

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-000989-190

(Class Action)  
SUPERIOR COURT

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**GERTRUDE GILLICH**, domiciled and  
residing at [REDACTED]  
[REDACTED]

Applicant

-vs-

**MERCEDES-BENZ CANADA INC.**, legal  
person having a place of business at 4525  
Saint-Jean boulevard, Dollard-Des-Ormeaux,  
District of Montreal, Province of Quebec,  
H9H 2A7

and

**MERCEDES-BENZ FINANCIAL SERVICES  
CANADA CORPORATION**, legal person  
having an establishment at 2100 boulevard  
Dagenais West, Laval, District of Laval,  
Province of Quebec, H7L 5X9

and

**MERCEDES-BENZ WEST ISLAND**, legal  
person having an establishment at 4525  
Saint-Jean boulevard, Dollard-Des-Ormeaux,  
District of Montreal, Province of Quebec,  
H9H 2A7

and

**GM FINANCIAL CANADA LEASING LTD.**,  
legal person having a principal establishment  
at 715 Dubois Street, Saint-Eustache, District  
of Terrebonne, Province of Quebec, J7P 3W1

and

**SCI LEASE CORP.**, legal person having a principal establishment at 715 Dubois Street, Saint-Eustache, District of Terrebonne, Province of Quebec, J7P 3W1

and

**COMPAGNIE DE GESTION CANADIAN ROAD**, legal person having a principal establishment at 300 Albert-Mondou boulevard, Saint-Eustache, District of Terrebonne, Province of Quebec, J7R 7A7

and

**HONDA CANADA FINANCE INC.**, legal person having an elected domicile at 3900-1 Place Ville-Marie, District of Montreal, Province of Quebec, H3B 4M7

and

**TOYOTA CREDIT CANADA INC.**, legal person having a principal establishment at 4705 Lapinière boulevard, Brossard, District of Longueuil, Province of Quebec, J4Z 3T5

and

**CANADIAN DEALER LEASE SERVICES INC.**, legal person having its place of business at 250 Yonge Street, Suite 2601, Toronto, Province of Ontario, M5B 2L7

Defendants

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**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF  
(ARTICLES 571 AND FOLLOWING C.C.P.)**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS  
FOLLOWS:**

**I. GENERAL PRESENTATION**

1. This class action seeks the reimbursement of the amounts that Class members disbursed to exercise their conventional option to purchase their vehicles at the end of their lease (commonly referred to as a “**buyback**”) that were not precisely indicated in the contract, in violation of sections 12 and 228 of Quebec’s *Consumer Protection Act* (the “**CPA**”), as well as punitive damages for the exploitation of consumers;
2. Applicant is a consumer as defined in the CPA;
3. The Defendants are merchants within the meaning of the CPA and carry on, notably, in the business of leasing and selling vehicles, as it appears from extracts of the Quebec enterprise’s information statements from the enterprise register (CIDREQ), Applicant disclosing them as:

<b>Defendant</b>	<b>CIDREQ Exhibit</b>
Mercedes-Benz Canada Inc.	<b>Exhibit P-1;</b>
Mercedes-Benz Financial Services Canada Corporation	<b>Exhibit P-2;</b>
Mercedes-Benz West-Island	<b>Exhibit P-3;</b>
GM Financial Canada Leasing Ltd.	<b>Exhibit P-4;</b>
SCI Lease Corp.	<b>Exhibit P-5;</b>
Compagnie de Gestion Canadian Road	<b>Exhibit P-6;</b>
Honda Canada Finance Inc.	<b>Exhibit P-7;</b>
Toyota Credit Canada Inc.	<b>Exhibit P-8;</b>
Canadian Dealer Lease Services Inc.	<b>Exhibit P-9;</b>

