

1 Herman Franck, Esq. (SB #123476)
2 Elizabeth Betowski, Esq. (SB #245772)
FRANCK & ASSOCIATES
3 910 Florin Road, Suite 212
Sacramento, CA 95831
4 Tel. (916) 447-8400; Fax (916) 447-0720

5 Janet R. Varnell, (Admitted Pro Hac Vice)
6 Brian W. Warwick, (Admitted Pro Hac Vice)
David Lietz (Admitted Pro Hac Vice)
7 **VARNELL & WARWICK, P.A.**
P.O. Box 1870
8 Lady Lake, FL 32158
9 Tel. (352) 753-8600; Fax (352) 504-3301

10 Attorneys for Plaintiffs Steve Ferrari, Mike Keynejad et al.

11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 STEVE FERRARI, MIKE KEYNEJAD, PATRICIA
14 REUBEN, HAROLD FETHE, JOHN DIAZ AND
RAY GAPASIN; individually and as representatives
of the Class of Persons Similarly Situated;

15 Plaintiffs,

16 v.

17
18 AUTOBAHN, INC. DBA AUTOBAHN MOTORS;
19 MERCEDES-BENZ USA, LLC; AND SONIC
AUTOMOTIVE, INC.

20 Defendants

Case No. 17-CV-00018-YGR

FOURTH AMENDED COMPLAINT FOR

- 1. **BREACH OF CONTRACT**
- 2. **VIOLATION OF CIVIL CODE SECTION 1750 (CONSUMERS LEGAL REMEDIES ACT)**
- 3. **VIOLATION OF B&P CODE SECTION 17200 (UNFAIR COMPETITION ACT)**
- 4. **VIOLATION OF B&P CODE SECTION 17200 (CAL. VEH. CODE 11713.18)**
- 5. **VIOLATION OF B&P CODE SECTION 17500 (MISLEADING ADVERTISING)**
- 6. **TRESPASS TO CHATTEL**
- 7. **NEGLIGENCE**
- 8. **UNJUST ENRICHMENT**
- 9. **COMMON LAW FRAUD**
- 10. **NEGLIGENT MISREPRESENTATION**

DEMAND FOR JURY TRIAL

1 Pursuant to Federal Rule of Civil Procedure 15(a)(2), all Defendants have provided
2 written consent for this amendment. Named Class Plaintiffs Steve Ferrari, Mike Keynejad,
3 Patricia Reuben, Harold Fethe, John Diaz, and Ray Gapasin submit this Fourth Amended
4 Complaint for Breach of Contract; Violation of Civil Code Section 1750 (Consumers Legal
5 Remedies Act); B&P Code Section 17200 (Unfair Competition Act); Violation of B&P Code
6 Section 17200 (Unfair Competition Law and California Vehicle Code 11713.18); Violation of
7 B&P Code Section 17500 (Misleading Advertising); Trespass to Chattel; Negligence; Unjust
8 Enrichment; Common Law Fraud (individually) and Negligent Misrepresentation (individually).
9

10 In support of these claims, Plaintiffs allege and state as follows:

11 INTRODUCTION

12 1. This case involves four related systematic and intentional schemes to manipulate
13 and deceive Mercedes-Benz customers regarding to the sale or non-sale of “Genuine Mercedes-
14 Benz” auto parts. Together, these four schemes bilked millions of dollars from unknowing
15 consumers and potentially voided thousands of warranties.
16

17 2. First, between 2004 and 2015, Defendant Autobahn Motors, a Mercedes-Benz
18 certified auto dealer located in Northern California, regularly invoiced its maintenance and repair
19 customers for Genuine Mercedes-Benz Parts. Unbeknownst to the customers, however,
20 Autobahn installed non-Genuine parts and pocketed the difference as additional hidden profit.
21 Regular maintenance items such as air filters, oil filters, oil, spark plugs, etc., were routinely
22 invoiced as Genuine Mercedes-Benz Parts, but customers were actually provided cheaper non-
23 Genuine versions.
24

25 3. Second, Defendants sold Certified Pre-Owned (“CPO”) Vehicles as having been
26 reconditioned to original specifications with Genuine Mercedes Parts. However, Autobahn

1 regularly used non-Genuine parts in the reconditioning process for these vehicles thereby
2 potentially negating their status as a Certified Pre-Owned vehicle. The use of some non-Genuine
3 parts, like zMAX, potentially voids the extended warranties offered on CPO vehicles.

4 4. Third, Sonic and Autobahn orchestrated a scheme to force their customers to
5 purchase the oil additive “zMAX” as a non-negotiable component a standard oil change at
6 Autobahn. Not only did customers not request zMAX, but zMAX caused harm to the internal
7 components of the engine and voided the manufacturers’ warranty on thousands of vehicles.
8

9 5. Fourth, Defendants have engaged in a well-documented marketing campaign
10 promoting Genuine Mercedes-Benz parts as being superior to non-Genuine parts without
11 exception. However, many non-Genuine parts are manufactured by the same companies that
12 supply these products to Mercedes-Benz as Genuine Parts. Accordingly, these non-Genuine
13 Parts are identical to many Genuine Parts but cost only one third the cost. As a result of this
14 marketing campaign, Plaintiffs and the Class paid more for Genuine Parts when identical non-
15 Genuine parts are readily available.
16

17 6. Plaintiffs, on their own behalf and on behalf of all those similarly situated, assert
18 the claims set forth herein against Defendants arising from these three unlawful schemes.

19 **JURISDICTION AND VENUE**

20 7. This case was re-filed in San Mateo Superior Court, after this United States
21 District Court dismissed Plaintiffs’ RICO claims, and declined to retain jurisdiction over the
22 remaining state law claims. Plaintiffs then re-filed this action in the San Mateo County Superior
23 Court, asserting a series of state law claims. Defendant Mercedes-Benz USA subsequently
24 removed this case back to the United States District Court, on the basis of the Class Action
25 Fairness Act of 2005, 28 U.S.C. § 1332(d), 1453, and 1711–1715.
26

1 8. This Court has jurisdiction over this action pursuant to the Class Action Fairness
2 Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship
3 from one Defendant, there are more than 100 Class members, and the aggregate amount in
4 controversy exceeds \$5,000,000, exclusive of interest and costs.

5 9. The Court has personal jurisdiction over Defendants pursuant to 18 U.S.C. §§
6 1965(b) and (d), and Cal. Code Civ. P. § 410.10, and supplemental jurisdiction over the state-law
7 claims pursuant to 28 U.S.C. § 1367.

8
9 10. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial
10 part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District, from
11 transactions between the Plaintiffs with Autobahn Motors in Belmont, California.

12 **PARTIES**

13 11. Defendant, Autobahn, Inc. dba Autobahn Motors (“Autobahn” or “Autobahn
14 Motors”) is a California Corporation with a principal place of business in Los Angeles, CA and
15 doing business as Autobahn Motors in Belmont, San Mateo, California. Autobahn Motors is a
16 Mercedes Dealership and is wholly owned and operated by Defendant, Sonic Automotive.
17 Autobahn is sued based upon its direct participation in the unlawful conduct described herein.

18
19 12. Defendant, Sonic Automotive, Inc. (“Sonic” or “Sonic Automotive”) is a Fortune
20 500 corporation organized under the laws of the state of Delaware, with its principal place of
21 business in Charlotte, North Carolina. Sonic is among the largest automotive retailers in the
22 United States. It operates over 100 dealerships in 14 states, including the Autobahn Motors
23 Mercedes-Benz dealership located in Belmont, California. Sonic is sued based upon its direct
24 participation and involvement in the unlawful conduct described herein.

25 13. Defendant Mercedes-Benz USA, LLC (“MB USA”) is a Delaware Limited
26 Liability Company, with a principal place of business in Atlanta, Georgia. MB USA is sued

1 herein based on its direct participation in the unlawful conduct described herein and based upon
2 the actions of its agents, Autobahn and Sonic.

3 14. Plaintiff Steve Ferrari purchased one or more Mercedes-Benz automobiles from
4 Autobahn Motors, and has taken his cars in for regular maintenance service at Autobahn Motors.
5 Although Plaintiff Ferrari was charged for Genuine Mercedes Parts, Defendants installed non-
6 Genuine parts into his vehicle. He is a resident of Woodside, California, located in San Mateo
7 County, California.

8 15. Plaintiff Mike Keynejad purchased one or more Mercedes-Benz automobiles from
9 Autobahn Motors, and has taken his cars in for regular maintenance service at Autobahn Motors
10 during which non-Genuine parts were installed into his car. He is a citizen of the State of
11 California and a resident of Hillsborough, California, located in San Mateo County.

12 16. Plaintiff Patricia Reuben purchased one or more Mercedes-Benz automobiles from
13 Autobahn Motors, and has taken her vehicle in for regular maintenance service at Autobahn
14 Motors during which non-Genuine parts were installed into her vehicle. She is a citizen of the
15 State of California and a resident of Woodside, CA, located in San Mateo County.

16 17. Plaintiff John Diaz brought one or more Mercedes-Benz automobiles into
17 Autobahn Motors for repairs, received non-Genuine and non-OEM parts during those repairs,
18 was invoiced for Genuine and OEM parts, and suffered compensable damages as a proximate
19 result. He is a citizen of the State of California and a resident of San Francisco, California,
20 located in San Francisco, County.

21 18. Plaintiff Harold Fethe purchased a 2005 S12 Mercedes-Benz as a Certified Pre-
22 Owned (CPO) vehicle from Autobahn Motors in 2009. The CPO vehicle purchased by Plaintiff
23 Fethe contained non-Genuine parts in violation of the Mercedes-Benz CPO Program including
24 but not limited to zMAX. He is a citizen of the State of California and a resident of Half Moon
25 Bay, California, located in San Mateo County.

26 19. Plaintiff Ray Gapasin purchased a pre-owned Mercedes-Benz and had zMAX
27 added to his engine by Defendants without his knowledge and the engine subsequently contained

oil sludge caused by the zMAX, damaging the vehicle. He is a citizen of the State of California and a resident of Campbell, California, located in Santa Clara County.

COMMON FACTUAL ALLEGATIONS

ALLEGATIONS REGARDING DEFENDANTS' USE OF NON-GENUINE PARTS

20. Autobahn Motors is a Mercedes Dealership located in Belmont, California. Autobahn is a highly successful dealership selling thousands of vehicles per year in the profitable Northern California market. As part of its state-of-the-art facility, Autobahn services thousands of Mercedes brand vehicles every year. As a certified repair facility and dealership, Autobahn represents to its customers that its Mercedes Certified Technicians will install and use Genuine Mercedes-Benz Parts in the repair and maintenance of the vehicles it services.

21. The Autobahn Motors website for the period 2005 through the present states as follows concerning its use of OEM/genuine Mercedes-Benz parts at its Belmont, California location:

Year	Statement
2005	Not currently available
2006	Not currently available
2007	"We use genuine Mercedes-Benz Parts" NOTE: the document does NOT state that sometimes Autobahn uses non-Genuine parts.
2008	"We use genuine Mercedes-Benz Parts" NOTE: the document does NOT state that sometimes Autobahn uses non-Genuine parts.
2009	"We use genuine Mercedes-Benz Parts" NOTE: the document does NOT state that sometimes Autobahn uses non-Genuine parts.
2010	"We use genuine Mercedes-Benz Parts" NOTE: the document does NOT state that sometimes Autobahn uses non-Genuine parts.
2011	"We use genuine Mercedes-Benz Parts" NOTE: the document does NOT

	state that sometimes Autobahn uses non-Genuine parts.
2012	“We use genuine Mercedes-Benz Parts” NOTE: the document does NOT state that sometimes Autobahn uses non-Genuine parts.
2013	“We use genuine Mercedes-Benz Parts” NOTE: the document does NOT state that sometimes Autobahn uses non-Genuine parts.
2014	“Best of all, we only use OEM Certified Mercedes-Benz auto repair parts and accessories!” NOTE: the document does NOT state that sometimes Autobahn uses non-Genuine parts.
2015	“Best of all, we only use OEM Certified Mercedes-Benz auto repair parts and accessories!” NOTE: the document does NOT state that sometimes Autobahn uses non-Genuine parts.
2017	“When work is performed on your vehicle, it’s important that the technicians are Mercedes-Benz factory-trained and are using genuine Mercedes-Benz parts.”

