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9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

14 Cory Hazdovac, an individual, on behalf of
himself and all others similarly situated,

15 Plaintiff,

16 v.

17 Mercedes-Benz USA, LLC,

18 Defendant.
19

Case No. 20-cv-377

**NOTICE OF REMOVAL OF CIVIL ACTION
UNDER 28 U.S.C. §§ 1332(D), 1441, 1446 &
1453 (CLASS ACTION FAIRNESS ACT)**

20 TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES AND THEIR
21 COUNSEL OF RECORD:

22 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. sections 1332(d), 1441, 1446 and
23 1453, defendant Mercedes-Benz USA, LLC (“MBUSA”) by and through its counsel of record,
24 hereby removes to this Court the state-court action described herein.

25 Federal diversity jurisdiction exists under the Class Action Fairness Act (“CAFA”), 28
26 U.S.C. section 1332(d), because this case is a “class action” under CAFA, the CAFA diversity of
27 citizenship requirements are fully met, and the matter in controversy exceeds the sum or value of
28 \$5,000,000, exclusive of interest and costs. MBUSA states the following grounds for removal:

1 **I. INTRODUCTION**

2 1. On December 4, 2019, Plaintiff Cory Hazdovac filed a Class Action Complaint
3 against MBUSA in the Superior Court of California for the County of Alameda, styled *Cory*
4 *Hazdovac, an individual, on behalf of himself and all others similarly situated v. Mercedes-Benz*
5 *USA, LLC*, No. RG19045555 (“Class Action Complaint”). At the time of filing this Notice of
6 Removal, the case was still pending in the Superior Court of California for the County of
7 Alameda. *See* 28 U.S.C. § 1441(a).

8 2. The Class Action Complaint was served on MBUSA on December 18, 2019.

9 3. True and correct copies of the Class Action Complaint, Summons and all other
10 documents as served on MBUSA in this action are attached hereto as **Exhibit A**. *See* 28 U.S.C.
11 § 1446(a).

12 4. When a plaintiff files suit in state court but could have invoked the original
13 jurisdiction of the federal courts, a defendant may remove the action to federal court. 28 U.S.C.
14 § 1441(a).

15 5. This Court has original jurisdiction over this action under CAFA, 28 U.S.C.
16 section 1332 *et seq.*, and the action may be removed from the Superior Court of California for the
17 County of Alameda to this Court pursuant to 28 U.S.C. sections 1332(d), 1446 and 1453(b),
18 because, as Plaintiff here alleges in his complaint, it is a “class action” comprised of at least 100
19 members in the aggregate, minimal diversity of citizenship exists between the parties, and the
20 amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs. *See*
21 **Exhibit A** at 7 (Compl. ¶ 23) (“This Court has original jurisdiction over the subject matter of this
22 action pursuant to 28 U.S.C. § 1332(d)(2)(A) because: (i) members of the Class are citizens of a
23 state different from that of Defendant MBUSA; and (ii) aggregating the claims of individual
24 Class members, the total matter in controversy exceeds the sum or value of \$5,000,000, exclusive
25 of interests and costs. Further, 28 U.S.C. § 1332(d)(5) does not apply because (i) MBUSA is not
26 a state, state official, or other governmental entity against whom the Court may be foreclosed
27 from ordering relief, and (ii) the number of members of the Class in the aggregate exceeds 100.”).

1 **II. THE REMOVED ACTION IS A CLASS ACTION SUBJECT TO CAFA REMOVAL**

2 6. This case is a “class action” as defined in 28 U.S.C. section 1332(d)(1)(B) and is
3 therefore removable under the provisions of CAFA. *See, e.g., Exhibit A* at 7 (Compl. ¶ 23)
4 (conceding CAFA jurisdiction); *see also id.* at 13–17 (Compl. ¶¶ 56–71) (“Plaintiff’s Class
5 Action Allegations”).

6 7. Further, in his Class Action Complaint, Plaintiff purports to bring all causes of
7 action “pursuant to California Code of Civil Procedure § 382” *Id.* at 13 (Compl. ¶ 57).
8 Further, the caption of Plaintiff’s Class Action Complaint denotes that it is a “Class Action.” *Id.*
9 at 2 (Compl. p. 1).

10 8. In the Class Action Complaint, Plaintiff defines the putative classes to include:

11 All persons in California who, within the last four years, have been
12 owners or lessees of MBUSA vehicles and who have paid for
13 repairs and parts that should have been covered under MBUSA's
14 “high-priced warranted parts” 7-year 70,000-mile California
15 emissions warranty (the “Class”).

14 and

15 All persons in California who are, or have been, owners or lessees
16 of MBUSA MY 2015 Mercedes C300 vehicles and who have paid
17 for repairs and parts for the vacuum pump, coolant pump, and
18 thermostat, which should have been covered under the 7-year
19 70,000-mile California Emissions Warranty (the “Subclass”).

18 *Id.* at 13–14 (Compl. ¶¶ 60–61).

19 9. Section 382 of the California Code of Civil Procedure authorizes actions to be
20 brought by “one or more” persons who may “sue or defend for the benefit of all” where “the
21 question is one of a common or general interest, of many persons, or when the parties are
22 numerous, and it is impracticable to bring them all before the court” Thus, actions alleged
23 under this section qualify as “class actions” for removal jurisdiction under CAFA because they
24 “authoriz[e] an action to be brought by 1 or more representatives as a class action.” *See* 28
25 U.S.C. § 1711(2); *Martinez v. Check ’N Go of Cal., Inc.*, No. 15-CV-1864 H (RBB), 2016 WL
26 6103166, at *3 (S.D. Cal. Feb. 18, 2016) (defendants properly removed case originally brought
27 under Cal. Civ. Proc. Code § 382 as a “class action” under CAFA); *Korn v. Polo Ralph Lauren*
28 *Corp.*, 536 F. Supp. 2d 1199, 1202 (E.D. Cal. 2008) (same).

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1 10. Accordingly, the Class Action Complaint falls within the definition of a “class
2 action” under CAFA. *See* 28 U.S.C. § 1332(d)(1)(8).

3 **A. MBUSA and a Member of the Putative Class Are Citizens of Different States**

4 11. Complete diversity of citizenship exists between a member of the proposed class
5 and at least one defendant, as required by CAFA. 28 U.S.C. § 1332(d)(2).

6 12. The named Plaintiff Cory Hazdovac alleges he is a citizen of the State of
7 California. **Exhibit A** at 8 (Compl. ¶ 26).

8 13. At the time this action was filed and at the time of removal, MBUSA was, and still
9 is, a Delaware limited liability company that maintained, and still maintains, its home office and
10 principal place of business in Georgia. *See Exhibit B* (Declaration of Greg Gunther in Support of
11 Notice of Removal of Civil Action (“Gunther Decl.”)) at ¶ 4.¹ MBUSA has only one member,
12 Daimler North America Corporation (“DNAC”). DNAC is a Delaware corporation with its
13 principal place of business in Michigan. *Id.* at ¶ 5. Both at the time this action was commenced
14 and at the time of the filing of the Notice of Removal, neither MBUSA nor DNAC were citizens
15 of the State of California. *Id.* at ¶ 6.

16 **B. The Amount in Controversy Exceeds \$5,000,000**

17 14. CAFA provides for original jurisdiction for “any civil action in which the matter in
18 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C.
19 § 1332(d)(2). Unlike traditional review of the amount in controversy for claims asserted by
20 individuals, in class actions, CAFA requires that claims of class members be aggregated:

21 In any class action, the claims of the individual class members shall
22 be aggregated to determine whether the matter in controversy
23 exceeds the sum or value of \$5,000,000, exclusive of interest and
costs. [28 U.S.C. § 1332(d)(6).]

24 15. The amount in controversy is determined by evaluating the Plaintiff’s complaint
25 and the record as a whole. *See Lewis v. Verizon Communications, Inc.*, 627 F.3d 395, 400 (9th
26

27 ¹ The Court is authorized to consider declarations and “summary-judgment type” evidence in
28 considering whether removal is proper. *See Lim v. Helio, LLC*, 2012 U.S. Dist. LEXIS 12871, at
*4 (C.D. Cal. Feb. 2, 2012); *see also Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81,
87–88 (2014) (removing defendant may rely on evidence).