4. During the class period the Defendants never disclosed in their respective motor vehicle lease agreements that consumers must pay an administrative fee if they wish to exercise their conventional option to purchase their vehicles, nor did they disclose the amount of such a fee, nor that such a fee was discretionary and variable, all of which are flagrant violations of sections 12 and 228 CPA;
5. It is worth emphasizing that other leasing companies (not named as Defendants herein) do specifically provide for and disclose the fees that consumers must pay in order to exercise their option to purchase upon lease termination. These companies include:
  - i) Volkswagen Credit Canada expressly discloses a \$500.00 “*purchase option fee*” in their motor vehicle lease agreements (including in leases for Audis and Volkswagens);
  - ii) Nissan Canada Inc. specifies that a “*Vehicle Purchase Fee*” of \$100 will be charged to consumers wishing to exercise their option to purchase;
  - iii) BMW Financial Services and Mini Financial Services specify that a “*Retailer administration fee of \$999*” applies when exercising the option to purchase;

6. We note the following violations concerning two of the named Defendants:
  - i) Defendant Toyota Credit Canada Inc. does mention in its “Toyota” leases that there is a “*frais d’option d’achat de 300\$ payable au concessionnaire*”, **Exhibit P-10**, but fails to make this disclosure in its “Subaru” leases, **Exhibit P-11**;
  - ii) Defendant Honda Canada Finance Inc. only recently modified its vehicle lease agreements to disclose a \$386 purchase option fee as it appears from **Exhibit P-12**, but did not include this disclosure in prior vehicle lease agreements (meaning that consumers with Honda Canada Finance Inc. leases are included in the class definition so long as their lease did not mention the existence of a fee and the amount of said fee);
7. It is safe for Applicant to assume that Class members have lost millions of dollars due to Defendants’ failure and omission to disclose the fees that are eventually charged to consumers who wish to exercise their option to purchase their vehicles at the end of the lease;
8. Consequently, Applicant wishes to institute a class action on behalf of the following class of which she is a member, namely:

**Class:**

All consumers who had a vehicle lease agreement with any of the Defendants and, since March 14, 2016, paid a fee to exercise their option to purchase their vehicle (“buyback”) at the end of their lease which was not disclosed in their lease;

*Tous les consommateurs ayant conclu un contrat de location de véhicule avec l’une des défenderesses et qui, depuis le 14 mars 2016, ont payé des frais pour exercer leur option d’achat (« rachat ») de leur véhicule à la fin de la location qui n’étaient pas divulgués dans leur contrat de location;*

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

**II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):**

**A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT**

**Applicant's Claim against Mercedes under ss. 12 and 228 CPA**

9. Applicant leased a Mercedes-Benz C300 4MATIC Sedan from Defendants Mercedes-Benz Canada Inc. and Mercedes-Benz Financial Services Canada Corporation (hereinafter collectively referred to as "**Mercedes**"), Applicant disclosing her lease and assumption documents *en liasse* as **Exhibit P-13**;
10. On or around November 24, 2017, Applicant assumed the lease from the initial lessee. The initial lease began on November 16, 2015 and was for a fixed term of 39 months as it appears from Exhibit P-13;
11. Applicant's final payment under the terms of her lease was due on January 16, 2019 and the lease would terminate 30 days later;
12. At the beginning of January 2019 (prior to January 14), Applicant and her husband spoke to several representatives of Defendant Mercedes-Benz West Island, who, at that point, were still trying to convince Applicant and her husband to lease a new vehicle from them;
13. On January 14, 2019, Applicant and her husband contacted April Best at Mercedes-Benz West Island and indicated that they have decided to exercise their option to purchase the vehicle (provided for at clause 9 of the lease, Exhibit P-13). Ms. Best acknowledged the Applicant's request and scheduled an appointment with the service department for January 31, 2019, to determine if the vehicle was eligible for an extended warranty;
14. Clause 9 of Applicant's lease (Exhibit P-13, at page 4 of 15), provides as follows:

**9. CONVENTIONAL OPTION TO PURCHASE**. Lessee will have the option to purchase the vehicle at the scheduled termination of this Lease for the Estimated End of Term Residual Value being **\$ 32,092.20** which amount is a genuine pre-estimate of the fair market value of the vehicle at that time, if Lessee is not in default under this Lease and has paid Lessor all charges then due. Lessee must notify Lessor no later than thirty days prior to the end of the Lease if Lessee wants to purchase the vehicle. Upon payment in cash of the purchase option price, plus any other amounts due under this Lease, plus all applicable taxes and fees (including fees payable to obtain any certificate of fitness or like certificate), the right of ownership to the vehicle will be transferred to Lessee.
15. Applicant contacted her local dealership (i.e. Mercedes-Benz West Island – whose address 4525 boul. Saint-Jean is listed under "LESSOR" Mercedes-Benz Canada Inc. at the top of the first page of the lease, Exhibit P-13) to exercise this option to purchase because she had no other way to exercise this option to purchase other than going through a Mercedes-Benz dealership as an

intermediary or agent of Mercedes (the buyback cannot be done directly with Mercedes);

16. On January 22, 2019, Julie Naud, Financial Services manager at Mercedes-Benz West Island sent an email to Applicant and attached what she referred to in the email as a “*lease buyout financing quote*”, Applicant disclosing the email thread as **Exhibit P-14** and the attachment showing the “MBC Lease buyout fee” as **Exhibit P-15**;
17. The Applicant and her husband replied to Ms. Naud’s email within 2 hours asking the following (see Exhibit P-14 at the top of page 6):

Can you give me an explanation of the DEALER OPTIONS AND CHARGES? The total is \$3,731.99 **and I don’t see any mention of this in the lease agreement.** Please let me know.

[our emphasis in bold].

18. Indeed, the dealer Mercedes-Benz West Island – acting as an agent of Mercedes in performing its obligations under the lease so that Applicant can exercise her right to purchase the vehicle provided for by Mercedes – was now imposing a fee never before disclosed to Applicant in the amount of \$595.00 plus taxes to exercise her option to purchase the vehicle at the end of the lease;
19. By email dated January 23, 2019 (Exhibit P-14 at page 5), Ms. Naud agreed to remove the fee “optional” fee for “wheel locks” and sent Applicant an updated “lease buyout financing quote”, which still imposed a \$595.00 plus taxes “MBC Lease buyout fee”, Applicant disclosing the updated quote as **Exhibit P-16**:

I apologize, the wheel locks charge should not have been there, it goes on automatically when a quote is processed in the system and I am suppose (*sic*) to remove it manually which I did not. Here is attached, your new buyout quote. **The lease buyout fee of \$595 + tax is a standard fee charged upon lease buyout for administration** and processing documentation, government lien release paperwork. All manufacturers have a buyout fee.

[our emphasis in bold].

20. Since Ms. Naud justified and admitted that the lease buyout fee of \$595 “*is a standard fee*” and that “*All manufacturers have a buyout fee*”, Mercedes had a legal obligation to disclose it in the Applicant’s lease, but failed to do so;
21. On January 24, 2019, Applicant and her husband replied to Ms. Naud as follows (see Exhibit P-14, at the top of page 5):

Thank you, this clarifies your earlier quote but still does not answer the question of where the buyout fee appears in the lease document or any of the documents we signed when we took over the lease from Tammy Smith. You can understand that **from the client's perspective this is just another surprise charge and whether or not other manufacturers have a charge it beside the point.**

22. On January 25, 2019, Ms. Naud replied by admitting that Mercedes has been violating ss. 12 and 228 CPA for at least 13 years (Exhibit P-14 at page 4):

... As for the lease buyout fee, **it does not state the price in your lease contract**, Mercedes-Benz dealerships throughout Canada all charge between \$500 and \$1095 for lease buyout transaction from my experience. **I have been here for 13 years now and our buyout fee has always been \$595.**

[our emphasis in bold].

23. On January 25, 2019, realizing that they had no other choice but to pay the illegal fee that was being imposed on them, Applicant and her husband agreed to exercise their option to purchase and pay the \$595.00 plus taxes, but nonetheless mentioned the following to Ms. Naud by email (Exhibit P-14 at p. 3):

... As far as the lease buyout fee I have to tell you that from the client's perspective it should definitely have been disclosed and given the number of forms that were signed when the original lease was put in place as well as when the lease transfer was processed there were plenty of opportunities for disclosure.