22. Autobahn Motors also publishes a repair manual that is used by its Service Advisors and is kept for use and display in the Service Advisors’ work area. The Service Advisor is the person who meets with the repair customer and guides them through the various repair options. The repair manual published by Autobahn Motors states: “Our maintenance schedule meets or exceeded the manufacturer’s recommended recommendations for vehicle maintenance...” Mercedes-Benz recommends that Genuine Mercedes-Benz parts are always to be used.

23. However, these statements are untrue, as Autobahn secretly places non-Genuine parts into the vehicles it services and repairs in order to make hidden profit at the expense of its customers.

24. Autobahn’s secret non-Genuine parts scandal was first uncovered during the May 20, 2015 deposition of Mike Del Rosario in an unrelated matter. Mr. Del Rosario testified that as a former Service Tech for Autobahn Motors from 2001 to 2012, he and other service techs were instructed to and did install non-Genuine parts into thousands of Autobahn customer vehicles. Critically, those customers were charged for Genuine Mercedes Parts and were not informed that

1 Autobahn was surreptitiously using cheaper non-Genuine parts in the vehicles it serviced and
2 repaired, pocketing the difference as additional profit.

3 25. The Del Rosario testimony was further supported by a series of documents
4 produced via third-party subpoenas in the *Maskay Inc. v. Autobahn* lawsuit. According to these
5 documents, Autobahn Motors placed a variety of auto parts purchased from SSF Auto, a major
6 supplier of non-Genuine Mercedes-Benz parts, into its used car inventory and into thousands of
7 customer vehicles. It was also discovered that from 2004 to May 2015, Autobahn Motors
8 installed virtually every type of non-Genuine auto part sold by SSF Auto, from brake pads to
9 shock absorbers and everything in between.

10 26. Autobahn Motors' Parts Manager, Roopesh Chandra, confirmed that the non-
11 Genuine parts purchased by Autobahn from SSF Auto covered virtually every auto part available
12 for Mercedes-Benz automobiles. These non-Genuine parts were routinely installed in
13 Autobahn's used car inventory and into the vehicles of its maintenance/repair customers without
14 the customer's knowledge or consent.

15 27. Autobahn Motors also installed into its used car inventory and into
16 maintenance/repair customer vehicles non-Genuine products sold by MOC Products. Non-
17 Genuine products purchased by Autobahn from MOC Products for use in customer vehicles
18 includes the following:

- 19 • 2,520 bottles of non-OEM zMAX
- 20 • 3,188 32 oz. bottles of non-OEM MOC brake fluid
- 21 • 3,336 bottles of MOC non-OEM automatic transmission fluid conditioner
- 22 • 40,560 bottles of non-OEM windshield washer solvent
- 23 • 2,712 bottles of non-OEM MOC Gear Guard 75w-140
- 24 • 2,856 units of non-OEM ultra-power steering flush kit, and
- 25 • 1,466 units of non-OEM power steering two-pack kits.

26 28. Upon information and belief, the MOC brake fluid and other MOC products are
27 of a lower quality and do not constitute Genuine Mercedes-Benz approved brake fluid. MOC

1 Brake fluid is definitely not approved by MB USA, but was regularly used by Autobahn Motors
2 in its CPO vehicles and into maintenance customer vehicles as well.

3 29. Autobahn also used non-Genuine parts purchased from Munich Auto Parts.
4 According to data obtained from Munich Auto Parts, Autobahn purchased 17,795 non-Genuine
5 oil filters during the class period. These non-Genuine oil filters were used in the maintenance
6 and repair Autobahn Motors' customer vehicles such as Plaintiffs herein.

7 30. In addition to oil filters, between 2005 and 2010, Autobahn Motors purchased
8 69,431 additional non-Genuine parts from Munich Auto Parts Warehouse.

9 31. The dollar amounts sold by Munich Auto Parts to Autobahn are as follows:
10 \$174,120 in non-Genuine oil filters; \$75,280.00 in non-Genuine spark plugs (13,670 units);
11 \$1,816 in non-Genuine motor mounts; \$16,484.50 in non-Genuine V-Belts; \$18,358.50 in non-
12 Genuine gaskets; \$3,868.00 in non-Genuine engine mounts; \$22,709.90 in non-Genuine battery
13 units (5024 units); \$20,109.50 in non-Genuine brake sensors (5024 units); \$28,570.00 in non-
14 Genuine ignition cables; \$330.00 in non-Genuine tightener pulleys; \$30,736.00 in non-Genuine
15 air mass sensors; \$19,857.50 in non-Genuine fuel filters; \$22,649.00 in non-Genuine part kits
16 filters; \$7,460.00 in non-Genuine trans oil filters; \$14,556.20 in non-Genuine cabin filters;
17 \$19,898.50 in non-Genuine air filters; \$60,303.00 in non- OEM filter elements; adding up to a
18 total of \$537,106.60 in non-Genuine parts.

19 32. Thousands of customers bring their automobiles to Autobahn Motors for regular
20 maintenance, and Autobahn Motors installed non-Genuine parts in their vehicles without
21 permission. The number of class members that had their vehicles serviced by Autobahn during
22 the class period likely exceeds 12,000. It was Autobahn's practice to routinely invoice
23 customers for Genuine Mercedes-Benz parts although they were not receiving Genuine
24 Mercedes-Benz parts. The customers were never informed that they were receiving non-
25 Genuine parts at the time of service, and they were not given the opportunity to refuse the non-
26 Genuine parts or to insist on Genuine Mercedes parts.

1 33. Plaintiff and putative class representative Steve Ferrari purchased one or more
2 Mercedes-Benz vehicles from Autobahn Motors, and has taken his vehicle(s) to Autobahn for
3 regular maintenance service during the class period. Although Plaintiff Ferrari was charged and
4 paid for Genuine Mercedes-Benz Parts, Defendants installed non-Genuine parts into his vehicle.

5 34. Plaintiff and putative class representative Mike Keynejad purchased one or more
6 Mercedes-Benz vehicles from Autobahn Motors, and has taken his vehicle(s) to Autobahn for
7 regular maintenance service during the class period. Although Plaintiff was charged and paid for
8 Genuine Mercedes-Benz Parts, Defendants installed non-Genuine parts into his vehicle.

9 35. Plaintiff and putative class representative Patricia Reuben purchased one or more
10 Mercedes-Benz vehicles from Autobahn Motors, and has taken her vehicle(s) into Autobahn for
11 regular maintenance service during the class period. Although Plaintiff was charged and paid for
12 Genuine Mercedes-Benz Parts, Defendants installed non-Genuine parts into her vehicle.

13 36. Plaintiff and putative class representative John Diaz brought one or more
14 Mercedes-Benz vehicles to Autobahn Motors for repairs and/or service. Although Plaintiff was
15 charged and paid for Genuine Mercedes-Benz Parts, Defendants installed non-Genuine parts into
16 his vehicle.

17 **ALLEGATIONS REGARDING THE CPO PROGRAM**

18 37. Autobahn's common practice of using non-Genuine parts to make hidden profit
19 bled over into the Mercedes-Benz Certified Pre-Owned Program ("CPO"). According to
20 Autobahn Motors General Manager Joe Cox, between December 2004 to May 2015, there were
21 thousands of non-Genuine parts placed into Autobahn Motors pre-owned fleet, including
22 automobiles that were eventually sold under the CPO Program.

23 38. Apart from the allegations herein, Mercedes-Benz USA has good reason to be
24 proud of its CPO program. The program is advertised on the MB USA website as having strict
25
26
27

1 compliance standards: “To qualify for Pre-Owned Certification, a Mercedes-Benz vehicle must
2 meet stringent criteria and pass a rigorous inspection.”¹

3 39. The website and a YouTube video published by MB USA describe the CPO
4 Program as “a 155-point inspection regime covering all aspects of the automobile including:
5 Fluid check; engine components; electrical systems and functions; drivetrain and undercarriage;
6 chassis and body; road test; post road test inspection.” According to the YouTube video (at
7 1:24), “it’s a vigorous regime of multiple multi point inspections.”²

8 40. Under the CPO Program, the vehicle is supposed to be checked by Mercedes-
9 Benz factory trained techs, and qualifying vehicles are to be re-conditioned with genuine
10 Mercedes-Benz parts. (YouTube video, at 2:03).

11 41. The YouTube video further states that “exceeding expectation is also what sets a
12 certified pre-owned Mercedes-Benz apart from the rest...” The YouTube video also states that
13 the Mercedes -Benz CPO program “. . .continues to lead the way . . .”

14 42. In addition, MB USA publishes a CPO “Program Guide” which states:

- 15 • “Quality Certified Mercedes-Benz Technicians perform repairs using only
16 genuine Mercedes-Benz Parts, exchange units, and factory-approved accessories.”
17 Id. p. 7.
- 18 • “The ICR and all reconditioning work must be performed on a qualifying vehicle
19 to bring it up to MB CPO Standards using Mercedes-Benz Genuine Parts.” Id. p.
20 17.
- 21 • “Prior to vehicle sale: Provide Inspection and Certification Report to Customer -
22 Disclose any prior repair and service history - Provide supporting repair orders for
23 CPO reconditioning.” Id. p. 19.

24 ¹

25 <https://www.mbusa.com/mercedes/cpo#waypoint=cpocertification&!layout=/cpo/overview/certif>
26 [ication](https://www.mbusa.com/mercedes/cpo#waypoint=cpocertification&!layout=/cpo/overview/certif)

27 ² <https://www.youtube.com/watch?v=f7PzX4d50tY>

- “The ICR must be reviewed with the Customer prior to sale. o Items on the vehicle that are excluded from the MB USA warranty because they are non-Mercedes-Benz or aftermarket components and/or accessories should be checked off by the Technician on the online form. Id. p. 21.

43. The Service Manager signs the Inspection and Certification Report (“ICR”) that establishes the vehicle as certified according to MBCPO Standards, as stated in the vehicle manuals:

- Page 18 states: NetStar automatically flags MBCPO vehicles that must be recertified and prevents data entry of the vehicle as an MBCPO sale
- page 19 states: 3.16 Prior to vehicle sale: • Provide Inspection and Certification Report to Customer • Disclose any prior repair and service history • Provide supporting repair orders for CPO reconditioning
- page 21 states: The ICR must be reviewed with the Customer prior to sale. o Items on the vehicle that are excluded from the MB USA warranty because they are non-Mercedes-Benz or aftermarket components and/or accessories should be checked off by the Technician on the online form. The online ICR must include (in the “Notes” section) any body repairs of a cumulative value in excess of 10 percent of the vehicle’s current market value. For a vehicle to be certified, the appropriate ICR and all reconditioning work must be performed on a qualifying vehicle to bring it up to MBCPO standards using Mercedes-Benz Genuine Parts, exchange units, and factory-approved accessories. The original completed, signed technical ICR and supporting repair orders (ROs) must be maintained in Dealer Service files. The consequences of noncompliance with MBCPO standards are stated in Section H of this manual. Consult your shop’s Workshop Information System (WIS) for the latest information and standards for inspection and repair procedures, tools, materials, and safety procedures for specific models and model years.

- 1 • Page 27 states: 1.1.5 The Service Department will make repairs using only
2 Genuine Mercedes-Benz Parts, exchange units, and factory-approved accessories.
- 3 • Page 27: “Reconditioning is a Team Effort,” stating in pertinent part: “The service
4 Department will make repairs using only Genuine Mercedes-Benz parts.”
- 5 • Page 28 states & explain managements responsibilities: Service Manager •
6 Designating one person to administer the entire Service Department process •
7 Expediting the vehicle through the process • Keeping the Pre-Owned Manager or
8 designated person informed of the current status of the vehicle while it is in the
9 process • Approving repairs in a timely fashion • Performing the required
10 inspection on each vehicle presented for reconditioning and reporting to the Pre-
11 Owned Manager or designated person the extent and estimated costs of the repairs
12 • Ensuring MBCPO-quality repairs • Returning the vehicle to the Pre-Owned
13 Department or Detail Department, as directed, immediately upon completion of
14 repairs • Ensuring that the Pre-Owned Manager or designated person receives the
15 actual reconditioning costs when receiving the vehicle.
- 16 • Page 39 states: Consult your shop’s Workshop Information System (WIS) for the
17 latest information and standards for inspection and repair procedures, tools,
18 materials, and safety procedures for specific models and model years.
- 19 • Page 49 states: 2.1.3 Carcannon Reporting Reviews—Depending on the results of
20 the periodic Carcannon Consultations, a PIR may be scheduled with the dealer.
21 Vehicle file reviews will be conducted by MB USA as well as inspection of
22 certified vehicles in dealer inventory.
- 23 • 2.2.2.1 Certification Training Review—The Reviewer determines whether the
24 current Pre-Owned Manager, Service Manager, and F&L Manager have
25 completed appropriate MBCPO online training. The Reviewer also determines if
26 the appropriate Dealership Representatives who sell new vehicles, pre-owned
27 vehicles, or both are trained and certified according to MBCPO Standards.