1 Cir. 2010). “[W]hen a defendant seeks federal-court adjudication, the defendant’s amount-in-
2 controversy allegation should be accepted when not contested by the plaintiff [with evidence] or
3 questioned by the court.” *Dart Cherokee*, 574 U.S. at 87. Here, as discussed below in paragraph
4 16, Plaintiff does not contest the amount-in-controversy—but rather has himself admitted that the
5 requirement is met. Only if contested, “both sides submit proof and the court decides, by a
6 preponderance of the evidence, whether the amount-in-controversy requirement has been
7 satisfied.” *Id.* at 88. The amount in controversy is “simply an estimate of the total amount in
8 dispute, not a prospective assessment of defendant’s liability” or “proof of the amount the
9 plaintiff will recover.” *Lewis*, 627 F.3d at 400 (quoting *McPhail v. Deere & Co.*, 529 F.3d 947,
10 956 (10th Cir. 2008)).

11 16. MBUSA denies all of Plaintiff’s allegations and specifically denies that Plaintiff or
12 any putative class members are entitled to any relief. Without prejudice to its defenses in this
13 action, however, MBUSA avers that the amount in controversy exceeds the \$5,000,000 threshold
14 for removal jurisdiction under CAFA, 28 U.S.C. section 1332(d)(2), because Plaintiff alleges
15 “aggregating the claims of individual Class members, the total matter in controversy exceeds the
16 sum or value of \$5,000,000, exclusive of interests and costs.” **Exhibit A** at 7 (Compl. ¶ 23). His
17 claims are based on allegations that he and the class members are entitled to injunctive relief,
18 compensatory, exemplary, and statutory damages, pre- and post-judgment interest, repair costs,
19 disgorgement of profits, and attorneys’ fees and costs. *See, e.g., Exhibit A* at 25–26 (Compl. pp.
20 22–23) (“Prayer for Relief”). The Court must accept Plaintiff’s allegations as true in measuring
21 the amount in controversy, and Plaintiff must be bound by those same allegations. *See Kenneth*
22 *Rothschild Tr. v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (“In
23 measuring the amount in controversy, a court must assume that the allegations of the complaint
24 are true and assume that a jury will return a verdict for the plaintiff on all claims made in the
25 complaint.”) (quotations and brackets omitted); *Crum v. Circus Circus Enters.*, 231 F.3d 1129,
26 1131 (9th Cir. 2000) (“Generally, the amount in controversy is determined from the face of the
27 pleadings. The sum claimed by the plaintiff controls so long as the claim is made in good faith.”)
28 (citation omitted); *Dejong v. Prod. Assocs.*, No. CV 14-02357 MMM (DTBx), 2015 U.S. Dist.

1 LEXIS 35286, at *11 (C.D. Cal. Mar. 19, 2015) (“[W]hen a complaint filed in state court alleges
 2 on its face an amount in controversy sufficient to meet the federal jurisdictional threshold, [the
 3 amount in controversy] requirement is presumptively satisfied unless it appears to a 'legal
 4 certainty' that the plaintiff cannot actually recover that amount.”) (alterations in original)
 5 (quoting *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007)); *cf. Flores v.*
 6 *Safeway, Inc.*, No. C19-0825-JCC, 2019 U.S. Dist. LEXIS 170498, at *9 (W.D. Wash. Oct. 1,
 7 2019) (“In a case for money damages . . . the appropriate focus in determining the amount in
 8 controversy is on plaintiff's assessment of the value of her case, and the best evidence of that
 9 assessment is usually the plaintiff's own statements.”) (quotations omitted ellipses in original).

10 17. Here, Plaintiff claims he incurred over \$1,200 in repair costs related to various
 11 repairs. **Exhibit A** at 9–10 (Compl. ¶¶ 34–42). The putative class potentially encompasses
 12 hundreds of thousands of vehicles, because it includes all Mercedes-Benz models sold in
 13 California for over a decade; vehicles sold in 2008 are the oldest vehicles that could still have
 14 been within the seven-year limitation of the warranty at the start of the putative class period four
 15 years ago in 2015. Assuming even a fraction of the vehicles at issue involved alleged costs
 16 similar to Plaintiff, CAFA's \$5,000,000 amount-in-controversy requirement is easily met in this
 17 case.

18 18. Plaintiff also seeks “attorneys’ fees and costs.” **Exhibit A** at 25–26 (Compl. pp.
 19 22–23) (“Prayer for Relief”). Courts consider attorneys’ fees and costs in establishing the amount
 20 in controversy for removal jurisdiction under the CAFA amendments. *See, e.g., Gibson v.*
 21 *Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001); *accord Haldiman v. Continental Casualty Co.*,
 22 666 Fed. Appx. 612, 613–14 (9th Cir. Nov. 14, 2016). Coupled with Plaintiff's concession that
 23 the amount in controversy exceeds CAFA's jurisdictional minimum, as well as the fact that
 24 Plaintiff's alleged repair costs when aggregated on a class-wide basis also exceed the
 25 jurisdictional minimum, the claim for attorneys’ fees and costs only further causes the \$5,000,000
 26 jurisdictional minimum to be met.

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1 **III. 28 U.S.C. § 1466 REQUIREMENTS**

2 19. **Removal Is Timely.** MBUSA was served on December 18, 2019, and timely filed
3 this Notice of Removal within 30 days of service of the Class Action Complaint. *See* 28 U.S.C. §
4 1446(b).

5 20. **Removal to This Court Is Proper.** The Class Action Complaint was filed in the
6 Superior Court of California for the County of Alameda. This Court is part of the “district and
7 division within which such action is pending” 28 U.S.C. § 1446(a).

8 21. **Pleadings and Process.** Pursuant to 28 U.S.C. section 1446(a), a “copy of all
9 process, pleadings, and orders served upon” MBUSA is attached to this Notice of Removal as
10 **Exhibit A**. MBUSA has not answered or otherwise filed a response to the Class Action
11 Complaint. Other than the documents attached as **Exhibit A**, no other pleadings, process, orders,
12 or other papers in this case have been filed, served, or otherwise received by defendant or, to its
13 knowledge, are presently on file in the Superior Court of California for the County of Alameda.
14 In the event that additional filings, if any, come to MBUSA’s attention, it will promptly provide
15 this Court with true and correct copies of all such papers.

16 22. **Notice to All Parties and the State Court.** Concurrent with the filing of this
17 Notice, MBUSA gave written notice of this Notice of Removal to Plaintiff’s counsel of record,
18 and will file a copy of this Notice of Removal with the Clerk of the Superior Court of California
19 for the County of Alameda. 28 U.S.C. § 1446(a), (d).

20 WHEREFORE, notice is given that this action is removed from the Superior Court of
21 California for the County of Alameda, to the United States District Court for the Northern District
22 of California, Oakland Division.

23 Dated: January 17, 2020

Squire Patton Boggs (US) LLP

24
25
26
27
28

By: /s/ Troy M. Yoshino
Troy M. Yoshino

Attorneys for Defendant
Mercedes-Benz USA, LLC

EXHIBIT A

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

MERCEDES BENZ USA, LLC, and DOES MBUSA 1 through 10,
inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CORY HAZDOVAC, individually and on behalf of all others similarly
situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
**ENDORSED
FILED
ALAMEDA COUNTY
DEC 04 2019**
CLERK OF THE SUPERIOR COURT
By **JERRIE MOYER**
Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito llene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

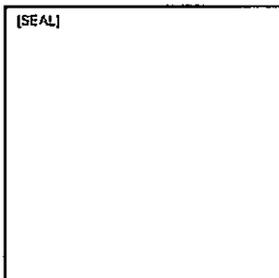
The name and address of the court is:
(El nombre y dirección de la corte es): Alameda County Superior Court
1225 Fallon St.
Oakland, CA 94612

CASE NUMBER:
(Número del Caso)
19045553

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jordan L. Lurie, Pomerantz LLP, 1100 Glendon Avenue, 15th Flr., Los Angeles, CA 90024, (310) 432-8492

DATE: December 3, 2019 Clerk, by JERRIE MOYER Deputy
(Fecha) DEC 04 2019 (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): **MERCEDES BENZ USA, LLC**

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

4. by personal delivery on (date): **12-18-19**

ENDORSED
FILED
ALAMEDA COUNTY

DEC 04 2019

CLERK OF THE SUPERIOR COURT

By _____ Deputy

JERRIE MOYER

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11 *Attorneys for Plaintiff*

12 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA

14 CORY HAZDOVAC, individually and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 MERCEDES BENZ USA, LLC, and DOES
19 MBUSA 1 through 10, inclusive,

20 Defendants.

Case No.

