “ultra-low emissions,” emitting up to 90% fewer emissions than equivalent gas-powered vehicles. Mercedes further claimed that the BlueTEC Diesel Vehicles convert nitrous oxide emissions into “pure, earth-friendly nitrogen and water.”

52. In its messaging to consumers, Mercedes consistently touted its role in advancing “green” technologies, like BlueTEC Clean Diesel engines.

53. For instance, Mercedes referred to its BlueTEC engine as “[e]arth-friendly, around the world.”

54. A technical description of BlueTEC diesel engines available on the Mercedes-Benz website proclaimed: “BlueTEC—the world’s cleanest diesel engines. Environmentally-friendly technology, without sacrificing performance or driving pleasure.”

55. A 2009 website designed for Mercedes-Benz pictured a 2009 ML320 BlueTEC Clean Diesel driving in the sky through clouds, with the title, “Why you should go BLUE if you want to go green.”

56. In a brochure for a 2016 Sprinter, Mercedes claimed: “Thanks to BlueTEC clean-diesel technology, the Sprinter is one of the greenest vans in the land.”

57. In addition to promoting sales through deceptive advertisements; Mercedes also subjected consumers to additional misrepresentations at the point of sale and beyond.

58. Window stickers affixed to each Diesel Vehicle offered for sale or lease in the United State also displayed average “smog ratings” when, in fact, the Diesel Vehicles NOx ratings far exceeded the applicable standards.

CAUSES OF ACTION

COUNT I

UNFAIR AND DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF THE DECEPTIVE CONSUMER SALES ACT

59. The State repeats and re-alleges the allegations in the foregoing paragraphs as if fully set forth herein.

60. The Defendants regularly engage in “consumer transactions” under Ind. Code § 24-5-0.5-2(a)(1).

61. The Defendants are “suppliers” under Ind. Code § 24-5-0.5-2(a)(3).

62. Defendants engaged in and/or directly facilitated unfair or deceptive acts or practices in the conduct of trade or commerce in violation of Ind. Code § 24-

5-0.5-3(a) of the Deceptive Consumer Sales Act by way of the following, without limitation:

- i. Misrepresenting, creating false pretenses, and/or falsely certifying and/or warranting the Diesel Vehicles' compliance with applicable emission standards, certification, and/or other regulatory standards in warranties to consumers, on vehicle stickers, and in advertisements appearing in the stream of commerce in the State of Indiana;
- ii. Selling, leasing, and offering for sale or lease Diesel Vehicles that failed to comply with applicable emissions, certification, and/or other regulatory standards;
- iii. Failing to disclose, omitting, concealing, and/or suppressing from federal environmental regulators the existence of the Defeat Devices and their harmful environmental impact;
- iv. Failing to disclose, omitting, concealing, and/or suppressing from consumers the existence of the Defeat Devices and their harmful environmental impact and the fact that they were illegal to sell, lease or otherwise place into commerce in the State of Indiana;
- v. Warranting to each buyer and lessor of a Diesel Vehicle, that the vehicle was designed, built, and equipped to conform, at the time of sale, to applicable emission standards and other applicable environmental standards;
- vi. Advertising, promoting, and warranting the Diesel Vehicles, as conforming and/or complying with applicable emission standards and other applicable environmental standards that allow automobiles to be placed into the stream of commerce in the State of **Indiana**;
- vii. Advertising, promoting, and warranting the Diesel Vehicles as "clean" and "green" despite the fact that, in regular driving, they emit NO_x at many multiples of the allowable amounts;
- viii. Advertising, promoting, and warranting the Diesel Vehicles by failing to disclose that certain performance measures could only be met when the Defeat Devices were operating;
- ix. Causing a likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of the Diesel Vehicles in

regards to applicable emission standards, applicable environmental standards, and pollution and impact on the environment;

- x. Representing that the Diesel Vehicles had sponsorship, approval, characteristics, uses, benefits, or qualities that they did not;
- xi. Representing that the Diesel Vehicles were of a particular standard or quality when they did not have the represented particular standards or qualities;
- xii. Advertised the Diesel Vehicles with the intent not to sell them as advertised in regards to applicable emission standards, applicable environmental standards, and pollution and impact on the environment;
- xiii. Offering for sale and/or selling Diesel Vehicles at falsely inflated prices based upon representations of high-performing, fuel efficient, and environmentally friendly vehicles; and
- xiv. Advertising, selling, and leasing the Diesel Vehicles and creating a likelihood of confusion or misunderstanding as to applicable emission standards, applicable environmental standards, and pollution and impact on the environment.

63. Defendants' conduct was knowing and willful.

64. Defendants committed a separate and independent violation of the Deceptive Consumer Sales Act through each and every unfair, deceptive, false, or misleading representation, or omission of material information.

65. Defendants committed a separate and independent violation of the Deceptive Consumer Sales Act each and every time Defendants offered, sold, or enabled a Diesel Vehicle to be driven in the State of Indiana.

PRAYER FOR RELIEF

WHEREFORE, the State of Indiana requests that this Court grant the following relief:

A. Permanently enjoining all Defendants from engaging in the following conduct, either directly or indirectly, pursuant to Ind. Code § 24-5-0.5-4(c)(1):

- i. Falsely, unfairly, and/or deceptively advertising, promoting, or marketing any new motor vehicle in the State of Indiana equipped with Defeat Devices as conforming or complying with applicable emission and environmental standards;
- ii. Failing to disclose to or concealing from consumers the existence of Defeat Devices and their harmful environmental impact in any new motor vehicles;
- iii. Engaging in the unlawful, deceptive, fraudulent, and unfair business practices alleged in this Complaint; and
- iv. Preparing, making, marketing, and advertising false, unfair and/or deceptive advertisements related to environmental claims, features or attributes, in or from the State of Indiana.

B. Ordering the Defendants to provide appropriate relief under Ind. Code § 24-5-0.5-4(c)(2) to Indiana consumers who purchased, leased, or otherwise owned a Diesel Vehicle by providing the following:

- i. A warranty, for the life of the subject vehicle or lease, that it will conform to all applicable emission standards; and
- ii. Full consumer restitution and damages to each affected consumer, including, without limitation, any damages resulting from any degradation of performance and/or fuel efficiency resulting from any

“fix” of the issues identified in the Complaint; and any additional sums spent for purchase of extended warranties that will go unused due to repurchase.

C. Ordering all Defendants to pay a civil penalty under Ind. Code § 24-5-0.5-4(g) for knowing violations of Ind. Code § 24-5-0.5-3(a) in the amount of five thousand dollars (\$5,000.00) per violation, payable to the State of Indiana.

D. Ordering Defendants to pay the costs of the investigation and prosecution of this action, pursuant to Ind. Code § 24-5-0.5-4(c)(4).

E. Ordering such other relief as the Court deems necessary, proper, and just.

Respectfully submitted,

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