- 1 • Page 50 states: • Vehicle, process, and overall Dealership compliance scores • Top
2 five noncompliant vehicle categories; if less than five categories are
3 noncompliant, those categories are listed • Vehicle file and documentation
4 findings (documentation present, etc.) • Vehicle inspection graphs for exterior
5 appearance, interior appearance, and mechanical • Electronic Extended Limited
6 Warranty (number of days from delivery to DDR, Customer signature, etc.) •
7 Inventory reconciliation • Reasons vehicle was unavailable for inspection by PIR
8 Reviewers • Training certification report • Pre-owned capacity report • Point-of-
9 sale (POS) materials report • Top 25 problem categories • Vehicle level reporting
10 (individual vehicle condition report).
- 11 • page 54: Noncompliance with any of the MBCPO Training and Certification
12 Standards can result in the Dealership losing the right to participate in the
13 MBCPO Program.

14 44. The MB USA checklist likewise states: “The following items are to be
15 specifically brought to the attention of the customer because they are non-Mercedes-Benz or
16 aftermarket components. These items are excluded from the Mercedes-Benz certified pre-owned
17 limited Warranty.

18 45. A document in the service advisor’s office area kept at Autobahn Motors also
19 states that all automobiles are repaired according to factory guidelines. Mercedes-Benz factory
20 guidelines specify that only MB Genuine/OEM/approved parts are to be used.

21 46. Former parts advisers from Autobahn Motors’ have explained that they keyed in
22 the Genuine part numbers for non-Genuine products, at the direction of Autobahn Motors
23 management. On information and belief, Autobahn Motors in turn was directed to act from
24 directives of its corporate owner, Sonic Automotive.

25 47. The MB USA CPO program further advertises in the form of website publications
26 by its dealerships, including Autobahn Motors, in which the following false statement is made:

1 “Maintenance performed by Mercedes-Benz trained technicians using Genuine
2 Mercedes-Benz parts. Potential increase in resale value.”

3 48. This ad, or a similar one, has been published on the Autobahn Motors’ website, as
4 part of the Mercedes-Benz CPO program, and in the name of Mercedes-Benz USA.

5 49. Plaintiffs accordingly plead and allege against MB USA that it is responsible for
6 not only false statements that occurring during the initial sale of the CPO Program vehicles, but
7 also during the ensuing maintenance and/or repair after the sale.

8 50. Plaintiff Harold Fethe purchased a CPO Program vehicle from Autobahn which
9 included an ICR reports which stated at page 1:

10 "This report shows that your newly acquired pre-owned Mercedes-Benz vehicle has
11 been inspected and when required reconditioned to our exacting standards. Further, it is
12 our assurance that you will receive the same considerate customer service that we provide
13 to our new vehicle owners.”

14 51. In a brief filed by MB USA in San Mateo County Superior Court Action No.
15 CIV525559, MB USA stated: “MB USA’s certification program is a promise (or certification) to
16 the repair customer that the vehicle will be repaired with OEM parts and to MB standards (those
17 which they had prior to the collision).”

18 52. MB USA, through its agent Autobahn Motors, and with the connivance,
19 assistance, and facilitation of Sonic Automotive, willfully misrepresented CPO vehicles sold by
20 Autobahn Motors as being in compliance with the MB USA CPO Program’s mandates to use
21 only Genuine Mercedes-Benz parts in the re-conditioning of CPO Program vehicles.

22 53. However, CPO vehicles sold by Autobahn Motors during the class period did not
23 comply with the Program mandate as non-Genuine parts were routinely used in the
24 refurbishment of the CPO Program vehicles. Various parts, including but not limited to: zMAX,
25 MOC Brake Fluid, non-Genuine Parts from SSF auto, non-Genuine parts from Munich Auto
26 Parts (oil filters, air filters, cabin filters, spark plugs, brake sensors and other various parts) were
27 regularly and systematically placed into the Autobahn Motors CPO Program vehicles during the
28 CPO reconditioning process.

1 54. MB USA's actual knowledge of Autobahn Motors' practice of using zMAX and
2 MOC Products in CPO Program vehicles is evident from a review of the vehicle repair history
3 reports called "VMI reports." These VMI reports show the regular use of zMAX and other non-
4 Genuine products in vehicles represented as CPO compliant by Autobahn. MB USA is the
5 keeper of these reports, and as such has actual knowledge of the regular use of these non-
6 Genuine products in CPO Program vehicles sold and or serviced by Autobahn Motors.

7 55. Many of these non-Genuine products fail to meet Mercedes' own internal
8 requirements. For example, the MB USA website states that the proper approved brake fluid is
9 described as follows: "We recommend using only products which are distinctly marked with the
10 label indicating the approval of Mercedes-Benz, e.g. MB-Approval 229.51"³

11 56. Autobahn Motors and MB USA concealed the use of various non-Genuine parts
12 from consumers by failing to adhere to MB USA's CPO Program's mandates, and the mandate
13 of California Law, Vehicle Code Section 11713.18, by failing to provide customers with a signed
14 CPO inspection report detailing the non-compliant parts.

15 57. Plaintiff and putative class representative, Harold Fethe purchased a 2005 S12
16 Mercedes-Benz as a Certified Pre-Owned (CPO) vehicle from Autobahn Motors in 2009. The
17 VMI report on the repair and purchase history of the 2005 S12 shows that zMAX was put into
18 the vehicle by Autobahn Motors.

19 58. Former Autobahn Parts Advisor Roopesh Chandra testified that Autobahn placed
20 zMAX in all of its pre-owned vehicles during Chandra's 10-year term of employment.

21 59. Plaintiff Harold Fethe is a putative class representative of similarly situated
22 individuals who purchased a Certified Pre-Owned vehicle from any Sonic-owned Dealership,
23 including but not limited to Autobahn Motors, in which zMAX was placed during the class
24 period. The VMI Report for Plaintiff Fethe's vehicle, reviewed for the first time in 2016,
25 indicates that Autobahn placed zMAX into the vehicle's engine block during a repair service that
26 took place on or about May 14, 2012 and January 30, 2013.

27 ³ https://bevo.mercedesbenz.com/bevolisten/331.0_en.html

1 and to automatically place zMAX into all of vehicles in the dealerships pre-owned inventory,
2 including CPO Program vehicles.

3 66. Upon information and belief, Mr. Smith gave this directive regarding zMAX in
4 order to increase the profits of Speedway Motorsports, thereby enriching himself.

5 67. Autobahn Motors, along with and through the actions of former Sonic
6 Automotive Executive and Autobahn Motors General Manager Joe Cox, enforced and followed
7 this directive by Mr. Smith, and from approximately 2004 to the present, regularly caused zMAX
8 to be placed into all pre-owned vehicles, including CPO cars in stock at Autobahn Motors, and
9 into every vehicle that had its oil changed by Autobahn.

10 68. Based upon the testimony of Autobahn Motors General Manager Joe Cox,
11 approximately 12,000 vehicles had zMAX placed in them.

12 69. Former Autobahn Motors salesperson Paul Grewal (employed 2004-2014)
13 explained that all of the sales people at Autobahn Motors were aware of the practice of placing
14 zMAX into its CPO vehicles. They all knew it was non-genuine unapproved product. They
15 collectively agreed not to tell customers about the use of zMAX.

16 70. One Autobahn Service Advisor, Mr. Steve Meade testified that: “I think zMAX
17 got to a point where it wasn’t so much me selling it. It got to a point where the technicians were
18 just told to use it, and it wasn’t – there wasn’t any option given to the client.”

19 71. Sonic Automotive knew that in so directing Autobahn Motors, it would cause
20 Autobahn Motors to intentionally harm customers and their vehicles.

21 72. Paul Grewal explained the reason he did not tell customers that zMAX was
22 optional is because “if I told him, he would have asked me what is zMAX, and I didn’t want to
23 have to answer that question.”

24 73. Unfortunately, zMAX is a prohibited product for Mercedes-Benz vehicles.
25 Mercedes-Benz publishes the following statement at its website concerning the use of oil
26 additives such as zMAX:

1 “Up to now, Daimler AG has not approved any product that is
2 allowed to be introduced or mixed into approve, read-formulated
3 lubricants for engines, transmissions, or major assemblies in
4 Mercedes-Benz vehicles as a special additive! The vehicle owner
is solely responsible if special additives are used in lubricants! If
damage occurs the legal warranty and guarantee claims may be
limited.”

5 74. Mercedes-Benz also publishes owners’ manuals for its automobiles
6 which uniformly prohibit the use of oil additives such as zMAX.

7 75. Furthermore, by placing zMAX into the gas tanks of its used vehicle fleet and
8 customer vehicles, compliance with the emissions standards set by California State law is
9 diminished, and the process of confirming compliance through smog testing is altered and
10 harmed. zMAX increases the emissions because it is primarily a petroleum based mineral oil.

11 76. Defendants’ unfettered use of zMAX in order to increase the profits of Speedway
12 Motorsports and to pad the pockets of Sonic’s Chairman has caused damage to thousands of
13 vehicles and potentially voided the warranties covering thousands of vehicles. Some class
14 members have already had warranty claims denied as a result of using zMAX. As indicated
15 above, MB USA clarifies that it will deny such warranty claims if zMAX is used. Accordingly,
16 Sonic and its dealership, Autobahn, were intentionally adding a product to customer vehicles that
17 they knew or should have known would detrimentally affect the customers’ Mercedes-Benz
warranty.

18 77. Plaintiff Harold Fethe purchased a Certified Pre-owned Mercedes (CPO) car
19 from Autobahn that had zMAX put into it, and which consequentially caused Mr. Fethe’s
20 automobile warranty to become voidable at the option of the Mercedes-Benz. This legal impact
21 on the warranty is common to all purchasers of Certified Pre-owned vehicles of Autobahn
22 Motors, and many of the other 132 dealerships owned by Sonic Automotive. Mr. Fethe paid
23 more for a CPO program vehicle because of its extended warranty. However, in November
24 2016, Mr. Fethe attempted to obtain a warranty repair of sludge in the engine caused by zMAX
25

1 by making a warranty claim. That warranty claim was declined on the basis that the damage was
2 caused by non-approved services oil additives which is not covered by the warranty.

3 78. Plaintiff Ray Gapasin is an individual who purchased a pre-owned Mercedes–
4 Benz from non-party Peter Pan Motors, a BMW dealership located in Burlingame, CA. His
5 vehicle had been sold to the previous owner by Autobahn Motors. His VMI report shows that
6 zMAX was placed into the vehicle’s engine by Autobahn Motors, when the vehicle was brought
7 to Autobahn for repairs. Without Plaintiff Gapasin’s consent, Autobahn added zMAX to his
8 engine on September 30, 2010.

9 79. Plaintiff Gapasin’s automobile is an example of zMAX causing damage to the
10 vehicle in the form of oil sludge that is now throughout the engine. Repairing the vehicle to
11 remove engine sludge will require that the entire engine be cleaned piece by piece. Plaintiff
12 Gapasin only first discovered the use of zMAX in 2015 when he took the vehicle in for repairs.

13 80. Plaintiff and putative class representative Ray Gapasin seeks to represent all those
14 who purchased a pre-owned vehicle from a Sonic Automotive dealership, including but not
15 limited to Autobahn Motors, in which zMAX was placed between 2004 and the present.

16 **ALLEGATIONS REGARDING THE SUPERIORITY AND LONGEVITY**
17 **OF GENUINE MERCEDES-BENZ PARTS**

18 81. Defendants have falsely represented in a longtime advertising campaign that
19 Genuine Mercedes-Benz Parts have numerically designated greater longevity and are of superior
20 quality when compared to non-Genuine parts.

21 82. Among others, these advertisements take the form of promotional brochures
22 mailed out and given out to consumers, and statements on MB USA’s website.