RG19045555

CLASS ACTION

COMPLAINT FOR:

- (1) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE, SECTION 17200, *et seq.*; and,
- (2) VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, CAL. CIV. CODE SECTION 1770, *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff Cory Hazdovac ("Plaintiff"), individually and on behalf of all other members of
2 the public similarly situated, brings this action against Defendant Mercedes Benz USA, LLC
3 ("Defendant" or "MBUSA"), upon information and belief, except as to his own actions, the
4 investigation of her counsel, and the facts that are a matter of public record, and alleges as
5 follows:

6 INTRODUCTION

7 1. This class action arises out of MBUSA's failure to accurately and
8 comprehensively identify *all* of the vehicle parts that should properly be classified as "high-cost
9 emissions warranty parts" under California's emission control system warranty requirements
10 and covered under the California Emissions Warranty ("Emissions Warranty") for 7-years and
11 70,000 miles.

12 2. Instead, MBUSA has unilaterally limited the parts that should be covered under
13 the Emissions Warranty for 7-years and 70,000 miles, including the parts specifically identified
14 by Plaintiff, in order to minimize MBUSA's warranty exposure.

15 3. By not comprehensively identifying all of the parts that should be included as
16 "high-cost" warranted parts, Mercedes is able to limit the emissions warranty coverage for those
17 parts to only 3-years and 50,000 miles.

18 4. Plaintiff seeks reimbursement for, *inter alia*, all out of pocket costs paid for
19 repairs that should have been covered under the 7-years and 70,000-mile emissions warranty for
20 high-priced parts and an injunction to compel MBUSA to properly identify all high-priced
21 warranted parts.

22 BACKGROUND

23 5. For decades, MBUSA has been in the business of importing and distributing
24 MBUSA vehicles in the State of California, with the intent to sell MBUSA vehicles to
25 consumers in California. As such, the MBUSA vehicles have been subject to state and federal
26 regulations regarding both emissions standards and regarding MBUSA's obligations to provide
27 consumers with warranties relating to emissions parts.

28

1 6. Specifically, dating back over 20 years, California Code of Regulations, Title 13,
2 Section 2035, *et seq.*, entitled “Emission Control System Warranty Requirements for 1990 and
3 Subsequent Model Year Passenger Car, Light-Trucks, and Medium-Duty Vehicles and Engines
4 (“the CCR”) has required MBUSA to identify to the California Air Resources Board (“CARB”)
5 the vehicle parts that are “high-priced” “warranted parts” and has required MBUSA to provide a
6 7-year 70,000-mile warranty to California consumers relating to “high-priced” “warranted
7 parts.” This provision is sometimes referred to as the “High-Cost Emissions-Related Parts
8 Warranty” or the “California Emission Control System Warranty.”

9 7. The CCR very clearly defines the methodology that MBUSA is required to use in
10 order to identify which parts should be covered by the 7-year 70,000-mile warranty.

11 8. Pursuant CCR Section 2035, with regard to 1990 and subsequent model year
12 vehicles, a “warranted part” is defined as, “any part installed on a motor vehicle or motor
13 vehicle engine by the vehicle or engine manufacturer, or installed in a warranty repair, which
14 affects any regulated emission from a motor vehicle or engine which is subject to California
15 emission standards.”

16 9. Furthermore, CCR Section 2037(b) states: “The manufacturer of each motor
17 vehicle or motor vehicle engine shall warrant to the ultimate purchaser and each subsequent
18 purchaser that the vehicle or engine is:

- 19 (1) Designed, built, and equipped so as to conform with all applicable regulations
20 adopted by the Air Resources Board pursuant to its authority in chapters 1 and 2,
21 part 5, division 26 of the Health and Safety Code; and
22 (2) Free from defects in materials and workmanship which cause the failure of a
23 warranted part to be identical in all material respects to the part as described in
24 the vehicle or engine manufacturer’s application for certification, including any
25 defect in materials or workmanship which would cause the vehicle’s on-board
26 diagnostic malfunction indicator light to illuminate, for a period of three years or
27 50,000 miles, whichever first occurs; and
28

1 (3) Free from defects in materials and workmanship which cause the failure of a
2 warranted part described in section (c) below for seven years or 70,000 miles,
3 whichever first occurs.”

4 10. California Code of Regulations Section 2037(c) deals with “high-priced
5 warranted parts” under the California Emission Control System Warranty and states:

6 (1) Each manufacturer shall identify in its application for certification the “high-
7 priced” warranted parts which are:

8 (a) For 1990 through 2007 model year vehicles: [i] included on the Board’s
9 “Emissions Warranty Parts List” as last amended February 22, 1985,
10 incorporated herein by reference, and; [ii] have an individual replacement
11 cost at the time of certification exceeding the cost limit defined in section
12 (c)(3);

13 (b) For 2008 and subsequent model year vehicles: [i] subject to coverage as a
14 warranted part in section (b)(2) above, and; [ii] have an individual
15 replacement cost at the time of certification exceeding the cost limit
16 defined in section (c)(3).

17 (2) The replacement cost shall be the retail cost to a vehicle owner and include the
18 cost of the part, labor, and standard diagnosis. The costs shall be those of the
19 highest-cost metropolitan area of California.

20 (3) The cost limit shall be calculated using the following equation:

21
$$\text{Cost limit } \{n\} = \$300 \times (\text{CPI}\{n-2\}) / 118.3$$

22 Cost limit {n} is the cost limit for the applicable model year of the vehicle
23 rounded to the nearest ten dollars.

24 11. In summary, any part that either effects a vehicle’s emissions, or causes a
25 vehicle's on-board diagnostic malfunction indicator light to illuminate is, for the purpose of
26 determining coverage under CCR, considered a “warranted part.” If a part is a “warranted part,”
27 the part shall have a 50,000-mile California emissions warranty.

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1 18. MBUSA engages in the alleged misconduct in order to reduce the amount of
2 money that MBUSA has to pay out on warranty related repairs and warranty claims.

3 19. If MBUSA properly identified all of the high-priced warranted parts that should
4 be correctly identified as such, then MBUSA dealerships would properly provide coverage for
5 said high-priced parts under warranty.

6 20. The failure by MBUSA to properly identify parts as "high-priced" warranted
7 parts under the CCR violates the UCL and CLRA and is intended to minimize the amount of
8 money that MBUSA has to pay out in warranty claims. This conduct violates California law.

9 21. Plaintiff and other consumers have suffered damage and lost money or property
10 as a result of MBUSA's wrongful conduct.

11 22. Plaintiff's theory does not depend on the premise that CARB was deceived by
12 the information that MBUSA submitted, and Plaintiff is not accusing CARB of mismanagement
13 or blaming CARB for MBUSA's inaccuracy. MBUSA alone is responsible for selecting and
14 identifying to CARB the parts that MBUSA has unilaterally identified as "high-cost emissions
15 warranty parts" as part of its application for vehicle certification. That list may be correct as far
16 as CARB may know. But, as Plaintiff alleges, the list is incomplete, as evidenced by Plaintiff's
17 own experience.

18 JURISDICTION AND VENUE

19 23. This Court has original jurisdiction over the subject matter of this action
20 pursuant to 28 U.S.C. § 1332(d)(2)(A) because: (i) members of the Class are citizens of a state
21 different from that of Defendant MBUSA; and (ii) aggregating the claims of individual Class
22 members, the total matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
23 interests and costs. Further, 28 U.S.C. § 1332(d)(5) does not apply because (i) MBUSA is not
24 a state, state official, or other governmental entity against whom the Court may be foreclosed
25 from ordering relief, and (ii) the number of members of the Class in the aggregate exceeds
26 100.