24. On February 15, 2019, Applicant exercised her option to purchase and paid the "MBC Lease buyout fee" of \$595.00 plus tax, as it appears from copies of the two (2) bank drafts and documents disclosed *en liasse* as **Exhibit P-17**;
25. Applicant believes that "MBC" stands for "Mercedes-Benz Canada" and is certain that Mercedes is aware of and involved in the commission of this illegal practice (even though knowledge and intent are not factors to consider in determining a violation of the CPA);
26. Defendants Mercedes-Benz Canada Inc., Mercedes-Benz Financial Services Canada Corporation and Mercedes-Benz West Island jointly and solidarily enabled and were instrumental to the creation and conclusion of an illegal transaction and are therefore solidarily liable for the acts and omissions of the other;

27. Under section 12 CPA, Mercedes has a legal obligation to mention both the *existence* of the fee and the *precise amount* thereof:

**12 CPA.** *No costs may be claimed from a consumer unless the amount thereof is precisely indicated in the contract.*

28. Section 228 CPA provides that Mercedes must mention all important facts, which it failed to do as well:

**216 CPA.** *For the purposes of this title, representation includes an affirmation, a behaviour or an omission.*

...

**228 CPA.** *No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.*

29. Quebec consumer protection is of public order and ss. 261 and 262 CPA protect a consumer who contracts with a merchant operating in violation of the CPA:

**261.** No person may derogate from this Act by private agreement.

**262.** No consumer may waive the rights granted to him by this Act unless otherwise provided herein.

30. Therefore, the Applicant did not “waive” any rights by paying the fee and is entitled to request a reimbursement of the amount paid pursuant to s. 272 CPA;

31. Applicant has suffered ascertainable damages of \$595.00 plus taxes (\$684.10) as a direct and proximate result of Mercedes’ violation of ss. 12 and 228 CPA;

32. As a result of the foregoing, the Applicant is justified in claiming, for herself and on behalf of Class members, compensatory damages, as well as punitive damages based on repeated violations of ss. 12 and 228 CPA (pursuant to section 272);

33. Applicant is accordingly entitled to claim and does hereby claim from Mercedes and all Defendants the aggregate of the sums paid on account of amounts charged to exercise the option to purchase a vehicle that were never disclosed in the lease by all Class members;

**Applicant’s claim for punitive damages**

34. Unlike Nissan Canada Inc., BMW Financial Services, Mini Financial Services and Volkswagen Credit Canada, Mercedes does **not** mention:

- i) the *existence* of any administrative fees for exercising the option to purchase;



or

- ii) the precise *amount* of any fee required to exercise the option to purchase.
35. Mercedes and the other Defendants failed to respect the law, whereas they could have easily complied with ss. 12 and 228 CPA in the same manner as their competitors do;
  36. Applicant and her husband even took the time to reach out to Mercedes-Benz Canada headquarters to inquire about the illegal fee, Applicant disclosing the email dated February 24, 2019 sent to the email address [cs.can@cac.mercedes-benz.com](mailto:cs.can@cac.mercedes-benz.com), which is the one published on the Mercedes-Benz Canada's website for customer service (<https://www.mercedes-benz.ca/en/contact-us/overview>), Applicant disclosing her email and screen capture of the website *en liasse* as **Exhibit P-18**;
  37. Mercedes never responded to or even acknowledged Applicant's email of February 24, 2019;
  38. Additionally, Mercedes is charging 6 times (or 600%) more than Nissan Canada for the exact same service, confirming the abusive and lesionary nature of its fee (recall that Nissan discloses a \$100 "*Vehicle Purchase Fee*" in their lease agreements);
  39. Not only is the fee paid by Applicant illegal because it was never disclosed in the lease, but it is also an abusive fee because it grossly exceeds the \$100.00 price at which similar services are readily available Nissan Canada Inc., for instance;
  40. Mercedes' overall conduct before, during and after the violation, was lax, careless, passive and ignorant with respect to consumers' rights and to its own obligations;
  41. In this case, the Applicant gave Mercedes ample opportunity to "waive" the fee and comply with the CPA, but Mercedes was relentless and insisted on charging her, knowing full well that Applicant had no other way to exercise her option to purchase the vehicle;
  42. Mercedes continues to breach consumer protection legislation without any explanation, for a significant period (for at least "13 years" according to Ms. Naud in Exhibit P-14);
  43. This complete disregard for consumers' rights and to its own obligations under the CPA is in and of itself an important reason for this Court to enforce measures that will punish Mercedes and the other Defendants, as well as deter and dissuade others from engaging in similar reprehensible conduct to the detriment of consumers;
  44. The reality is that Mercedes has likely generated millions of dollars in revenues

