

ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 04 2019

CLERK OF THE SUPERIOR COURT

By \_\_\_\_\_ Deputy

JERRIE MOYER

**POMERANTZ LLP**

Jordan L. Lurie, State Bar No. 130013

jlurie@pomlaw.com

Ari Y. Bassar, State Bar No. 272618

abassar@pomlaw.com

1100 Glendon Avenue, 15<sup>th</sup> Floor

Los Angeles, CA 90024

Telephone: (310) 432-8492

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

Robert L. Starr, State Bar No. 183052

robert@starrlaw.com

23901 Calabasas Road, Suite 2072

Calabasas, CA 91302

*Attorneys for Plaintiff*

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

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

Plaintiff,

vs.

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

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.

28



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,  
28

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  
28

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:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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  
28

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.

27 ///

28 ///

**Fraudulent Prong**

1  
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  
28

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  
28

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

1 Civil Procedure § 1021.5;

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

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

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

6  
7 Dated: December 3, 2019

Respectfully submitted,

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

10 By: \_\_\_\_\_

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

11  
12  
13 *Attorneys for Plaintiff*  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28