27 24. This Court has personal jurisdiction over Defendant because Defendant has
28 sufficient minimum contacts with California, having intentionally availed itself of the

1 California market so as to render the exercise of jurisdiction over it by this District Court
2 consistent with traditional notions of fair play and substantial justice.

3 25. Venue is proper in this Court because California Code of Civil Procedure
4 §§395 and 395.5, and case law interpreting those sections, provide that if a foreign business
5 entity fails to designate with the office of the California Secretary of State a principal place of
6 business in California, it is subject to being sued in any county in the State that plaintiff
7 desires. On information and belief, MBUSA is a foreign business entity, and has failed to
8 designate a principal place of business in California with the office of the Secretary of State as
9 of the date this Complaint was filed.

10 **PARTIES**

11 26. Cory Hazdovac is, and at all times relevant hereto has been, a resident and citizen
12 of the State of California.

13 27. MBUSA was and is, upon information and belief, a Delaware limited liability
14 company doing business in California. MBUSA's North American headquarters are located at
15 One Mercedes-Benz Drive, Sandy Springs, Georgia 30328-4201.

16 28. The true names and capacities of Defendants sued in this Complaint as Does 1
17 through 10, inclusive, are currently unknown to Plaintiff, and therefore Plaintiff sues such
18 Defendants by such fictitious names.

19 29. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
20 were the partners, agents, owners, shareholders, managers, or employees of MBUSA at all
21 relevant times.

22 30. Plaintiff is informed and believes, and on that basis alleges that each of the
23 fictitiously named Defendants was in some manner legally responsible for the actionable and
24 unlawful actions, policies and practices as alleged herein. Plaintiff will amend this Complaint to
25 set forth the true names and capacities of said Defendants, along with the appropriate charging
26 allegations, when the same have been ascertained, as may be necessary. Each reference in this
27 Complaint to "MBUSA" or "Defendant" is also a reference to all Defendants sued as Does 1
28 through 10.

1 consumers can present their vehicles for repair pursuant to the MBUSA warranty. Plaintiff
2 visited Sangera because the check engine light was illuminated.

3 38. Sangera ran a short test, and found fault code P029921, indicating that the boost
4 pressure for the turbo charger was too low. This fault code is stored in the Hazdovac Vehicle's
5 diagnostic system. Sangera diagnosed the Hazdovac Vehicle as having a non-functioning turbo
6 charger. Sangera determined that the problems with the turbo charger were the result of a
7 malfunctioning vacuum pump. Sangera subsequently notified Plaintiff that Plaintiff had to pay
8 for these repairs. Thus, there was no warranty coverage provided by MBUSA at that time
9 relating to the vacuum pump.

10 39. Plaintiff paid a \$100 deductible out of pocket because Plaintiff purchased a
11 service contract for the Hazdovac Vehicle. Thus, as a result of the vacuum pump not being
12 covered under the MBUSA warranty, Hazdovac suffered financial loss.

13 40. On July 19, 2019, at 59,693 miles, the Hazdovac Vehicle again underwent
14 repairs at Sangera because the Hazdovac Vehicle's check engine light was illuminated. Sangera
15 generated Invoice 157444 relating to this repair visit.

16 41. Sangera ran a short test, and found fault code 260013, indicating a fault in the
17 coolant pump. This fault code is stored in the Hazdovac Vehicle's diagnostic system. Plaintiff
18 that Hazdovac had to pay for these repairs. Thus, there was no warranty coverage being
19 provided by MBUSA at that time relating to the coolant vacuum pump.

20 42. Plaintiff paid a \$100 deductible out of pocket because Plaintiff purchased a
21 service contract for the Hazdovac Vehicle. Thus, as a result of the coolant pump not being
22 covered under the MBUSA warranty, Hazdovac suffered financial loss.

23 43. The cost associated with the diagnosis and repairs relating to all three repairs
24 should have been covered and paid for by MBUSA under the 7-year 70,000-mile California
25 Emissions Warranty. This is because, pursuant to California Code of Regulations section
26 2037(c), the vacuum pump, coolant pump, and coolant thermostat should have been identified
27 as a high-priced emissions warranted parts. Thus, the cost associated with the diagnosis,
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1 replacement parts, and labor relating to the replacement of the parts, should have been covered
2 under section 2037(c).

3 44. Furthermore, the warranty booklet relating to the Model Year ("MY") 2015
4 Mercedes C300 should have identified said parts as being high-priced emissions parts. This is
5 because, at the time of initial distribution, the costs associated with diagnosing the parts as being
6 defective, purchasing the parts, and installing the parts, qualified the parts as high-priced
7 emissions warranted parts, as described in the statute.

8 45. On information and belief, there is no legitimate explanation for why, based on
9 these facts, the vacuum pump, coolant pump, and thermostat were not identified by MBUSA as
10 a high-cost emission parts and, to date, MBUSA has not explained the basis for MBUSA's
11 determination, despite Plaintiff's request.

12 46. On information and belief, MBUSA's failure to include the vacuum pump,
13 coolant pump, and thermostat as a high-priced parts was an omission by MBUSA designed to
14 limit MBUSA's warranty exposure and is just one example of MBUSA's scheme to fail to
15 properly and comprehensively identify all of the parts that should be identified as high-priced
16 warranted parts and covered for 7-years or 70,000 miles under the California Emissions
17 Warranty.

18 47. The details of how MBUSA applied the CCR formula with respect to the vacuum
19 pump, coolant pump, and thermostat are exclusively within MBUSA's possession. Similarly,
20 the information regarding what other parts satisfied the CCR requirements but were not
21 identified by MBUSA as high-priced emissions warranted parts also are in the exclusive
22 possession of MBUSA.

23 48. When MBUSA vehicles are presented to MBUSA dealerships for repairs of
24 defects which should be covered under the 7-year 70,000-mile California Emissions Warranty,
25 but are not identified by MBUSA's Warranty Information booklet as being covered, MBUSA
26 refuses to provide 7-year 70,000-mile California Emissions Warranty coverage. As explained
27 herein, Plaintiff presented the Hazdovac Vehicle to a MBUSA authorized repair facility for
28 repairs prior to the end of the 7-year 70,000-mile California Emissions Warranty period for

1 high-priced emissions parts. Plaintiff was wrongfully denied warranty coverage for the vacuum
2 pump, coolant pump, and thermostat, which should have been covered under the 7-year 70,000-
3 mile California Emissions Warranty.

4 49. The reason that Plaintiff was charged for said repairs was not the result of an
5 individual issue relating to Sangera or Alfano, or an oversight by Sangera, or Alfano in failing
6 to identify the repairs as repairs that should have been covered under the 7-year 70,000-mile
7 California Emissions Warranty. Rather, Plaintiff was charged for said repairs because of
8 MBUSA's uniform and systematic business practice of intentionally refusing to identify in the
9 MBUSA warranty booklet, and in resources provided to its dealerships, all of the parts that
10 should be identified as high-priced warranted parts under California law in order to limit the
11 amount of warranty claims paid by MBUSA..

12 50. CCR section 2037(c)(1)(B) regarding "High-priced Warranty Parts" requires
13 MBUSA to identify the "high-priced warranted parts . . . which have an individual replacement
14 cost at the time of certification exceeding the cost limit defined in section (c)(3)."

15 51. MBUSA intentionally failed to identify all said components in order to reduce
16 the amount of money that MBUSA spends on warranty related repairs. If MBUSA complied
17 with California law and properly identified all parts as high-priced warranted parts that should
18 be identified as such, then MBUSA dealerships would properly provide warranty coverage for
19 said high-priced warranted parts.

20 52. MBUSA's conduct violates California's unfair business practices statute,
21 California Business and Professions Code section 17200, *et seq.* (the "UCL"), and violates the
22 Consumers Legal Remedies Act, Civil Code section 1750, *et seq.*

23 53. Plaintiff and other members of the Class have suffered damage as a result of
24 MBUSA's wrongful conduct. Plaintiff also seeks injunctive relief compelling MBUSA to
25 properly and fully identify the parts that should be covered under the California Emissions
26 Warranty and identify the correct warranty periods for those components. Plaintiff and other
27 Class members still own MBUSA vehicles and, in the future, will need to repair or replace
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1 emissions-related components that are entitled to extended warranty coverage pursuant to the
2 California Emissions Warranty, but which MBUSA fails to cover.