23 83. Defendant Sonic Automotive authorizes the advertisements issued by Autobahn
24 Motors, its wholly-owned subsidiary.

25 84. MB USA provides content for the ads and makes its own representations
26 regarding the higher quality of Genuine Parts.

1 85. Autobahn Motors prepares and disseminates these statements through direct
2 mailers and email-blasts.

3 86. Among others, the ads take the following general approach:

4 a. MB USA's website states:

5 "Using only Genuine Mercedes-Benz Parts affords you measurable
6 differences every mile you travel. Longevity, safety and warranty are just
7 a few of many reasons to buy Genuine Parts."

8 "Being history's first car company has afforded us the time and expertise
9 to instill durability into our parts. For example, our fleece oil filter lasts up
10 to 45% longer than conventional filters, minimizing engine wear."

11 b. A brochure mailed and the MB USA link to Autobahn Motors quotes statements
12 made by MB USA:

13 Oil filters: "can last 45% longer than other aftermarket oil filters."

14 Air filters: "lasts at least 40,000 miles. Other aftermarket filters might need to be
15 replaced at 12,000 miles." and "capture 28% more soot over their lifetime than
16 most brands."

17 Cabin filters: "are 36% more effective at filtering soot than tested aftermarket
18 filters."

19 Wiper blades: "can provide up to 800,000 more wiping cycles than other
20 aftermarket brands."

21 Brakes: "tested lower in vibration versus other aftermarket brands."

22 87. These statements are materially false when the so-called non-Genuine
23 "aftermarket" parts are produced by the same manufacturers that produce Genuine Parts for
24 Mercedes-Benz.

25 88. For example, Mann Filter Company makes Genuine oil filters for Mercedes-Benz.
26 That filter has the Mercedes-Benz star logo emblazoned upon it. However, Mann Filter also
27 sells non-Genuine versions of the same oil filters that are identical to the Genuine oil filter in all

1 respects other than having the Mercedes-Benz logo. Critically, the Genuine Mann filter costs
2 approximately three times the price of same non-Genuine Mann oil filter without the logo. The
3 only actual difference between the Genuine and non-Genuine oil filters manufactured by Mann
4 Filter Company is the logo.

5 89. Mann Filter company's website states:

6 "MANN-FILTER is not only a leading development partner and OE supplier to the
7 international automotive industry, but also supplies world-famous MANN-
8 FILTER brand products in the aftermarket to fit most vehicles around the world.
9 The MANN-FILTER range of products also meets the highest standards of quality and
10 service demanded by our OE customers."
11

12 90. According to Mann Filters, the non-Genuine products are in every way as good
13 performance-wise as the Genuine Mercedes products.

14 91. These Mann non-Genuine filters are among the filters sold to Plaintiffs and
15 members of the class, albeit at the higher Genuine Parts price.

16 92. Another example is Bosch spark plugs. Bosch makes a Genuine spark plugs for
17 Mercedes-Benz which contain the Mercedes-Benz logo. Bosch also makes a non-Genuine spark
18 plug that is identical to the Genuine spark plugs, for a fraction of the cost.
19

20 93. MB USA's statements about the longevity of its Genuine parts are not mere
21 puffery, but instead are based on factual statements using a numerical designation to describe
22 MB Genuine parts as having better longevity than non-Genuine parts.
23

24 94. Autobahn Motors knows this is an untrue statement, as it has stated in court
25 papers in the previous federal RICO case that it should not be held liable for fraud because
26

1 Plaintiffs were not damaged by receiving non-Genuine parts because the parts they received
2 were of the same quality as Genuine parts.

3 95. Plaintiffs believe that the position of Autobahn Motors to be true with respect to
4 the various non-Genuine products sold to Autobahn Motors from Munich Parts Warehouse. This
5 is not inconsistent with Plaintiffs' other claims of harm from these products, in that Plaintiffs
6 were charged for Genuine Mercedes parts at the Genuine Mercedes parts (or higher) price for
7 these products, and in fact received lower priced non-Genuine parts, and thus suffered actual
8 damage. If the Genuine products are found not to be of superior quality, then Defendants
9 engaged in unlawful conduct by charging higher amounts for Genuine Parts. In addition, the
10 non-Genuine parts are not covered by MB USA warranty, which is a further actual damage
11 suffered by Plaintiffs.
12

13 96. MB USA knowingly causes its advertising brochures to be sent out in bulk mail to
14 customers, knowing them to be false, because it knows (just like Autobahn Motors knows) that
15 many producers of its own Genuine Mercedes products also make the same exact product as a
16 non-Genuine alternative, and that the only actual difference is one has a Mercedes-Benz logo,
17 and the other does not.
18

19 97. MB USA disseminates its false superiority and longevity claims through
20 statements on its website, and also through the use of displays physically placed inside
21 Mercedes-Benz dealerships throughout the state of California. There are approximately 50
22 Mercedes-Benz authorized dealerships within the state of California. Plaintiffs believe that this
23 display advertisement, which takes the form of a stand-alone monument, is placed in each
24 dealership.
25

1 98. This Mercedes-Benz display is entitled “Why Genuine Mercedes-Benz Parts,”
2 and is placed in a prominent place in lobby area of Autobahn Motors.

3 99. Autobahn Motors knew that the display monument ad contained false factual
4 statements, as described above, and yet knowingly and willfully accepted the display monument
5 ad. Autobahn Motors knowingly and willfully co-published this ad with MB USA by placing it
6 in its lobby.

7 100. Further, MB USA publishes information about its claims of superiority and
8 longevity on its MB USA website. Its website currently shows the following further false
9 statement about its parts:
10

11 “Genuine New Parts - They don't merely perform. They endure.

12 Quality doesn't simply reside in how well a part functions at the get-go: it's a
13 function of how well it performs over time. And Genuine Parts endure because
14 they're engineered specifically for your car—they fit like no other parts can,
15 they're engineered to work with the other parts and systems, and they're made
16 with the finest materials available.”
17

18 Web link for above quote: https://www.mbusa.com/mercedes/service_and_parts/genuine_parts

19 101. Mercedes-Benz also publishes several YouTube videos concerning the benefits of
20 Genuine Parts over non-Genuine parts.

21 102. Defendants knowingly concealed from Plaintiffs and members of the class the
22 true facts regarding non-Genuine parts in order to cause them to purchase only Genuine Parts
23 despite virtually identical parts made by the same manufacturer being available at reduced prices.
24 Defendants also kept Plaintiffs from knowing these true facts, and made statements about
25 Genuine products that are rendered untrue and misleading by concealing these true facts, and by
26

1 hiding facts which are known to Defendants. The true facts are that non-Genuine products
2 produced by the same manufacturers of Genuine products are every bit as good and any
3 statements to the contrary are demonstrably false.

4 CLASS ACTION ALLEGATIONS

5 103. This action has been brought and may be properly maintained on behalf of each of
6 the Classes proposed herein under Federal Rule of Civil Procedure 23 and satisfies the
7 numerosity, commonality, typicality, and adequacy requirement of Rule 23(a) as well as the
8 predominance, and superiority requirements of Rule 23(b).

9 Class Definition(s)

10 104. Plaintiffs bring this lawsuit as a class action pursuant to Federal Rules of Civil
11 Procedure 23(a); and (b)(3) on behalf of themselves and all others similarly situated as members
12 of the following Subclasses (collectively, the “Class”); on their federal and state claims.

13 105. Plaintiffs propose the following class definitions:

14 **(a) Non-Genuine Parts Class:** Any consumer who brought one or more Mercedes-Benz
15 automobiles to Autobahn Motors for service, repair, or maintenance from January 1,
16 2005 to February 28, 2018, and who received non-OEM/non-genuine/approved
17 Mercedes-Benz parts, supplies, and/or oil from Autobahn Motors, and were invoiced for
18 Genuine Mercedes-Benz OEM parts.

19 **(b) zMAX Class:** Any consumer who had zMAX added to his or her vehicle by
20 Autobahn in connection with service, repair, or maintenance between January 1, 2005
21 and February 28, 2018, or in connection with the reconditioning of a CPO vehicle that he
22 or she purchased between January 1, 2007 and December 31, 2012.

23 **(c) Certified Pre-Owned Class:** Any consumer who purchased a Certified Pre-Owned
24 (CPO) Mercedes-Benz automobile from Autobahn Motors during the period January 1,
25 2007 and December 31, 2012.

26 **(d) Genuine Parts Class:** All consumers within the state of California that purchased
27 from any California Mercedes-Benz dealership Genuine Mercedes-Benz spark plugs, oil

1 filters, air filters, brake pads and/or wiper blades between September 24, 2011 and the
2 date the Notice issues to the class.

3 **Numerosity and Ascertainability**

4 106. Federal Rule of Civil Procedure 23(a)(1) requires that “the class is so numerous
5 that joinder of all members is impracticable.”

6 107. As set forth above, Autobahn purchased tens of thousands of non-Genuine parts
7 from various retailers during the proposed class period of January 1, 2005 to the present. These
8 parts were all installed in thousands of customer vehicles.

9 108. Based upon the testimony of Autobahn Motors General Manager, Joe Cox,
10 Autobahn placed zMAX into approximately 12,000 vehicles during the class period.
11 Furthermore, the size and location of Autobahn indicates that it services hundreds of vehicles
12 each month. During the class period, each of those service customers was charged for Genuine
13 Mercedes-Benz parts, but received non-Genuine parts instead.

14 109. Accordingly, the members of the Classes set forth above are so numerous and
15 geographically dispersed that individual joinder of all Class members is impracticable.

16 110. The precise number and identities of Class members may be ascertained from
17 Autobahn Motors’ repair records as such records are maintained for each Mercedes vehicle and
18 shared nationally with all Mercedes dealerships. For example, all Mercedes-Benz dealerships
19 use a Vehicle Master Inquiry database to track service and repairs of Mercedes vehicles. The
20 VMI database also tracks which dealer performed which services and the specific parts used.
21 This information can be used to identify and track class members and to calculate damages
22 and/or restitution.

23 **Commonality**

24 111. Federal Rule of Civil Procedure 23(a)(2) requires that “there are questions of law
25 or fact common to the class.”

26 112. The claims advanced herein are based upon common courses of conduct by
27 Defendants.

1 113. First, Autobahn's employees have testified that during the class period Autobahn
2 regularly and routinely used non-Genuine parts to service and repair customer vehicles, while
3 charging their customers for Genuine Mercedes-Benz parts. The legality of this common
4 practice is common for all class members as the decision will turn on common evidence.

5 114. Second, whether Defendant's practice of reconditioning CPO vehicles with non-
6 Genuine parts diminished the value of the vehicle, violated the program terms, and caused harm
7 to the vehicle itself will likewise turn on evidence common to all CPO class members.

8 115. Third, the legality of Defendants' practice of using zMAX in customer vehicles
9 without request or permission as part of routine maintenance will also turn on common claims.
10 If Defendants' conduct in this manner is found to be illegal in the transactions of the named class
11 representatives, it will be the same for each member of the putative class.

12 116. Fourth, the determination regarding whether Mercedes-Benz's advertising
13 program misrepresented the superiority and longevity of Genuine Parts when compared to the
14 same parts sold by the same manufacturers is a common representation that will turn on common
15 evidence.

16 117. Since only one common issue of law or fact is required under Rule 23(a)(2), this
17 second requirement is easily established by the common conduct of the Defendants.

18 **Typicality**

19 118. Rule 23(a)(3) requires that "the claims of defenses of the representative parties are
20 typical of the claims or defenses of the class."

21 119. The named Plaintiffs' claims are typical of the nature and types of claims held by
22 members of the class. They are all owners of Mercedes-Benz automobiles that had their vehicles
23 serviced and/or repaired Autobahn Motors, received non-Genuine parts, and were invoiced for
24 Genuine Mercedes-Benz parts at elevated prices. Plaintiffs wished to have Genuine Parts
25 installed in their vehicles because MB USA's advertising campaign represented Genuine
26 Mercedes-Benz Parts as being of superior quality to all other aftermarket parts.

1 120. Likewise, Plaintiffs Patricia Reuben and Harold Fethe purchased CPO Mercedes-
2 Benz automobiles from Autobahn Motors that contained non-Genuine parts during services.
3 They are typical of class members who also purchased a CPO vehicle from Autobahn during the
4 class period.