over the years by charging this fee, without disclosing its existence or its amount to Class members beforehand;

45. Punitive damages have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
46. Mercedes' violations are unconscionable, intentional, calculated, malicious and vexatious;
47. Applicant is accordingly entitled to claim and does hereby claim on behalf of Class members from Mercedes and all Defendants the sum of **\$100.00** per Class member on account of punitive damages;
48. Mercedes' patrimonial situation is so significant that the foregoing amount of punitive damages is appropriate in the circumstance;

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

49. All Class members have a common interest both in proving a violation of ss. 12 and 228 CPA by all Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by the Defendants;
50. The Applicant alleges that during the Class period all of the Defendants failed to disclose the buyback fee, which consumers are then forced to pay in order to exercise their right to purchase their vehicle at the end of the lease;
51. To meet her burden of demonstration - at this stage of the proceedings - Applicant provides the following exhibits to support her allegations contained in the present application vis-à-vis each of the Defendants:

<b>Defendant</b>	<b>Vehicle Lease</b>
Mercedes-Benz Defendants	Exhibit P-13 (clause 9) & Exhibit P-17;
GM Financial Canada Leasing Ltd.	<b>Exhibit P-19</b> (clause 14);
SCI Lease Corp.	<b>Exhibit P-20</b> (clauses 7 & 20);
Compagnie de Gestion Canadian Road	<b>Exhibit P-21</b> (clause 8);
Honda Canada Finance Inc.	<b>Exhibit P-22</b> (clause 6);
Toyota Credit Canada Inc.	Exhibit P-11 (clause 9);
Canadian Dealer Lease Services Inc.	<b>Exhibit P-23</b> (clause 8);

52. For clarity, Applicant alleges that Class members with similar leases to those listed above not only never received disclosure of the precise amount of the administrative fee to purchase their vehicle at the end of the lease, but were also in fact required to pay an amount (sometimes as high as **\$1000 plus taxes**) that was imposed on them in order to exercise their option to purchase at the end of the lease;

53. Class members therefore include consumers in Quebec and across Canada who paid an administrative fee to exercise their option to purchase a vehicle that was never mentioned in their lease;
54. Although the Applicant herself does not have a personal cause of action against, or a legal relationship with, each of the Defendants, the Class contains enough members with personal causes of action against each Defendant;
55. The nature of the interest necessary to establish the standing of the Applicant must be viewed from the perspective of the common interest of the proposed Class and not solely from the perspective of the Applicant;
56. The claims of Class members - forming part of this class action - who leased the following vehicle makes from the following Defendants raise identical issues of fact and law:

<b>Defendant</b>	<b>Vehicle Makes</b>
Mercedes-Benz Defendants	Mercedes-Benz, Smart and Daimler
GM Financial Canada Leasing Ltd.	Buick, Cadillac, Chevrolet, General Motors and GMC
SCI Lease Corp.	Alfa Romeo, Chrysler, Dodge, Fiat, Jeep and Ram
Compagnie de Gestion Canadian Road	Ford and Lincoln
Honda Canada Finance Inc.	Acura and Honda
Toyota Credit Canada Inc.	Lexus, Scion and Subaru
Canadian Dealer Lease Services Inc.	Hyundai, Jaguar, Kia, Land Rover, Maserati, Mazda and Volvo

57. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether the Defendants violate ss. 12 and 228 CPA and whether Class members can claim damages;
58. The claims of every Class member are founded on very similar facts to the Applicant's claim, regardless of which of the Defendants they contracted with and which vehicle make (indicated in the chart above) they leased;
59. Every Class member was charged an administrative fee to purchase their vehicle at the end of their lease that was not expressly provided for in the contract;
60. By reason of the Defendants' unlawful conduct, Applicant and every Class member have suffered damages, which they may collectively claim against the Defendants;
61. In taking the foregoing into account, all Class members are justified in claiming the sums which they unlawfully paid to Defendants to exercise their option to purchase at the end of their lease, as well as punitive damages;

62. Each Class member is justified in claiming at least one or more of the following as damages:
- Reimbursement of the whole of the administrative fees charged for exercising the option to purchase that was not disclosed in the lease (which can be as high as \$1000 plus taxes); and
  - Punitive damages in the amount of \$100.00 each.
63. All of the damages to the Class members are a direct and proximate result of the Defendants' misconduct;
64. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
65. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
- a) Do Defendants violate sections 12 or 228 CPA and, if so, are Class members entitled to compensation and in what amount?
  - b) Are the Class members entitled to punitive damages and if so, what amount must Defendants pay?

### **C) THE COMPOSITION OF THE CLASS**

66. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
67. The Class is conservatively estimated to include thousands of consumers across Quebec and Canada;
68. The names and addresses of all persons included in the Class are not known to the Applicant, however, the Defendants are in possession of all of them;
69. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
70. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
71. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and to have access to justice without overburdening the court system;

**D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**

72. Applicant requests that she be appointed the status of representative plaintiffs for the following main reasons:
- a) she is a member of the Class and has a personal interest in seeking the conclusions that she proposes herein;
  - b) she is competent, in that she has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) her interests are not antagonistic to those of other Class Members;
73. Additionally, Applicant respectfully add that:
- a) she has time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
  - b) she mandated her attorney to file the present application for the sole purpose of having her rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Defendants' illegal and abusive behavior and so that the Defendants can be held accountable for their misconduct;
  - c) she cooperates and will continue to fully cooperate with her attorney, who has experience in consumer protection-related class actions;
  - d) she understands the nature of the action;
74. As for identifying other Class members, Applicant draws certain inferences from the situation and realizes that by all accounts, there is a very important number of Class members that find themselves in an identical situation, and that it would not be any more useful for her to attempt to identify them given their sheer number;
75. For the above reasons, Applicant respectfully submits that her interest and competence are such that the present class action could proceed fairly and in the best interest of Class Members;

**III. DAMAGES**

76. During the Class Period, the Defendants have likely generated millions of dollars while intentionally choosing to ignore the law in Quebec;
77. Defendants must be held accountable for their illegal practice and violation of

consumer protection legislation in Quebec, including:

a) Quebec's *Consumer Protection Act*, notably ss. 12, 228 and 272;

78. In light of the foregoing, the following damages may be claimed against Defendants:

a) compensatory damages in the amount of the aggregate of the administrative fees charged to exercise the option to purchase that were never disclosed, plus interest, and

b) punitive damages, in the amount of \$100.00 per Class member, for the breach of obligations imposed on Defendants pursuant to section 272 CPA;

#### **IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

79. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;

80. The conclusions that the Applicant wishes to introduce by way of an originating application are:

**GRANT** the Representative Plaintiff's action against Defendants on behalf of all the Class members;

**DECLARE** the Defendants liable for the damages suffered by the Representative Plaintiff and each of the Class members;

**DECLARE** that the administrative fee imposed on and paid by Class members for exercising their option to purchase a vehicle at the end of the lease are not precisely indicated in the contract, in violation of sections 12 and 228 of the *CPA*;

**CONDEMN** the Defendants to pay the Representative Plaintiff and Class members compensatory damages for the aggregate of the amounts charged for exercising their option to purchase when this amount was not disclosed in the lease;

**ORDER** the collective recovery of all damages owed to the Class members for the amounts charged;

**CONDEMN** the Defendants to pay to each Class member the sum of \$100.00 on account of punitive damages, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

**ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;

## **V. JURISDICTION**

81. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal because she is a consumer and has her domicile and residence in the judicial district of Montreal;
82. The interests of justice favour that this Application be granted in accordance with its conclusions.