3 54. On September 10, 2019, pursuant to California Civil Code Section 1782, counsel
4 for Plaintiff sent MBUSA a letter, notifying MBUSA in writing of Plaintiff's claims under the
5 Consumers Legal Remedies Act relating to said MBUSA Warranty concealment. Said letter
6 provided MBUSA with an opportunity to take actions to remedy said unlawful practices.
7 Specifically, the letter indicated that MBUSA wrongfully failed to identify the vacuum pump,
8 coolant pump, and thermostat relating to Plaintiff's vehicle as being high-priced emissions parts,
9 having a 7-year 70,000-mile California Emissions Warranty, and failed to provide said
10 coverage.

11 55. On November 12, 2019, MBUSA's counsel sent a letter in response, indicating in
12 essence that MBUSA had done nothing wrong, and that MBUSA was refusing to take any
13 corrective action.

14 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

15 56. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

16 57. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
17 other persons similarly situated, and thus seeks class certification under California Code of Civil
18 Procedure section 382.

19 58. Excluded from the Class are Defendant, and its subsidiaries and affiliates; its
20 current and former officers, directors, and employees (and members of their immediate
21 families); and the legal representatives, heirs, successors or assigns of any of the foregoing.

22 59. All claims alleged herein arise under California law for which Plaintiff seeks
23 relief authorized by California law.

24 60. Plaintiff's proposed class consists of and is defined as follows:

25 All persons in California who, within the last four years, have been
26 owners or lessees of MBUSA vehicles and who have paid for
27 repairs and parts that should have been covered under MBUSA's
28 "high-priced warranted parts" 7-year 70,000-mile California
emissions warranty (the "Class").

61. Plaintiff's proposed subclass consists of and is defined as follows:

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All persons in California who are, or have been, owners or lessees of MBUSA MY 2015 Mercedes C300 vehicles and who have paid for repairs and parts for the vacuum pump, coolant pump, and thermostat, which should have been covered under the 7-year 70,000-mile California Emissions Warranty (the "Subclass").

62. Members of the Class and Subclass are referred to herein as "Class members."

63. On behalf of the Class members, Plaintiff seeks injunctive relief requiring MBUSA to identify all of the parts or components that should have been, and that should be, properly covered under the 7-year or 70,000-mile California Emissions Warranty.

64. On behalf of the Class members, Plaintiff also seeks reimbursement for the money wrongfully paid by Plaintiff and the Class relating to repairs that should have been covered by MBUSA under the 7-year 70,000-mile California Emissions Warranty during the Class period.

65. Plaintiff reserves the right to redefine the Class and Subclass and to add subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

66. There are common questions of law and fact as to Class and Subclass members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether MBUSA has failed, and is failing, to comply with the High-Cost Emissions-Related Parts Warranty by failing to provide a 7-year 70,000-mile California Emissions Warranty for all parts that should be defined by MBUSA as high-priced warranted parts pursuant to the CCR.
- (b) Whether MBUSA has failed, and is failing, to identify for consumers and dealerships all of the parts that should be identified as high-priced warranted parts, and thus covered by the 7-year 70,000-mile California Emissions Warranty.
- (c) Whether MBUSA has engaged in, and is engaging in, a systematic business practice of intentionally failing to identify all of the parts that should be

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identified as high-priced warranted parts and thus covered by the 7-year 70,000-mile California Emissions Warranty under the CCR.

(d) Whether MBUSA has failed, and is failing, to identify all of the parts that should be identified as high-priced warranted parts and thus covered by the 7-year 70,000-mile California Emissions Warranty in an effort to reduce the amount of money that MBUSA spends on warranty related repairs.

(e) Whether MBUSA's conduct of failing to identify all of the parts that should be identified as high-priced warranted parts and thus covered by the 7-year 70,000-mile California Emissions Warranty results in consumers suffering financial loss.

(f) Whether MBUSA's conduct of failing to identify all of the parts that should be identified as high-priced warranted parts and thus covered by the 7-year 70,000-mile California Emissions Warranty results in wrongfully minimizing the amount of money that MBUSA has to pay out in warranty claims.

(g) Whether MBUSA's conduct of failing to identify all of the parts that should be identified as high-priced warranted parts and thus covered by the 7-year 70,000-mile California Emissions Warranty violates California law.

(h) Whether MBUSA has engaged in, and is engaging in, unlawful and unfair business practices in violation of California Business & Professions Code section 17200, *et seq.* with regard to MBUSA's failure to identify all of the high-priced warranted parts that should be covered by the 7-year 70,000-mile California Emissions Warranty.

(i) Whether Plaintiff and Class members are entitled to injunctive relief regarding MBUSA's failure to identify all of the high-priced warranted parts that should be covered by the 7-year 70,000-mile California Emissions Warranty.

(j) The appropriate amount of restitution, or monetary penalties resulting from MBUSA's violations of California law.

1 (k) Whether MBUSA has engaged in, and is engaging, in concealment relating to
2 MBUSA's failure to identify all of the high-priced warranted parts that should be
3 covered by the 7-year 70,000-mile California Emissions Warranty.

4 (l) Whether MBUSA has violated and is violating the Consumers Legal Remedies
5 Act, Civil Code section 1750, *et seq.*, with regard to MBUSA's failure to identify
6 all of the high-priced warranted parts which should be covered by the 7-year
7 70,000-mile California Emissions Warranty.

8 67. Numerosity: The Class members are so numerous that joinder of all Class
9 members would be unfeasible and impractical, and the resolutions of their claims through the
10 procedure of a class action will be of benefit to the Parties and the Court. The membership of
11 the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be greater
12 than one hundred (100) individuals and the identity of such membership is readily ascertainable
13 by inspection of Defendant's records.

14 68. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the
15 interests of each Class member with whom he has a well-defined community of interest, and
16 Plaintiff's claims (or defenses, if any) are typical of all Class members as demonstrated herein.

17 69. Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the
18 interests of each Class member with whom he has a well-defined community of interest and
19 typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to
20 make known to the Court any relationship, conflicts or differences with any Class member.
21 Plaintiff's attorneys, the proposed Class counsel, are versed in the rules governing class action
22 discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of
23 this action, will continue to incur costs and attorneys' fees that have been, are, and will be
24 necessarily expended for the prosecution of this action for the substantial benefit of each Class
25 member.

26 70. Superiority: The nature of this action makes the use of class action adjudication
27 superior to other methods. A class action will achieve economies of time, effort, and expense as
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1 compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues
2 can be adjudicated in the same manner and at the same time for the entire class.

3 71. Defendant keeps extensive computerized records of its customers. Defendant has
4 one or more databases through which a significant majority of Class members may be identified
5 and ascertained, and it maintains contact information, including email and home mailing
6 addresses, through which notice of this action could be disseminated in accordance with due
7 process requirements.

8 **TOLLING OF THE STATUTE OF LIMITATIONS**

9 72. MBUSA has actively engaged in misleading and dishonest conduct relating to its
10 failure to properly identify parts that should be identified as high-priced warranted parts covered
11 under the 7-year 70,000-mile California Emissions Warranty. Despite acting diligently,
12 Plaintiff and the Class cannot be reasonably expected on their own to learn or discover what
13 parts and repairs should be identified as high-priced warranted parts covered under the 7-year
14 70,000-mile California Emissions Warranty. Therefore, the discovery rule is applicable to the
15 claims asserted by Plaintiff and members of the Class, and the statute of limitations for bringing
16 the claims set forth herein should be tolled.

17 73. MBUSA has actual and constructive knowledge that it is violating California law
18 by failing to identify all of the parts that should be identified as high-priced warranted parts, and
19 by failing to provide a 7-year 70,000-mile California Emissions Warranty relating to said parts.
20 MBUSA has concealed from Plaintiff and members of the Class that MBUSA is violating
21 California law as set forth herein.

22 74. Any applicable statute of limitation is tolled by MBUSA's knowledge, active
23 concealment, and wrongful conduct set forth herein. MBUSA is further estopped from relying
24 on any statute of limitation because of its concealment set forth herein.