5 121. Multiple Plaintiffs had zMAX installed in their vehicles by Autobahn Motors.
6 The representative Plaintiffs, like all Class members, have been damaged by Defendants'
7 misconduct in that they have incurred similar or identical losses relating to the use of non-
8 Genuine parts and products in the Class vehicles. Furthermore, the factual bases of Defendants'
9 misconduct are common to all Class members and represent a common thread of misconduct
10 resulting in injury to all Class members.

11 **Adequate Representation**

12 122. Rule 23(a)(4) requires that “the representative parties will fairly and adequately
13 protect the interests of the class. This inquiry focuses on the named representatives and putative
14 class counsel.

15 123. Named Plaintiff Steve Ferrari is a longtime Mercedes-Benz owner with multiple
16 vehicles regularly serviced by Autobahn Motors. He was given non-Genuine parts during those
17 service appointments and was charged for Genuine Mercedes-Benz parts. He has no interest
18 antagonistic to the class members he seeks to represent.

19 124. Plaintiff Mike Keynejad purchased one or more Mercedes-Benz automobiles from
20 Autobahn Motors, and has taken his cars in for regular maintenance service at Autobahn Motors
21 during which non-Genuine parts were installed into his car. Plaintiff Keynejad has been
22 instrumental in receiving news and evidence of the non-Genuine parts scandal, and the
23 production of documents. Plaintiff Keynejad is a skilled mechanic whose shop Eurotech has
24 become a clearinghouse for Autobahn’s former technicians. Plaintiff Keynejad is also an expert
25 concerning Mercedes-Benz car repair procedures and issues, and of any of the interrelationships
26 that form the Mercedes-Benz subset of the auto repair business. He has no interest antagonistic
27 to the class members he seeks to represent.

1 125. Plaintiff John Diaz is a prospective class representative on non-Genuine parts
2 claims. He has specific expertise in all facets of automotive sector advertising, and specifically
3 with respect to Mercedes-Benz and other high-end automobiles. He also is an owner of a pre-
4 owned Mercedes-Benz automobile which was brought in for service at Autobahn Motors. He
5 has no interests antagonistic to the class members he seeks to represent.

6 126. Named Plaintiff Patricia Reuben is a longtime Mercedes-Benz owner with
7 multiple vehicles regularly serviced by Autobahn Motors. She was given non-Genuine parts
8 during those service appointments and was charged for Genuine Mercedes-Benz parts. She has
9 no interest antagonistic to the class members she seeks to represent.

10 127. Plaintiff Harold Fethe is a proposed class representative for individuals who
11 purchased a CPO vehicle from any Sonic dealership (including but not limited to Autobahn
12 Motors) that contained non-Genuine parts (including but not limited to zMAX) during the class
13 period. He is an example of someone who purchased a CPO car from Autobahn that had zMAX
14 put into it, which consequentially caused Mr. Fethe's automobile warranty to become voidable at
15 the option of the warrantor. This legal impact on the warranty is common to all purchasers of
16 preowned vehicles of Autobahn Motors, and many of the other 132 dealerships owned by Sonic
17 Automotive. Mr. Fethe purchased a CPO Program vehicle because having CPO status was
18 supposed to be worth several thousand dollars of additional value as a result of the re-
19 conditioning and qualification process. In November 2016, Mr. Fethe's warranty claim for
20 problems cause by zMAX (desludging) was denied because damage caused by oil additives,
21 including zMAX are not covered by the warranty. He has no interests antagonistic to the class
22 members he seeks to represent.

23 128. Plaintiff Ray Gapasin is a proposed class representative for individuals who
24 purchased a pre-owned vehicle in which zMAX and other non-Genuine products were placed,
25 during the class period. Plaintiff Gapasin purchased a preowned Mercedes-Benz that was
26 previously sold by Autobahn Motors, and that had zMAX placed into the car by Autobahn
27 Motors, when it sold the car as a CPO vehicle to the previous owner, and then again in

1 September 2010 when the car was taken in for a repair while owned by Gapasin. Ray Gapasin is
2 an auto enthusiast who has a substantial level of knowledge concerning the operation of
3 automobiles generally, and his own Mercedes-Benz. Plaintiff Gapasin's vehicle was damaged
4 by zMAX (sludge in the engine) as described above. He has no interest antagonistic to the class
5 members he seeks to represent.

6 **Adequacy of Class Counsel**

7 129. Plaintiffs have retained Herman Franck, Esq. of Franck & Associates to prosecute
8 this claim. Attorney Franck and Franck and Associates will serve as class counsel, and have the
9 following credentials to show that they will be adequate counsel for the class. Attorney Franck
10 is a Georgetown University Law Center Graduate (Juris Doctorate 1985) with a Masters of
11 Economics (1985) and a BA (honors) in Political Economy from UC Berkeley (1981). Mr.
12 Franck has been a member of the California State Bar since 1986 (SBN 123476), and has owned
13 and operated Franck & Associates in Sacramento since the year 2000. Mr. Franck represents an
14 auto body shop in San Mateo by the name of Eurotech in a lawsuit against Autobahn and MB
15 USA concerning an ad co-op scheme, illegal tying arrangement, and price fixing (*Maskay Inc.*
16 *dba Eurotech vs Autobahn Motors Inc. dba Autobahn Motors; MB USA; Rick Ali, Bobby Ali, AW*
Collision Inc. San Mateo Superior Court Case No. CIV525559).

17 130. Plaintiffs have also engaged and partnered with the consumer class action law
18 firm of Varnell & Warwick, P.A. to assist in the representation of the class. Varnell & Warwick,
19 P.A. and its partners Janet R. Varnell and Brian W. Warwick have substantial experience in
20 consumer class actions and have prosecuted dozens of consumer class actions in state and federal
21 courts across the United States.

22 **Predominance of Common Questions**

23 131. Once all the requirements of Rule 23(a) have been established, the two additional
24 requirements of Rule 23(b), predominance and superiority, must also be met.

25 132. There are numerous questions of law and fact common to Plaintiffs and Class
26 members that predominate over any question affecting only individual Class members. The

1 answers to these common questions will advance the adjudication or resolution of the litigation
2 as to all Class members.

3 133. The predominating common legal and factual questions include:

- 4 a. Whether Defendants charged customers for Genuine Mercedes-Benz parts,
5 but installed non-Genuine parts without the customers' knowledge;
- 6 b. Whether Defendants breached their contracts with customers by charging
7 for Genuine Mercedes-Benz parts but installing non-Genuine parts;
- 8 c. Whether Defendants breached their contracts with customers by providing
9 CPO Program vehicles that were re-conditioned with non-Genuine parts
10 and products;
- 11 d. Whether Defendants breached their contracts with service customers by
12 automatically installing zMAX as part of a routine maintenance;
- 13 e. Whether Defendants violated the Consumer Legal Remedies Act by
14 selling non-Genuine Parts to unknowing consumers or by representing
15 Genuine Parts as superior and longer lasting than non-Genuine parts made
16 from the same manufacturer;
- 17 f. Whether Defendants' practices of using non-Genuine parts without
18 informing their customers is an unfair and/or deceptive trade practice in
19 violation of California Vehicle Code 11713.18, thereby violating
20 California Code section 17200;
- 21 g. Whether Defendant's practice of selling CPO Program vehicles that
22 contain undisclosed non-Genuine parts is an unfair and/or deceptive
23 practice in violation of California Vehicle Code 11713.18, thereby
24 violating California Code section 17200;
- 25 h. Whether Defendants' practice of automatically installing zMAX without a
26 request from the customer constitutes an unfair and/or deceptive practice

1 in violation of California Vehicle Code 11713.18, thereby violating
2 California Code section 17200;

3 i. Whether Defendants' practice of charging for Genuine parts but installed
4 non-Genuine parts violates Business & Professions Code Section 17500;

5 j. Whether Defendants' practice of selling CPO Program vehicles as having
6 been refurbished with Genuine Mercedes parts when non-Genuine parts
7 were used violates Business & Professions Code Section 17500;

8 k. Whether Defendants' advertising program misrepresents Genuine
9 Mercedes-Benz Parts and being superior to all other aftermarket parts;

10 l. Whether Defendants were unjustly enriched by charging for Genuine
11 Mercedes-Benz parts while providing customers non-Genuine parts; and

12 m. Whether Defendants negligently breached their duty to provide Genuine
13 Mercedes-Benz parts to customers.

14 **Superiority**

15 134. Defendants' scheme treated consumers as a class of uniformly deceived.
16 However, the individual damages suffered by each class member are most often to be the
17 difference between what was promised and what was received, which will be a relatively modest
18 amount. Plaintiffs and Class members have all suffered and will continue to suffer economic
19 harm and damage as a result of Defendants' unlawful and wrongful conduct, which was directed
20 toward Class members and the public as a whole, rather than specifically or uniquely against any
21 individual Class members.

22 135. Absent a class action, most Class members would likely find the cost of litigating
23 their claims prohibitively high and would therefore have no effective remedy at law. The
24 respective value of the claims, person by person, are inadequate to litigate on their own. Because
25 of the relatively small size of the individual Class members' claims, it is likely that only a few
26 Class members could afford to seek legal redress for Defendants' misconduct. Absent a class

1 action, Class members will continue to incur damages, and Defendants' misconduct will
2 continue unchecked and without an effective remedy.

3 136. Class treatment will conserve the resources of the courts and the litigants, and will
4 promote consistency and efficiency of adjudication by providing common answers to the
5 common questions of knowledge, conduct, duty and breach, that predominate in this action.

6 137. Accordingly, the disposition of the claims of Class members in a single action
7 will provide substantial benefits to all parties and to the Court. Class members may be readily
8 notified of the pendency of this action by recognized, Court-approved notice dissemination
9 methods, which may include U.S. mail, electronic mail, Internet postings, and/or published
10 notice. Accordingly, a class action is superior to all other available methods for the fair and
11 efficient adjudication of this controversy.

12 TOLLING OF THE STATUTES OF LIMITATIONS

13 Discovery Rule

14 138. As discussed above, the Defendants hid their practice of using non-Genuine parts
15 from their customers. Unlike vehicles of the past, the vehicles of today can only be serviced by
16 trained technicians with appropriate computers, tools and knowledge. As a result, the vast
17 majority of class members remain completely unaware that Defendants were using non-Genuine
18 parts in the service and repair of their vehicles and in the CPO Program vehicles being sold by
19 Autobahn.

20 139. Defendants' unlawful conduct was elaborate and well concealed. Autobahn
21 Motors actively concealed the true character, quality, and nature of the non-Genuine parts and
22 products, and knowingly made material omissions regarding the quality, reliability,
23 characteristics, and performance of the non-Genuine parts and products.

24 140. Plaintiffs and Class members had no realistic ability to discover the presence of
25 the non-Genuine parts or products, or to otherwise learn of the unlawful conduct.

26 141. Any statutes of limitation otherwise-applicable to any claims asserted herein have
27 been tolled by the discovery rule.

1 **Intentional Concealment**

2 142. All applicable statutes of limitation have also been tolled by Autobahn Motor’s
3 knowing, active and ongoing fraudulent concealment of the facts alleged herein.

4 143. Defendants have known of the non-Genuine parts and products installed in the
5 Class Vehicles since at least 2004 when Autobahn Motors began installing them. Since then
6 Autobahn Motors has intentionally concealed from or failed to notify Plaintiffs, Class members,
7 and the public of the non-Genuine parts and products in the Class vehicles.

8 144. Autobahn Motors installed the non- parts in order to charge Mercedes Genuine
9 parts prices for lower-priced non-Genuine parts, installed zMAX as part of a concerted scheme
10 with Sonic Automotive to market and sell the unapproved oil additive zMAX, and sold CPO
11 vehicles with non-Genuine parts and products installed.

12 145. Despite knowing about the non-Genuine parts and products (including zMAX),
13 Defendants did not acknowledge the problem, and in fact actively concealed it, until after it was
14 discovered in separate litigation beginning in or about May 2015.

15 146. Any otherwise-applicable statutes of limitation have therefore been tolled by
16 Defendants’ exclusive knowledge and Autobahn Motors’ active concealment of the facts alleged
17 herein.

18 **Estoppel**

19 147. Defendants were and are under a continuous duty to disclose to Plaintiffs and
20 Class members the true character, quality, and nature of the non-Genuine parts and products
21 installed in the Class vehicles. Instead, Autobahn Motors actively concealed the true character,
22 quality, and nature of the non-Genuine parts and products, and knowingly made
23 misrepresentations about the quality, reliability, characteristics, and performance of the non-
24 Genuine parts and products.