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

**AUTHORIZE** the bringing of a class action in the form of an originating application in damages;

**APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

#### **Class:**

All consumers who had a vehicle lease agreement with any of the Defendants and, since March 14, 2016, paid a fee to exercise their option to purchase their vehicle (“buyback”) at the end of their lease which was not disclosed in their lease;

*Tous les consommateurs ayant conclu un contrat de location de véhicule avec l'une des défenderesses et qui, depuis le 14 mars 2016, ont payé des frais pour exercer leur option d'achat (« rachat ») de leur véhicule à la fin de la location qui n'étaient pas divulgués dans leur contrat de location;*

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

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

following:

- a) Do Defendants violate sections 12 or 228 CPA and, if so, are Class members entitled to compensation and in what amount?
- b) Are the Class members entitled to punitive damages and if so, what amount must Defendants pay?

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

**GRANT** the Representative Plaintiff's action against Defendants on behalf of all the Class members;

**DECLARE** the Defendants liable for the damages suffered by the Representative Plaintiff and each of the Class members;

**DECLARE** that the administrative fee imposed on and paid by Class members for exercising their option to purchase a vehicle at the end of the lease are not precisely indicated in the contract, in violation of sections 12 and 228 of the CPA;

**CONDEMN** the Defendants to pay the Representative Plaintiff and Class members compensatory damages for the aggregate of the amounts charged for exercising their option to purchase when this amount was not disclosed in the lease;

**ORDER** the collective recovery of all damages owed to the Class members for the amounts charged;

**CONDEMN** the Defendants to pay to each Class member the sum of \$100.00 on account of punitive damages, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

**ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of



claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;

**DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

**ORDER** the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the “News” sections of the Saturday editions of Le Journal de Montréal and the MONTREAL GAZETTE;

**ORDER** that said notice be published on the Defendants’ websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating “Notice of a Class Action”;

**ORDER** the Defendants to send a Notice by regular mail to each Class Member, to their last known physical address, with the subject line “Notice of a Class Action”;

**ORDER** the Defendant to send an Abbreviated Notice by e-mail to each Class member, to their last known e-mail address, with the subject line “Notice of a Class Action”;

**ORDER** the Defendant and its representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class members, including their names, addresses, phone numbers and email addresses;

**RENDER** any other order that this Honourable Court shall determine;

**THE WHOLE** with costs including publication fees.

Montreal, March 14, 2019

*(s) Joey Zukran*

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**LPC AVOCAT INC.**

Per: Me Joey Zukran

Attorney for Applicant

**SUMMONS**  
(ARTICLES 145 AND FOLLOWING C.C.P)

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**Filing of a judicial application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of **Montreal**.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of **Montreal** situated at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance

contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Extract of the CIDREQ for Mercedes-Benz Canada Inc.;
- Exhibit P-2:** Extract of the CIDREQ for Mercedes-Benz Financial Services Canada Corporation;
- Exhibit P-3:** Extract of the CIDREQ for Mercedes-Benz West-Island;
- Exhibit P-4:** Extract of the CIDREQ for GM Financial Canada Leasing Ltd.;
- Exhibit P-5:** Extract of the CIDREQ for SCI Lease Corp.;
- Exhibit P-6:** Extract of the CIDREQ for Compagnie de Gestion Canadian Road;
- Exhibit P-7:** Extract of the CIDREQ for Honda Canada Finance Inc.;
- Exhibit P-8:** Extract of the CIDREQ for Toyota Credit Canada Inc.;
- Exhibit P-9:** Extract of the CIDREQ for Canadian Dealer Lease Services Inc.;
- Exhibit P-10:** Copy of *Toyota Services Financiers* (Toyota Credit Canada Inc.)

lease dated September 21, 2017, for a Toyota Rav4 Hybrid;