25 **FIRST CAUSE OF ACTION**

26 **Violation of California Unfair Competition Law**

27 **(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

28 75. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

1 injunctive relief. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*, C.C.P. §
2 1021.5.

3 **Unfair Prong**

4 86. MBUSA's conduct violates the unfair prong of the UCL.

5 87. An act or practice is unfair if the consumer injury is substantial, is not
6 outweighed by any countervailing benefits to consumers or to competition and is not an injury
7 the consumers themselves could reasonably have avoided. An act or practice also is unfair if it
8 offends an established public policy or is immoral, unethical, oppressive, unscrupulous or
9 substantially injurious to consumers. An act or practice also is unfair if Plaintiff's claims are
10 "tethered" to specific constitutional, statutory or regulatory provisions. MBUSA's conduct
11 violates all of these definitions.

12 88. As alleged above, MBUSA engages and has engaged in a systematic business
13 practice of intentionally failing to identify in the Warranty Information booklet at the time of
14 distribution, and in resources provided to its dealerships, numerous parts that MBUSA is
15 obligated to identify as high-priced warranted parts by operation of law. MBUSA does this in
16 an effort to reduce the amount of money that MBUSA spends on warranty related repairs
17 knowing that it would be very difficult if not impossible for most consumers to discover this
18 unlawful conduct. If MBUSA complied with California law and properly identified all parts as
19 high-priced warranted parts that should be identified as such, then MBUSA dealerships would
20 properly provide warranty coverage for said high-priced warranted parts.

21 89. Further, MBUSA's conduct is unfair because it intentionally refuses to provide
22 warranty coverage for all high-priced emissions parts for the sole purpose of wrongfully limiting
23 its warranty claims, with no regard for the fact that the public is being forced to pay for repairs
24 which should be covered under the 7-year 70,000-mile California emissions warranty. Plaintiff
25 and members of the Class have suffered injury in fact and a loss of money or property as a result
26 of MBUSA's unfair business acts and practices as set forth in detail.

27 90. The failure on the part of MBUSA to properly identify all parts as high-priced
28 warranted parts that should be identified as such, is a uniform, systematic, and intentional

1 business practice on the part of MBUSA to minimize the amount of money that MBUSA has to
2 pay out in warranty claims. This conduct violates California law.

3 91. As a direct and proximate result of MBUSA's acts and practices in violation of
4 the UCL, Plaintiff and members of the Class have paid out of pocket to repair or replace high-
5 priced warranted parts that should have been covered by MBUSA under the 7-year 70,000-mile
6 California Emissions Warranty. Forcing consumers to pay out of pocket to repair or replace
7 vehicle components that should be covered under warranty is clearly unfair.

8 92. MBUSA's conduct does not benefit consumers or competition. Plaintiff and
9 members of the Class could not reasonably avoid the injury each of them suffered or will suffer,
10 which injury is substantial. MBUSA's conduct only benefits MBUSA, by MBUSA wrongfully
11 avoiding having to pay warranty claims which should be covered by the 7-year 70,000-mile
12 California Emissions Warranty.

13 93. The gravity of the consequences of MBUSA's conduct as described above
14 outweighs the justification, motive or reason therefor, is immoral, unethical and unscrupulous.

15 94. MBUSA's conduct also offends established public policy that is tethered to
16 legislatively declared policies as set forth in the laws detailed above, including California laws
17 and regulations regarding California's Emission Control System Warranty Requirements, or is
18 substantially injurious to the public, for the reasons set forth above.

19 95. To the extent that any definition of "unfair" requires a balancing test or weighing
20 various factors, such an inquiry is fact intensive and requires a full factual record as to
21 MBUSA's justification and motives for its conduct, and as to the impact of MBUSA's conduct
22 on Plaintiff and Class members.

23 96. MBUSA's acts of unfair competition as set forth above present a continuing
24 threat and will persist and continue to do so unless and until this Court issues appropriate
25 injunctive relief. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*, C.C.P. §
26 1021.5.

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Fraudulent Prong

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2 97. MBUSA engages in a uniform and systematic business practice of intentionally
3 failing to identify in the MBUSA warranty booklet, and in resources provided to its dealerships,
4 all parts that should be identified as high-priced warranted parts. MBUSA does this in an effort
5 to intentionally conceal the identity of all of the parts which should be covered under the 7-year
6 70,000- mile California Emissions Warranty for high-priced emissions parts, intentionally
7 mislead consumers with regard to what parts are covered under the 7-year 70,000- mile
8 California emission warranty for high-priced parts, and reduce the amount of money that
9 MBUSA spends on warranty related repairs. As warranted parts necessary for the operation of
10 the vehicles, the parts that MBUSA failed to properly identify as high-priced relate to the central
11 functionality of the vehicles and are critical to the vehicles' operation. If MBUSA complied
12 with California law, and properly identified all parts as high-priced warranted parts which
13 should be identified as such, then MBUSA dealerships would properly provide warranty
14 coverage for said high-priced warranted parts.

15 98. MBUSA's failure to properly identify all parts as high-priced warranted parts
16 which should be identified as such, is a systematic and intentional business practice on the part
17 of MBUSA to minimize the amount of money that MBUSA has to pay out in warranty claims.
18 This conduct violates California law.

19 99. Said conduct is likely to deceive an ordinary consumer as MBUSA concealed
20 from consumers and from MBUSA's dealerships all of the high-priced warranted parts, in an
21 effort by MBUSA to minimize the amount of money that MBUSA has to pay out in warranty
22 claims. One of the ways MBUSA misleads consumers relates to the information that MBUSA
23 provides to consumers in the warranty booklet. MBUSA intentionally omits information from
24 the warranty booklet by intentionally failing to classify all of the high-priced warranted parts as
25 parts that should be covered under the 7-year 70,000-mile California Emissions Warranty.

26 100. In evaluating the repair costs to be charged, Plaintiff justifiably relied on the
27 information in the warranty booklet about the parts covered under the high-cost emissions
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1 warranty and was deceived and suffered damage as a result of MBUSA's intentional, wrongful
2 and fraudulent conduct.

3 101. MBUSA is fully aware of its obligations pursuant to the CCR and purports to
4 comply with them. However, in derogation of its legal obligations, MBUSA willfully and
5 intentionally conceals from consumers, and from the MBUSA dealerships, all of the parts that
6 should be covered as high-priced warranted parts pursuant to the California Emissions
7 Warranty, in order to reduce the amount of money that MBUSA has to pay in warranty claims.

8 102. MBUSA is and was under a duty to disclose to consumers and to its dealerships
9 all of the parts which it is required to cover under the 7-year 70,000-mile California Emissions
10 Warranty because CCR section 2037(c)(1)(B) regarding "High-priced Warranty Parts" requires
11 MBUSA to identify the "high-priced warranted parts . . . which have an individual replacement
12 cost at the time of certification exceeding the cost limit defined in section (c)(3)."

13 103. MBUSA is and was further under a duty to disclose to consumers and to its
14 dealerships all of the parts which it is required to cover under the 7-year 70,000-mile California
15 Emissions Warranty because:

- 16 (1) MBUSA is and was in a superior position to know the true state of facts about
17 the duration of the 7-year 70,000-mile California Emissions Warranty and which
18 parts should be covered as high-priced warranted parts;
- 19 (2) MBUSA has made partial disclosures about the extent of the 7-year 70,000-mile
20 California Emissions Warranty;
- 21 (3) MBUSA has actively concealed and failed to identify all of the parts that are
22 covered under the 7-year 70,000-mile California Emissions Warranty; and,
- 23 (4) Members of the Class, including Plaintiff, have suffered actual loss due to
24 MBUSA's concealment and false representations.

25 104. The facts concealed and not disclosed by MBUSA to Plaintiff and members of
26 the Class are material. Had Plaintiff and members of the Class known the true extent of the 7-
27 year 70,000-mile California Emissions Warranty, and had MBUSA been truthful to its
28 dealerships and members of the Class with regard to identifying all of the parts and repairs that

1 are covered under the 7-year 70,000-mile California Emissions Warranty, Plaintiff and members
2 of the Class would have been able to avoid spending money in order to repair MBUSA vehicles
3 sold and leased in California. As a result, Plaintiff and members of the Class have suffered
4 damage.