25 148. Plaintiffs and Class members reasonably relied upon Autobahn Motors’ knowing
26 and affirmative misrepresentations and/or active concealment of these facts.

1 149. Based on the foregoing, Defendants are estopped from relying on any statutes of
2 limitation in defense of this action.

3 RELATION BACK

4 150. This action relates back to a similar action filed by Plaintiffs in the United States
5 District Court, Northern district of California, entitled *Ferrari et al. v. Mercedes-Benz et al.*,
6 Case No. 4:15-cv-04379-YGR, initially filed on September 24, 2015.

7
8 151. That action included a federal claim under RICO Action, 18 U.S.C. Section 1961
9 et seq., and state law claims of false advertising, fraud, negligent misrepresentation, negligence,
10 violation of B&P Code section 17200. The federal case was dismissed by Order granting
11 defendants Motions to Dismiss, dated December 12, 2016.

12 152. The dismissal was based on the RICO claim only, and the District Court's
13 unwillingness to retain supplemental jurisdiction over the state law claims absent a viable federal
14 law claim. The Court's decision states:

15
16 "In short, the allegations of the SAC might state a simple claim for fraud² or unfair
17 business practices by their respective companies, but they do not allege that the
individual defendants participated in a pattern of racketeering acts by a RICO enterprise.

18 FN 2 The Court notes that the website printout referenced in the SAC, attached as Exhibit
19 D, does not indicate that Autobahn only uses OEM parts, but that "[o]ur service center
20 has access to OEM Certified auto parts and accessories." (SAC, Exh. D. ECF 66-1 at 25.)
21 Further, the warranty information on the back of the invoice exemplar includes a separate
22 statement of a "Parts Warranty for Non-Mercedes-Benz Parts" in the lower left corner of
23 that page. (*Id.*, Exh. C.) Further, the alleged "newsletter" at Exhibit G to the SAC appears
to be part of an owners' manual and part of a service form, neither of which appear false,
much less to have been disseminated through the mails. Thus, the allegations lack
plausibility even to allege garden variety fraud."

24 153. This Court previously ruled that the state law claims against Autobahn Motors
25 had been sufficiently stated, and DENIED Autobahn Motors' Motion to Dismiss the Fraud

1 Claims. This Court made the following finding in its Order granting in part the series of motions
2 to dismiss the initial complaint:

3 “As to the claims for fraud, fraudulent inducement, negligent misrepresentation, and
4 negligence, Autobahn argues only that, as with the RICO claim, the allegations are
5 insufficiently pleaded per the standards set forth in Rule 9(b). The Court does not agree.
6 While Plaintiffs’ Complaint is not a model of clarity, there are factual allegations in
7 support of the claimed fraudulent and deceptive conduct by Autobahn which are pleaded
8 with sufficient particularity as to the nature of the false representations, made by whom,
9 and when.”

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT I
BREACH OF CONTRACT
(Class Action Claim Against All Defendants)

154. Plaintiffs incorporate by reference paragraphs 1 through 153 as if fully set forth
herein.

155. Plaintiffs assert four breach of contract claims in connection with each Class
defined above.

156. The members of the Non-Genuine Parts Class entered into a contract with Sonic
and its agent, Autobahn, when they brought their vehicles to Autobahn for service and/or repair.
As part of that contract, Autobahn represented that Genuine Mercedes-Benz Parts were to be
used in the repair or service of customer vehicles. Autobahn breached its contract with the Non-
Genuine Parts Class members by installing and using non-Genuine parts in the repair or service
of class member vehicles. Members of the Non-Genuine Parts Class have been damaged by
Autobahn’s breach in that did not receive the benefit of their bargain and received goods that
were not specified and were of lesser quality. Defendants’ conduct caused actual damage to
Non-Genuine Class members in the form of the difference in price between the Genuine
Mercedes-Benz parts and products specified and the non-Genuine parts and products that were
actually used.

157. Members of the zMAX Class entered into contracts with Autobahn, a Mercedes
qualified service center and dealership, to have their vehicles serviced with products approved by

1 Mercedes. Autobahn breached its contracts with these class members by installing zMAX as
2 part of its routine oil change and service because zMAX is not part of Mercedes' maintenance
3 program and is not approved by Mercedes and may void the Mercedes Warranty. Further,
4 Autobahn breached its contract with the zMAX Class members by automatically adding zMAX
5 to the service without the customer's knowledge or permission.

6 158. Members of the CPO Class entered into a contract with Defendants to purchase
7 vehicles that were compliant with the Mercedes-Benz Certified Pre-Owned Program, including
8 being re-conditioned with only Genuine Mercedes-Benz Parts. Defendants breached their
9 contracts CPO Class members by re-conditioning the CPO Vehicles with non-Genuine parts
10 contrary to the CPO Program directives. Members of the CPO Class were damaged in that they
11 did not receive the benefit of their bargain. They were to receive a vehicle that had been re-
12 conditioned with Genuine Mercedes-Benz parts. They were also damaged by the inclusion of
13 zMAX in CPO Program vehicles as it is not a Mercedes approved product and may void the
14 extended warranty that comes with CPO Program vehicles.

15 159. Reserved.

16 160. As a direct and proximate result of the Defendants' breaches described above,
17 Plaintiffs and Class members have been damaged in an amount to be proven at trial, which shall
18 include, but is not limited to, all compensatory damages, incidental and consequential damages,
19 and other damages allowed by law.

20 161. WHEREFORE Plaintiffs pray for judgment as set forth below.

21 **COUNT II**
22 **VIOLATION OF CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**
23 **CIVIL CODE § 1750, et seq.**
24 **(Class Action Claim Against All Defendants)**

25 162. Plaintiffs incorporate by reference paragraphs 1 through 153 as if fully set forth
26 herein.

1 163. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
2 Cal. Civ. Code § 1750, et seq. (the “CLRA”), because Defendants’ actions and conduct
3 described herein constitute transactions that have resulted in the sale or lease of goods or services
4 to consumers.

5
6 164. Plaintiff and each member of the Class are consumers as defined by Cal. Civ.
7 Code § 1761(d).

8 165. Cal. Civ. Code § 1770(a)(1), (2), (3), (5), (7), and (8) lists the following as
9 prohibited unlawful acts which have been violated by Defendants as follows:

10 **(1) Passing off goods or services as those of another.** Defendants violate this provision
11 by passing off non-Genuine Parts as Genuine Mercedes-Benz Parts when used in the
12 maintenance and/or repair of customer vehicles.

13 **(2) Misrepresenting the source, sponsorship, approval, or certification of goods or**
14 **services.** Defendants violate this provision by misrepresenting the source, sponsorship and
15 approval of non-Genuine Parts as if they were Genuine Mercedes-Benz Parts when used
16 in the maintenance and/or repair of customer vehicles. Defendants also violate this
17 provision by making unfounded superiority and longevity claims regarding Genuine Parts
18 as described herein. Defendants further violate this provision by selling vehicles as
19 qualified CPO Program vehicles, when those vehicles were not reconditioned with
20 Genuine Parts and in violation of Mercedes-Benz factory standards as required by the
21 CPO Program.
22

23 **(3) Misrepresenting the affiliation, connection, or association with, or certification**
24 **by, another.** Defendants violate this provision by misrepresenting the source, sponsorship
25
26

1 and approval of non-Genuine Parts as if they were Genuine Mercedes-Benz Parts when
2 used in the maintenance and/or repair of customer vehicles. Defendants also violate this
3 provision by making unfounded superiority and longevity claims regarding Genuine Parts
4 as described herein. Defendants further violate this provision by selling vehicles as
5 qualified CPO Program vehicles, when those vehicles were not reconditioned with
6 Genuine Parts as required by the CPO Program.

7 **(5) Representing that goods or services have sponsorship, approval, characteristics,**
8 **ingredients, uses, benefits, or quantities that they do not have ...** Defendants violate
9 this provision by misrepresenting the source, sponsorship and approval of non-Genuine
10 Parts as if they were Genuine Mercedes-Benz Parts when used in the maintenance and/or
11 repair of customer vehicles. Defendants also violate this provision by making unfounded
12 superiority and longevity claims regarding Genuine Parts as described herein.
13 Defendants further violate this provision by selling vehicles as qualified CPO Program
14 vehicles, when those vehicles were not reconditioned with Genuine Parts as required by
15 the CPO Program. Defendants use of zMAX also violates this provision because zMAX
16 is not approved by Mercedes-Benz to be used in any Mercedes vehicles.

17 **(7) Representing that goods or services are of a particular standard, quality, or**
18 **grade, or that goods are of a particular style or model, if they are of another.**
19 Defendants violate this provision by misrepresenting the source, sponsorship and approval
20 of non-Genuine Parts as if they were Genuine Mercedes-Benz Parts when used in the
21 maintenance and/or repair of customer vehicles. Defendants also violate this provision
22 by making unfounded superiority and longevity claims regarding Genuine Parts as
23 described herein. Defendants further violate this provision by selling vehicles as
24
25
26

1 qualified CPO Program vehicles, when those vehicles were not reconditioned with
2 Genuine Parts as required by the CPO Program. Defendants use of zMAX also violates
3 this provision because zMAX is not approved by Mercedes-Benz to be used in any
4 Mercedes vehicles.

5 **(8) Disparaging the goods, services, or business of another by false or misleading**
6 **representation of fact.** Defendants violate this provision by making unfounded
7 superiority and longevity claims regarding Genuine Parts, as alleged herein, when
8 compared to aftermarket parts sold by the same Genuine Parts manufacturer.
9

10 166. On or about November 14, 2017, Plaintiffs notified Defendants in writing, by
11 certified mail, of the violations alleged herein and demanded that Defendant remedy those
12 violations.

13 167. If Defendant fails to rectify or agree to rectify the problems associated with the
14 actions detailed above and give notice to all affected consumers within 30 days of receipt of
15 Plaintiff's written notice pursuant to § 1782 of the CLRA, Plaintiff will amend this Complaint to
16 add claims for actual, punitive, and statutory damages pursuant to the CLRA. Plaintiff and the
17 Class also will seek a Court order enjoining the above-described wrongful acts and practices of
18 Defendant and for restitution, disgorgement, statutory damages, and any other relief that the
19 Court deems proper.
20

21 168. Defendant's conduct is malicious, fraudulent, and wanton in that Defendant
22 intentionally and knowingly provides misleading information to the public and charges
23 consumers without their consent.
24
25
26

1 169. Pursuant to Cal. Civ. Code §§ 1780 and 1781, Plaintiff and Class Members
2 hereby request certification of Plaintiff's Class, injunctive relief, and attorneys' fees, costs, and
3 expenses.

4 170. WHEREFORE Plaintiffs pray for judgment as set forth below.

5 **COUNT III**
6 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW,**
7 **BUSINESS AND PROFESSIONS CODE SECTION 17200**
8 **(Class Action Claim Against Defendants Sonic and Autobahn)**

9 171. Plaintiffs incorporate by reference paragraphs 1 through 153 as if fully set forth
10 herein.

11 172. Business & Professions Code § 17200, et seq., the Unfair Competition Law
12 ("UCL"), prohibits acts of "unfair competition", which is defined by Business & Professions
13 Code § 17200 as including any "any unlawful, unfair or fraudulent business act or practice . . ."

14 173. As set forth above, Defendants have engaged in several unfair, deceptive and
15 fraudulent actions through the Non-Genuine Parts Fraud, the CPO Program Fraud and the zMAX
16 Fraud as alleged herein.

17 174. The members of the Non-Genuine Parts Class suffered damages when Autobahn
18 installed non-Genuine parts in the repair or service of class member vehicles, while charging for
19 Genuine Mercedes-Benz parts. As a result of this unlawful, unfair and fraudulent business
20 practice, Plaintiffs and members of the Non-Genuine Parts Class received goods that were not as
21 specified and/or which were of lesser quality. Defendants' conduct caused actual damage to
22 Non-Genuine Class members in the form of the difference in price between the Genuine
23 Mercedes-Benz parts and products specified and the non-Genuine parts and products that were
24 actually used.
25
26

1 175. Members of the zMAX Class were damaged by Autobahn's unlawful, unfair,
2 deceptive and fraudulent business practice of installing zMAX in their vehicles as part of its
3 routine oil change and service without the customer's knowledge or permission. Customers were
4 never informed that zMAX is not part of Mercedes' regular maintenance program and is not
5 approved by Mercedes and may void the Mercedes Warranty.