**Exhibit P-11:** Copy of a Toyota Credit Canada Inc. lease dated July 21, 2015 for a Subaru Forester;

**Exhibit P-12:** Copy of a Honda lease dated November 29, 2016;

**Exhibit P-13:** *En liasse*, copies of Applicant's lease and assumption documents with Mercedes-Benz;

**Exhibit P-14:** Copy of email thread from January 22, 2019 to February 13, 2019 with Mercedes-Benz;

**Exhibit P-15:** Copy of quote dated January 22, 2019, showing the "MBC Lease buyout fee" of \$595.00;

**Exhibit P-16:** Copy of updated quote dated January 23, 2019, still showing the "MBC Lease buyout fee" of \$595.00;

**Exhibit P-17:** *En liasse*, copies of two bank drafts and documents for purchase of Applicant's Mercedes-Benz;

**Exhibit P-18:** *En liasse*, copies of the email dated February 24, 2019 sent to Mercedes-Benz Canada and a screen capture of its website;

**Exhibit P-19:** Copy of GM Financial lease dated October 30, 2013;

**Exhibit P-20:** Copy of SCI Lease Corp. lease;

**Exhibit P-21:** Copy of Compagnie de Gestion Canadian Road (Ford) lease dated February 3, 2018;

**Exhibit P-22:** Copy of Honda Service Financiers lease from March 2012;

**Exhibit P-23:** Copy of Canadian Dealer Lease Services Inc. lease for a Land Rover dated January 24, 2017.

These exhibits are available on request.

## **Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, March 14, 2019

*(s) Joey Zukran*

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**LPC AVOCAT INC.**

Per: Me Joey Zukran  
Attorney for Applicant

**NOTICE OF PRESENTATION**  
(articles 146 and 574 al. 2 C.C.P.)

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**TO: MERCEDES-BENZ CANADA**  
4525 Saint-Jean boulevard,  
Dollard-Des-Ormeaux  
Quebec, H9H 2A7

**MERCEDES-BENZ FINANCIAL  
SERVICES CANADA  
CORPORATION**  
2100 boulevard Dagenais West  
Laval, Quebec, H7L 5X9

**MERCEDES-BENZ WEST  
ISLAND**  
4525 Saint-Jean boulevard  
Dollard-Des-Ormeaux, Quebec  
H9H 2A7

**GM FINANCIAL CANADA  
LEASING LTD.**  
715 Dubois Street  
Saint-Eustache, Quebec  
J7P 3W1

**SCI LEASE CORP.**  
715 Dubois Street  
Saint-Eustache, Quebec  
J7P 3W1

**COMPAGNIE DE GESTION  
CANADIAN ROAD**  
300 Albert-Mondou boulevard  
Saint-Eustache, Quebec  
J7R 7A7

**HONDA CANADA FINANCE INC.,**  
3900-1 Place Ville-Marie  
Montral, Quebec, H3B 4M7

**TOYOTA CREDIT CANADA INC.**  
4705 Lapinière boulevard  
Brossard, Quebec, J4Z 3T5

**CANADIAN DEALER LEASE  
SERVICES INC.,**  
250 Yonge Street, Suite 2601  
Toronto, Ontario, M5B 2L7

**DEFENDANTS**

**TAKE NOTICE** that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

**GOVERN YOURSELF ACCORDINGLY.**

Montreal, March 14, 2019

(s) *Joey Zukran*

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**LPC AVOCAT INC.**  
Per: Me Joey Zukran  
Attorney for Applicant

500-06-000989-190

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(Class Action)  
SUPERIOR COURT  
DISTRICT OF MONTREAL

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**GERTRUDE GILLICH**

*Applicant*

-vs.-

**MERCEDES-BENZ CANADA INC.  
ET ALS.**

*Defendants*

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**APPLICATION TO AUTHORIZE THE BRINGING OF  
A CLASS ACTION AND TO APPOINT THE STATUS  
OF REPRESENTATIVE PLAINTIFF  
(ARTICLES 571 AND FOLLOWING C.C.P.)**

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**ORIGINAL**

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Me Joey Zukran  
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**BL 6059**

**N/D: JZ-195**

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