5 105. MBUSA continues to fraudulently conceal the extent of the 7-year 70,000-mile
6 California Emissions Warranty in order to minimize the amount of money that MBUSA spends
7 on warranty related repairs.

8 106. Furthermore, MBUSA has refused to, and continues to refuse to provide 7-year
9 70,000-mile California Emissions Warranty coverage relating to all repairs which should be
10 covered under said warranty pursuant to California law. This refusal is intentional, willful,
11 unfair, and unlawful.

12 SECOND CAUSE OF ACTION

13 Violation of California Consumers Legal Remedies Act

14 (Cal. Civil Code §§ 1750 *et seq.*)

15 107. Plaintiff re-alleges and incorporates by reference each allegation set forth above.

16 108. MBUSA has violated Section 1770 of the California Consumers Legal Remedies
17 Act, Cal. Civ. Code Section 1750, *et seq.* (the "CLRA"). The violation is that MBUSA promised
18 both the state of California, and members of the Class, including Plaintiff, that it would honor
19 the terms of the MBUSA warranty, and by doing so, that it would honor the terms of the CCR,
20 however MBUSA has failed to do so. Furthermore, the warranty booklet provided by MBUSA
21 to consumers specifically references the California Emissions Warranty, and both inferentially
22 and specifically represents that it will honor the terms of the CCR, however MBUSA has
23 refused, and continues to refuse to honor the terms of the CCR, as stated herein.

24 109. Plaintiff is a consumer who was wrongfully required to pay for repairs which
25 should have been paid for by MBUSA pursuant to the CCR. The Hazdovac Vehicle was
26 presented by Plaintiff for repairs at a MBUSA authorized repair facility, in compliance with the
27 terms and conditions of the MBUSA warranty. The Hazdovac Vehicle required repairs which
28 should have been covered pursuant to the CCR, based upon the Hazdovac Vehicle's mileage

1 and age. MBUSA wrongfully failed and refused to pay for the warranty repairs due to the
2 unlawful pattern and practice set forth herein. Thus, Plaintiff suffered damage.

3 110. MBUSA knows that it is violating the terms of the CCR, however MBUSA
4 intentionally violates the CCR in order to save money. Plaintiff and members of the Class are
5 generally unaware of the terms and scope of the CCR, thus MBUSA is able to get away with
6 said wrongful conduct. As a result, Plaintiff and members of the Class have suffered damage.
7 MBUSA engages in a systemic pattern of denying warranty claims under the CCR relating to
8 high-priced warranted parts.

9 111. Plaintiff and members of the Class have presented MBUSA vehicles to MBUSA
10 authorized repair facilities for repairs that should have been covered under the CCR, but
11 coverage has been wrongfully denied to them. As a result, Plaintiff and members of the Class
12 have thus suffered damage. Plaintiff brings this claim on behalf of himself and the Class.

13 112. MBUSA's conduct in warranting, advertising, leasing, selling and distributing
14 vehicles in the State of California, while at the same time knowingly and wrongfully failing to
15 honor the terms of the CCR, constitutes the following violations of Section 1770:

- 16 (a) MBUSA represents and has represented that the vehicles sold and leased in the
17 state of California have characteristics or benefits which they did not have (in
18 violation of Section 1770(a)(5));
- 19 (b) MBUSA has falsely represented that the vehicles sold and leased in the State of
20 California were of a particular standard, quality, or grade when they were of
21 another (in violation of Section 1770(a)(7)); and,
- 22 (c) MBUSA advertised the vehicles that have been sold and leased in the state of
23 California with the intent not to sell them as advertised (in violation of Section
24 1770(a)(9)).

25 113. Civil Code section 1780(a) provides that any consumer who suffers damage as a
26 result of a violation of the CLRA may bring an action to recover: 1) actual damages, but in no
27 case shall the total award of damages in a class action be less than \$1,000; 2) an order enjoining
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1 the methods, acts, or practices; 3) restitution of property; 4) punitive damages; and 5) any other
2 relief that the court deems proper.

3 114. Civil Code section 1781 provides that Plaintiff may pursue this case as a class
4 action.

5 115. Plaintiff requests injunctive relief pursuant to Civil Code 1782(d).

6 116. Plaintiff is entitled to attorney fees pursuant to Civil Code section 1780(e).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
9 relief and judgment against MBUSA as follows:

10 1. Plaintiff, on behalf of himself, and members of the Class and Subclass, requests
11 that the Court enter judgment against MBUSA as follows:

12 (a) An order certifying the proposed Class designating Plaintiff as named
13 representative of the Class, and designating the Plaintiff's Counsel as Class Counsel;

14 (b) A declaration that MBUSA is financially responsible for notifying all
15 Class members about the wrongful conduct set forth herein;

16 (c) An order enjoining MBUSA from further deceptive distribution, sales,
17 and lease practices, and to reimburse both Plaintiff and the Class for the money wrongfully
18 paid by Plaintiff and members of the Class relating to repairs which should have been covered
19 by MBUSA under the 7-year 70,000-mile California Emissions Warranty;

20 (d) An award to Plaintiff and members of the Class of compensatory,
21 exemplary, and statutory damages, including interest, in an amount to be proven at trial;

22 (e) An award to Plaintiff and members of the Class of any repair costs they
23 are owed;

24 (f) A declaration that MBUSA must disgorge, for the benefit of the Class,
25 all or part of the ill-gotten profits it received as a result of the wrongful conduct set forth
26 herein, or make full restitution to Plaintiff and members of the Class;

27 (g) An award of attorneys' fees and costs, as allowed by law;

28 (h) An award of attorneys' fees and costs pursuant to California Code of

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Civil Procedure § 1021.5;

(i) An award of pre-judgment and post-judgment interest;

(j) Leave to amend the Complaint to conform to the evidence produced at trial; and,

(k) Other relief as may be appropriate under the circumstances.

Dated: December 3, 2019

Respectfully submitted,

**POMERANTZ LLP
THE LAW OFFICE OF ROBERT L. STARR**

By: _____

Jordan L. Lurie
Ari Y. Bassler
Robert L. Starr

Attorneys for Plaintiff

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jordan L. Lurie (SBN 130013); Jennifer Pafiti (SBN 282790); Ari Y. Basser (SBN 272618); Roxanna Talaie (SBN 320553) POMERANTZ LLP, 1100 Glendon Avenue, 15th Floor Los Angeles, CA 90024 TELEPHONE NO (310) 432-8492 FAX NO: ATTORNEY FOR (Name): Plaintiff Cory Hazdovac	FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY DEC 04 2019 CLERK OF THE SUPERIOR COURT By JERRIE MOYER Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon St. MAILING ADDRESS: 1225 Fallon St. CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Alameda County Courthouse	CASE NAME: Cory Hazdovac v. Mercedes Benz USA, LLC
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: RG19045555 JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/Unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Violation of: 1) Cal. Civ. Code Section 17200; and 2) CLRA, Section 1750
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 3, 2019
 Ari Y. Basser

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)--Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Contract/Warranty Breach--Seller Plaintiff (not fraud or negligence)	Claims Involving Mass Tort (40)
Asbestos (04)	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Asbestos Property Damage	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Asbestos Personal Injury/Wrongful Death	Collections (e.g., money owed, open book accounts) (09)	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Product Liability (not asbestos or toxic/environmental) (24)	Collection Case--Seller Plaintiff	Enforcement of Judgment
Medical Malpractice (45)	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Medical Malpractice--Physicians & Surgeons	Insurance Coverage (not provisionally complex) (18)	Abstract of Judgment (Out of County)
Other Professional Health Care Malpractice	Auto Subrogation	Confession of Judgment (non-domestic relations)
Other PI/PD/WD (23)	Other Coverage	Sister State Judgment
Premises Liability (e.g., slip and fall)	Other Contract (37)	Administrative Agency Award (not unpaid taxes)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Intentional Infliction of Emotional Distress	Other Contract Dispute	Other Enforcement of Judgment Case
Negligent Infliction of Emotional Distress	Real Property	Miscellaneous Civil Complaint
Other PI/PD/WD	Eminent Domain/Inverse Condemnation (14)	RICO (27)
Non-PI/PD/WD (Other) Tort	Wrongful Eviction (33)	Other Complaint (not specified above) (42)
Business Tort/Unfair Business Practice (07)	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Writ of Possession of Real Property	Injunctive Relief Only (non-harassment)
Defamation (e.g., slander, libel) (13)	Mortgage Foreclosure	Mechanics Lien
Fraud (16)	Quiet Title	Other Commercial Complaint Case (non-tort/non-complex)
Intellectual Property (19)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Other Civil Complaint (non-tort/non-complex)
Professional Negligence (26)	Unlawful Detainer	Miscellaneous Civil Petition
Legal Malpractice	Commercial (31)	Partnership and Corporate Governance (21)
Other Professional Malpractice (not medical or legal)	Residential (32)	Other Petition (not specified above) (43)
Other Non-PI/PD/WD Tort (35)	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Civil Harassment
Employment	Judicial Review	Workplace Violence
Wrongful Termination (38)	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Other Employment (15)	Petition Re: Arbitration Award (11)	Election Contest
	Writ of Mandate (02)	Petition for Name Change
	Writ--Administrative Mandamus	Petition for Relief From Late Claim
	Writ--Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ--Other Limited Court Case Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal--Labor	
	Commissioner Appeals	