6 176. Members of the CPO Class were damaged by Autobahn's unlawful, unfair,
7 deceptive and fraudulent business practice of re-conditioning CPO Program Vehicles with non-
8 Genuine parts contrary to the CPO Program directives. Members of the CPO Class were
9 damaged in that they did not receive the benefit of their bargain. They were to receive a vehicle
10 that had been re-conditioned with Genuine Mercedes-Benz parts. They were also damaged by
11 the inclusion of zMAX in CPO Program vehicles as it is not a Mercedes approved product and
12 identified by MB USA to be a detrimental product that may void the extended warranty that
13 comes with CPO Program vehicles. Defendants knowingly and intentionally hid from Plaintiffs
14 and members of the class its use of non-Genuine parts in CPO Program vehicles.

15
16
17 177. Reserved.

18 178. Members of the Genuine Parts Class suffered damages as a result of Defendants'
19 advertising campaign depicting Genuine Mercedes Parts as lasting longer and being of superior
20 quality to all aftermarket products, when many aftermarket products cost significantly less and
21 are identical to the Genuine Parts and sold by the same manufacturer.

22 179. Reserved.

23
24 180. Defendant Sonic Automotive is liable for this harm and damages because it is the
25 corporate owner of Autobahn Motors, and because it actively aided and abetted the conduct of
26 Autobahn Motors by expressly directing Autobahn Motors (through its General Manager, Joe

1 Cox, and David Ahlheim, its Fixed Operations Director) to use zMAX, MOC Products, SSF
2 Auto Parts products, Munich Auto parts non-genuine parts, and other non-genuine parts in the
3 CPO cars at Autobahn Motors.

4 181. Defendants' conduct was willful, premeditated, done with substantial planning and
5 intentional wrongful conduct, was known to be concealed by the public, was willfully concealed
6 from Plaintiffs in violation of the express rules of the MB CPO program and California Vehicle
7 Code 11713.18 , was done in disregard of Plaintiffs' rights as purchasers of the CPO cars, was
8 done fraudulently oppressively and wantonly, knowing that Plaintiffs would thereby be harmed,
9 which constitutes a basis for punitive damages pursuant to California Civil Code Section 3294 in
10 an amount according to proof.

12 182. Pursuant to Cal. Civ. Code § 1780, any consumer who suffers damage as a result
13 of the use or employment of any act or practice declared unlawful by § 1770, may recover actual
14 damages, restitution, punitive damages and injunctive relief.

16 183. Plaintiffs request injunctive relief, and state that unless and until Plaintiffs obtain
17 injunctive relief, Plaintiffs will suffer irreparable harm that is undetected and undetectable,
18 because Defendants are expected to continue to wrongfully market and sell zMAX and other
19 non-Genuine parts as described above. Injunctive relief is therefore necessary in order to avoid
20 multiplicity in actions; to avoid the rendering of a judgment ineffectual; and to avoid causing
21 Plaintiffs further irreparable harm in the probability of an undetected reuse of zMAX, and the
22 consequential impact on any remaining CPO warranties.

24 184. Plaintiffs request injunctive relief in the form of an injunction requiring
25 Defendant Sonic Automotive and Autobahn Motors to cease the distribution, sale and use of
26 zMAX products in Mercedes-Benz CPO Automobiles, and in any automobile in which the

1 manufacturers or other third-party warranties are rendered void or voidable by the use of zMAX;
2 or such other injunctive relief this court deems just and appropriate.

3 185. Plaintiffs further request an injunction preventing Defendants from installing non-
4 Genuine parts on customer maintenance/repair vehicles without express written permission of
5 the customer.

6 186. Plaintiffs request actual damages and restitution, including without limitation any
7 overpayments made for non-Genuine parts at OEM prices, actual out of pocket expenses for
8 repair costs paid as a consequence of voided warranties, diminution of value (both actual value
9 and resale value for CPO Vehicles, and the increased price paid for Genuine Parts where
10 identical aftermarket parts were available at a reduced price.

11 WHEREFORE Plaintiffs pray for judgment as set forth below.

12
13 **COUNT IV**
14 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW,**
15 **BUSINESS AND PROFESSIONS CODE SECTION 17200**
16 **FOR VIOLATIONS OF CALIFORNIA VEHICLE CODE SECTION 11713.18**
17 **(Class Action Claim Against All Defendants)**

18 187. Plaintiffs incorporate by reference paragraphs 1 through 153 as if fully set forth
19 herein.

20 188. Business & Professions Code § 17200, et seq., the UCL, prohibits acts of “unfair
21 competition”, which is defined by Business & Professions Code § 17200, as including any “any
22 unlawful, unfair or fraudulent business act or practice . . .”

23 189. California Vehicle Code Section 11713.18 makes it illegal to sell a certified
24 automobile under certain circumstances, including as follows:

25 It is a violation of this code for the holder of any dealer's license issued under this
26 article to advertise for sale or sell a used vehicle as “certified” or use any similar
27 descriptive term in the advertisement or the sale of a used vehicle that implies the

1 vehicle has been certified to meet the terms of a used vehicle certification
2 program if any of the following apply:

3 ***

4 (6) Prior to sale, the dealer fails to provide the buyer with a completed inspection
5 report indicating all the components inspected.

6 ***

7 (9) The term “certified” or any similar descriptive term is used in any manner
8 that is untrue or misleading or that would cause any advertisement to be in
9 violation of subdivision (a) of Section 11713 of this code or Section 17200 or
10 17500 of the Business and Professions Code.”

11
12 190. A violation of § 11713.18 is *per se* actionable under the California Unfair
13 Competition Law Section 17200.

14 191. The CPO Class members falling within the above definition, purchased CPO
15 Program vehicles from Defendants.

16 192. In violation of § 11713.18(6), Autobahn failed to provide buyers of CPO Program
17 vehicles with the required inspection report indicating the components inspection and listing any
18 non-Genuine parts. Thus, all such transactions were made in violation of § 11713.18(6).

19 193. Furthermore, Autobahn at the direction of Sonic, also used the term “certified” in
20 an untrue and misleading manner by presenting the vehicles as compliant with the MB USA
21 CPO Program, while knowing that non-Genuine parts were installed in the re-conditioning
22 process in direct violation of the CPO Program directives.

23 194. The CPO program is administered by MB USA through its agents, Autobahn
24 Motors and Sonic. The warranty is given by MB USA, but is actually issued through its agent(s)
25 Autobahn Motors, whereby Autobahn Motors actually performs the entire CPO vehicle
26

1 reconditioning and certification process, and issues a MB USA CPO warranty on behalf of MB
2 USA.

3 195. Under the Mercedes-Benz/Autobahn Motors CPO program rules, published at the
4 MB USA website, only OEM parts are to be used in the re-conditioning process. The MB USA
5 guidebook states at page 7: “Quality Certified Mercedes-Benz Technicians perform repairs
6 using only genuine Mercedes-Benz Parts, exchange units, and factory-approved accessories.”

7 196. In addition to simply installing non-conforming non-Genuine parts, Defendants
8 deliberately misrepresent that zMAX was a Genuine Mercedes-Benz approved product when
9 placed into CPO Program vehicles.

10 197. Sonic Automotive is sued herein based on its conduct in aiding and abetting the
11 fraudulent conduct of Autobahn Motors and its other California dealerships in misrepresenting
12 CPO Program vehicles sold in California.

13 198. MB USA clearly states in its owners’ manuals and on its website, that oil
14 additives are prohibited, and that damage to the car from the use of oil additives will be excluded
15 from MB USA warranty coverage on the automobile.

16 199. In addition, the 131 other dealerships owned and controlled by Sonic Automotive
17 have received a similar directive to put zMAX, into all of the pre- owned cars in inventory. This
18 claim seeks to encompass and include all purchases of CPO Vehicles form any Sonic owned
19 dealership within the state of California.

20 200. Defendants intentionally concealed the use of non-Genuine parts in CPO Program
21 vehicles and the impact on the MB USA warranty.

22 201. Defendants have actively concealed the above described facts, and have prevented
23 Plaintiffs from discovering the truth, by refusing to provide CPO checklist documents showing
24 the use of Non-Genuine products as described above and as mandated by California Vehicle
25 Code Section 11713.18.

1 202. As a proximate result of Defendants' conduct described herein, Plaintiffs have
2 been actually damaged in an amount according to proof.

3 203. Defendants conduct was willful, deceptive, fraudulent, and was done with
4 premeditation, and deliberate indifference to the statutory obligations placed upon them and the
5 rights of Plaintiffs and the Class, which warrants the imposition and award of punitive damages
6 in an amount according to proof.

7 204. Plaintiffs will be irreparably harmed and are without a remedy at law unless
8 injunctive relief is granted. Plaintiffs seek an injunction stopping defendants from this pattern
9 and practice of regularly placing non-Genuine product into Plaintiffs' cars without Plaintiffs'
10 consent.

11 WHEREFORE Plaintiffs pray for judgment as set forth below.

12
13 **COUNT V**
14 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW**
15 **BUSINESS & PROFESSIONS CODE SECTION 17500**
16 **(Class Action Claim Against All Defendants)**

17 205. Plaintiffs incorporate by reference paragraphs 1 through 153, above as if fully set
18 forth herein.

19 206. Plaintiffs assert this fourth claim for relief for violation of Business & Professions
20 Code section 17500 against all Defendants.

21 207. The allegations of fraudulent conduct, including the publication of advertisements
22 and how they were done in a fraudulent and knowing manner, are set out in the second and third
23 counts, which are also incorporated into this claim for relief.

24 208. Defendants' conduct constitutes the dissemination and publication of false and
25 misleading advertisements in violation of Business & Professions Code section 17500, which
26 provides:

27 "It is unlawful for any person, firm, corporation or association, or any employee thereof
28 with intent directly or indirectly to dispose of real or personal property or to perform

1 services, professional or otherwise, or anything of any nature whatsoever or to induce the
2 public to enter into any obligation relating thereto, to make or disseminate or cause to be
3 made or disseminated before the public in this state, or to make or disseminate or cause to
4 be made or disseminated from this state before the public in any state, in any newspaper
5 or other publication, or any advertising device, or by public outcry or proclamation, or in
6 any other manner or means whatever, including over the Internet, any statement,
7 concerning that real or personal property or those services, professional or otherwise, or
8 concerning any circumstance or matter of fact connected with the proposed performance
9 or disposition thereof, which is untrue or misleading, and which is known, or which by
10 the exercise of reasonable care should be known, to be untrue or misleading, or for any
11 person, firm, or corporation to so make or disseminate or cause to be so made or
12 disseminated any such statement as part of a plan or scheme with the intent not to sell
13 that personal property or those services, professional or otherwise, so advertised at the
14 price stated therein, or as so advertised. Any violation of the provisions of this section is a
15 misdemeanor punishable by imprisonment in the county jail not exceeding six months, or
16 by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that
17 imprisonment and fine.”

18 209. Defendants violated § 17500 by representing on its invoices delivered to
19 customers that its repair and/or maintenance customers were receiving Genuine Mercedes-Benz
20 parts when, in fact, they were receiving non-Genuine parts. It is also a misrepresentation to
21 conceal from customers the fact that non-Genuine parts were being used. These representations
22 took place on the invoices provided to all customers. Genuine parts codes were used and
23 Defendants never informed customers that non-Genuine parts were being used or could be used
24 or and Defendants never obtained customer approval before installing and using non-Genuine
25 parts. Customers were not given option of choosing non-Genuine versus Genuine parts.

26 210. Additionally, members of the zMAX Class suffered damages as a result of Sonic
27 and Autobahn’s automatic and undisclosed installation of zMAX in the engine blocks, power
28 steering, and other components of used vehicles sold by Autobahn. zMAX causes engine sludge
to build up and is a basis for denying warranty coverage because it not approved by the vehicle
manufacturer. Members of the zMAX Class have been damaged by this unfair, deceptive and
fraudulent conduct in that they own vehicles that are worth substantially less because they are
subject to engine sludge caused by the zMAX and the repair for the sludge is not covered by any
warranty.

1 211. MB USA is liable for this harm and damages suffered by Plaintiffs and class
2 members because the conduct of Autobahn Motors in misrepresenting and concealing the use of
3 non-genuine parts was done as part of the MB USA CPO program in the name of MB USA, but
4 actually done pursuant to an agency assignment by MB USA to Autobahn Motors.