Unified Rules of the Superior Court of California, County of Alameda

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: CORY HAZDOVAC, v. MERCEDES BENZ USA, LLC	Case Number:
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CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

<input checked="" type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (446)	<input type="checkbox"/> Hayward Hall of Justice (447)
<input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448)	

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G) Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no
Other PI /PD / WD Tort	Asbestos (04)	<input type="checkbox"/> 75 Asbestos (D)
	Product liability (24)	<input type="checkbox"/> 89 Product liability (not asbestos or toxic tort/environmental) (G)
	Medical malpractice (46)	<input type="checkbox"/> 07 Medical malpractice (G)
	Other PI/PD/WD tort (23)	<input type="checkbox"/> 33 Other PI/PD/WD tort (G)
Non - PI /PD / WD Tort	Bus tort / unfair bus practice (07)	<input checked="" type="checkbox"/> 79 Bus tort / unfair bus practice (G)
	Civil rights (08)	<input type="checkbox"/> 80 Civil rights (G)
	Defamation (13)	<input type="checkbox"/> 84 Defamation (G)
	Fraud (16)	<input type="checkbox"/> 24 Fraud (G)
	Intellectual property (19)	<input type="checkbox"/> 87 Intellectual property (G)
	Professional negligence (25)	<input type="checkbox"/> 59 Professional negligence - non-medical (G)
	Other non-PI/PD/WD tort (35)	<input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)
Employment	Wrongful termination (36)	<input type="checkbox"/> 38 Wrongful termination (G)
	Other employment (15)	<input type="checkbox"/> 85 Other employment (G)
		<input type="checkbox"/> 53 Labor comm award confirmation
		<input type="checkbox"/> 64 Notice of appeal - L.C.A.
Contract	Breach contract / Wrnty (06)	<input type="checkbox"/> 04 Breach contract / Wrnty (G)
	Collections (09)	<input type="checkbox"/> 81 Collections (G)
	Insurance coverage (18)	<input type="checkbox"/> 86 Ins. coverage - non-complex (G)
	Other contract (37)	<input type="checkbox"/> 98 Other contract (G)
Real Property	Eminent domain / Inv Cdm (14)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G)
	Wrongful eviction (33)	<input type="checkbox"/> 17 Wrongful eviction (G)
	Other real property (28)	<input type="checkbox"/> 36 Other real property (G)
Unlawful Detainer	Commercial (31)	<input type="checkbox"/> 94 Unlawful Detainer - commercial
	Residential (32)	<input type="checkbox"/> 47 Unlawful Detainer - residential
	Drugs (38)	<input type="checkbox"/> 21 Unlawful detainer - drugs Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No
Judicial Review	Asset forfeiture (05)	<input type="checkbox"/> 41 Asset forfeiture
	Petition re: arbitration award (11)	<input type="checkbox"/> 82 Pet. re: arbitration award
	Writ of Mandate (02)	<input type="checkbox"/> 49 Writ of mandate
	Other judicial review (39)	<input type="checkbox"/> 64 Other judicial review Is this a CEQA action (Publ. Res. Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No
Provisionally Complex	Antitrust / Trade regulation (03)	<input type="checkbox"/> 77 Antitrust / Trade regulation
	Construction defect (10)	<input type="checkbox"/> 82 Construction defect
	Claims involving mass tort (40)	<input type="checkbox"/> 78 Claims involving mass tort
	Securities litigation (28)	<input type="checkbox"/> 91 Securities litigation
	Toxic tort / Environmental (30)	<input type="checkbox"/> 93 Toxic tort / Environmental
	Ins covrg from cmplx case type (41)	<input type="checkbox"/> 95 Ins covrg from complex case type
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment
		<input type="checkbox"/> 08 Confession of judgment
Misc Complaint	RICO (27)	<input type="checkbox"/> 90 RICO (G)
	Partnership / Corp. governance (21)	<input type="checkbox"/> 88 Partnership / Corp. governance (G)
	Other complaint (42)	<input type="checkbox"/> 68 All other complaints (G)
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name
		<input type="checkbox"/> 69 Other petition



Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

QUESTIONS? Call (510) 891-6055. Email adrprogram@alameda.courts.ca.gov
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

What Are The Advantages Of Using ADR?

- **Faster** – Litigation can take years to complete but ADR usually takes weeks or months.
- **Cheaper** – Parties can save on attorneys' fees and litigation costs.
- **More control and flexibility** – Parties choose the ADR process appropriate for their case.
- **Cooperative and less stressful** – In mediation, parties cooperate to find a mutually agreeable resolution.
- **Preserve Relationships** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

What Is The Disadvantage Of Using ADR?

- **You may go to court anyway** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

What ADR Options Are Available?

- **Mediation** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
 - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (arbitrator) hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial and the rules of evidence are often relaxed. Arbitration is effective when the parties want someone other than themselves to decide the outcome.
 - **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
 - **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

Mediation Service Programs In Alameda County

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

SEEDS Community Resolution Center

2530 San Pablo Avenue, Suite A, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: www.seedscrc.org

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – **S**ervices that **E**ncourage **E**ffective **D**ialogue and **S**olution-making.

Center for Community Dispute Settlement

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: www.trivalleymediation.com

CCDS provides services in the Tri-Valley area for all of Alameda County.

For Victim/Offender Restorative Justice Services

Catholic Charities of the East Bay: Oakland

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: www.cceb.org

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ALA ADR-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS	CASE NUMBER: _____

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 24405 Amador Street, Hayward, CA 94544 or Fax to (510) 267-5727.

1. Date complaint filed: _____ An Initial Case Management Conference is scheduled for:

Date: _____ Time: _____ Department: _____

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (check one):

- Court mediation Judicial arbitration
 Private mediation Private arbitration

3. All parties agree to complete ADR within 90 days and certify that:

- a. No party to the case has requested a complex civil litigation determination hearing;
- b. All parties have been served and intend to submit to the jurisdiction of the court;
- c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- e. Case management statements are submitted with this stipulation;
- f. All parties will attend ADR conferences; and,
- g. The court will not allow more than 90 days to complete ADR.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

_____ ▶ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF PLAINTIFF)

Date: _____

_____ ▶ _____

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY FOR PLAINTIFF)

ALA ADR-001

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER.:
--	---------------

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF DEFENDANT)

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF ATTORNEY FOR DEFENDANT)

<http://apps.alameda.courts.ca.gov/domainweb>.

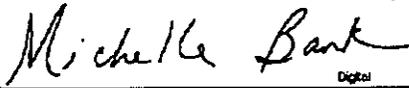
All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 23.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 23 by e-mail at Dept.23@alameda.courts.ca.gov or by phone at (510) 267-6939.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 12/10/2019

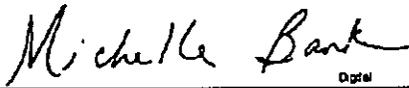
Chad Finke Executive Officer / Clerk of the Superior Court

By 
Digital
Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 12/11/2019.

By 
Digital
Deputy Clerk

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Mercedes Benz Fails to Identify 'High-Priced' Emissions Parts in California to Limit Warranty Exposure](#)