5 212. Defendant Sonic Automotive is liable for this harm and damages because it is the
6 corporate owner of Autobahn Motors, and because it actively aided and abetted the conduct of
7 Autobahn Motors by expressly directing Autobahn Motors (through its General Manager, Joe
8 Cox, and David Ahlheim, its fixed operations director) to use zMAX, MOC Products, SSF Auto
9 Parts products, Munich Auto parts non-genuine parts, and other non-genuine parts in the CPO
10 cars at Autobahn Motors.

11 213. Members of the Genuine Parts Class suffered damages as a result of Defendants'
12 advertising campaign depicting Genuine Mercedes Parts as lasting longer and being of superior
13 quality to all aftermarket products, when many aftermarket products cost significantly less and
14 are identical to the Genuine Parts and sold by the same manufacturer.

15 214. Defendants' conduct was willful, premeditated, done with substantial planning and
16 intentional wrongful conduct, was known to be concealed by the public, was willfully concealed
17 from Plaintiffs in violation of the express rules of the MB CPO program and California Vehicle
18 Code 11713.18 , was done in disregard of Plaintiffs' rights as purchasers of the CPO cars, was
19 done fraudulently oppressively and wantonly, knowing that Plaintiffs would thereby be harmed,
20 which constitutes a basis for punitive damages pursuant to California Civil Code Section 3294 in
21 an amount according to proof.

22 215. Plaintiffs request injunctive relief, and state that unless and until Plaintiffs obtain
23 injunctive relief, Plaintiffs will suffer irreparable harm that is undetected and undetectable,
24 because Defendants are expected to continue to wrongfully market and sell zMAX and other
25 non-Genuine parts as described above. Injunctive relief is therefore necessary in order to avoid
26 multiplicity in actions; to avoid the rendering of a judgment ineffectual; and to avoid causing

1 Plaintiffs further irreparable harm in the probability of an undetected reuse of zMAX, and the
2 consequential impact on any remaining CPO warranties.

3 216. Accordingly, Plaintiffs request injunctive relief in the form of an injunction
4 requiring Defendant Sonic Automotive, Autobahn Motors and MB USA to cease the distribution,
5 sale and use of zMAX products in Mercedes-Benz CPO Automobiles, and in any automobile in
6 which the manufacturers or other third-party warranties are rendered void or voidable by the use
7 of zMAX; or such other injunctive relief this court deems just and appropriate.

8 217. Plaintiffs also request restitution for non-Genuine parts being provided at Genuine
9 Parts prices, the increased price for CPO Program vehicles, and the inflated cost of Genuine
10 Parts when identical aftermarket parts are available.

11 WHEREFORE Plaintiffs pray for judgment as set forth below.

12 **COUNT VI**
13 **CLAIM FOR TRESPASS TO CHATTELS**
14 **(Class Action Claim Against Defendants Sonic and Autobahn)**

15 218. Plaintiffs incorporate by reference paragraphs 1 through 153 as if fully set forth
16 herein.

17 219. This is a claim for relief by all Plaintiffs Non-Genuine class members against
18 Defendants Autobahn, Inc. dba Autobahn Motors (“Autobahn”) and Sonic Automotive Inc.
19 (“Sonic”) for Trespass to Chattel.

20 220. Under California law, a trespass to chattels claim lies where an intentional
21 interference with the possession of personal property has proximately caused injury. In cases of
22 interference with possession of personal property not amounting to conversion, the owner has a
23 cause of action for trespass, and may recover actual damages suffered by reason of the
24 impairment of the property.

25 221. Autobahn and Sonic committed the intentional tort of trespass to chattels against
26 each named Plaintiff and the Non-Genuine Parts Class in several ways.

1 222. From approximately January 1, 2005 to the present, Autobahn Motors regularly,
2 repeatedly, and automatically used and installed various non-Genuine parts and products into
3 service and repair customers' vehicles without the customer's knowledge or permission.

4 223. None of the Plaintiffs consented to the placement of non-Genuine parts into their
5 vehicles.

6 224. The placement of these non-Genuine parts is done in a secret, concealed and
7 deceptive manner, and is done purposely by Autobahn Motors at the direction of its owner, Sonic
8 Automotive.

9 225. The non-Genuine parts placed into Plaintiffs' automobiles proximately caused
10 damage to the vehicles in the form of cheaper and non-approved parts.

11 226. Defendant Autobahn Motors secretly installed the non-Genuine parts, and then
12 invoiced the customers as though the parts were Genuine Mercedes-Benz parts and charged for
13 Genuine parts.

14 227. Plaintiffs and members of the Class are not present when the non-Genuine parts
15 are placed into their vehicles. This placement of non-Genuine parts occurs in the repair service
16 area of Autobahn Motors, a place where customers are generally not allowed.

17 228. With respect to the zMAX product, the use of this oil additive damaged the
18 vehicles of Plaintiffs and the Class. MB USA's website confirms this damage, as stated above.

19 229. In addition, Plaintiff Ray Gapasin's vehicle sustained actual damage in the form
20 of sludge or "gunk" caused by the use of zMAX, which infiltrated his entire automobile engine.

21 230. The use of the zMAX product has caused a present damage and injury to the
22 vehicles of Plaintiffs, the named Plaintiffs and the putative class members in that (a) the zMAX
23 product has caused a physical damage to the vehicle; (b) the zMAX product jeopardizes the MB
24 USA warranty, which excludes coverage for any damage to the car caused by the use of a
25 prohibited oil additive such as zMAX. Plaintiffs service warranties issued by MB USA, through
26 its agent Autobahn Motors, are thus in present jeopardy.

1 237. Plaintiffs incorporate by reference paragraphs 1 through 153 as if fully set forth
2 herein.

3 238. Plaintiffs assert this eighth claim for relief for negligence against all Defendants.

4 239. Defendants' conduct was careless, reckless, and in breach of Defendants' duty
5 owed to Plaintiffs, and in violation of California Civil Code 1714(a).

6 240. Defendants negligently each and all took steps to conceal the true facts about the
7 use of zMAX and other non-OEM/non-genuine products on MB USA warranties, and similar
8 warranties given by third parties.

9 241. Autobahn Motors and Sonic Automotive have breached the duty of due care owed
10 pursuant to Civil Code Section 1714(a) by negligently and wrongfully marketing, distributing,
11 selling, and placing zMAX into automobiles, knowing that in so doing, the manufacturer's
12 certified pre-owned warranties, or such similar warranties issued by third parties, are thereby
13 rendered void or voidable at the option of the warrantor. One such warrantor and beneficiary of
14 this negligence is Defendant MB USA, who, if it stands by and does nothing, gets the advantage
15 of voiding any warranty claims due to the prohibited use of zMAX.

16 242. MB USA committed negligence based on its CPO publications and ICRs, and by
17 failing to enforce its own policies and procedures regarding CPO vehicles, repairs, the use of
18 non-Genuine Mercedes parts by authorized Mercedes dealerships, and the use of an oil additive
19 (zMAX) by authorized Mercedes dealerships.

20 243. MB USA had a legal duty pursuant to Civil Code section 1714(a) to use
21 reasonable care to prevent harm to Plaintiffs and putative class members.

22 244. MB USA breached this duty by the conduct described in the common allegations
23 of fact above.

24 245. MB USA was further negligent in that it knew full well through VMI reports, and
25 the pendency of this very litigation, that Sonic Automotive, Speedway Motorsports, and dealers
26 owned by Sonic Automotive were and still are actively, selling, and marketing zMAX in a
27 manner that is expressly prohibited by the automobile manufacturers' warranty.

1 246. The Defendants' use of zMAX renders both Mercedes warranties (including
2 without limitation the CPO warranty) and third-party warranties void or voidable at the option of
3 MB USA and/or any third-party warrantor, by the express terms of the warranties.

4 247. An exemplar of a third party pre-owned car warranty is Easy Care Warranty,
5 which is a warranty product offered for sale through Sonic Automotive. This Easy Care
6 warranty held by Plaintiff Harold Fethe states:

7 "YOU must follow YOUR VEHICLE manufacturer's maintenance guidelines to
8 avoid denial of a claim because of improper maintenance."

9 248. MB USA is the party issuing a CPO warranty, at a time when it simultaneously
10 receives actual knowledge through the VMI process that at a time either before the sale of a car,
11 or during the pendency of the warranty, zMAX was added into the car by Autobahn Motors (as
12 in the case of Gapasin and Fethe) or to customers at any of the other 133 dealerships owned by
13 Sonic Automotive.

14 249. MB USA further had a duty, because Autobahn Motors was using the benefit of
15 the MB trademark star and name to market a product as though it were approved by MB USA.
16 Mercedes-Benz breached this duty of due care by failing to take appropriate steps to correct the
17 circumstances by mandating to Sonic Automotive and/or directly to the MB Authorized
18 dealerships owned by Sonic to stop putting zMAX in Mercedes-Benz Automobiles. Instead MB
19 USA has joined forces with Autobahn Motors and Sonic to squelch any attempt to bring the truth
20 of zMAX widespread use by dealerships owned by Sonic Automotive.

21 250. MB USA is motivated by its own economic interest, because, as described above,
22 it is a beneficiary of the scheme and benefits from standing idly by while its certified pre-owned
23 warranties become void or voidable at its options.

24 251. Autobahn Motors had a legal duty pursuant to California Civil Code section
25 1714(a) to use reasonable care to prevent harm to Plaintiffs.

26 252. Autobahn Motors has brought forward an objectively reasonable expectation by
27 its CPO customers and repair customers that genuine Mercedes-Benz parts will be used and that

1 non-approved parts will not be used. By virtue of this legal duty, Autobahn Motors has an
2 affirmative duty to inform customers, including Plaintiffs, of the use of non-genuine parts.
3 Autobahn Motors has a legal duty not to use non-approved fuel additives like zMAX and MOC
4 products.

5 253. Autobahn Motors creates this reasonable expectation by the use of the Mercedes-
6 Benz name and trademark throughout the dealership. When customers go there for repairs, they
7 naturally and reasonably expect that genuine parts only will be used.

8 254. Autobahn Motors knew or should have known that its customers expected and
9 trusted that it would use genuine/OEM parts only.

10 255. Autobahn Motors breached this duty of reasonable care by not living up to its
11 customers' objectively reasonable expectations and trust, by regularly placing zMAX, MOC
12 products, and other non-genuine parts into customers' cars, including Plaintiffs' cars, as further
13 set forth in the first through fifth claims for relief.

14 256. Sonic Automotive had a legal duty pursuant to Civil Code section 1714(a) to use
15 reasonable care to prevent harm to Plaintiffs.

16 257. Sonic Automotive knew or should have known that its customers expected and
17 trusted that it would use genuine/approved parts only. Mainly, Sonic Automotive directed
18 Autobahn Motors to regularly use zMAX, MOC, and other non-genuine parts in customers' cars,
19 including Plaintiffs' vehicles. This conduct constitutes Sonic's breach of the reasonable duty of
20 care.

21 258. Sonic Automotive further breached its duty of reasonable care by requiring
22 Autobahn Motors to regularly purchase and use various non-genuine parts in the CPO
23 reconditioning process, and in all repairs at Autobahn Motors.

24 259. Individuals who have unknowingly received zMAX in their car either as (a) it was
25 placed in the car as a CPO from Autobahn; or (b) at one of the Sonic dealerships owned by
26 Sonic; or (c) was placed in the car as part of the repair process, have suffered the following harm
27 proximately caused by all Defendants.

1 260. The people who received zMAX in their car, had their Certified Pre-owned
 2 warranties issued by MB USA or other third-party warrantors, rendered void and/or voidable at
 3 the option of MB USA or other third-party warrantor. The warranty was thereby transformed
 4 from a solid and enforceable, to that of warranty enforceable at the option of the warrantor. The
 5 status/ existence/nature/and pendency of a pre-owned automobile’s warranty is extremely
 6 significant aspect concerning the value of that car.

7 261. The same impact and damage as described above with respect to zMAX applies
 8 equally to Plaintiffs through receipt of non-approved, non-OEM, non-genuine oil.

9 262. Plaintiffs request injunctive relief, and state that unless and until Plaintiffs obtain
 10 injunctive relief, Plaintiffs and the absent class members will suffer irreparable harm that is
 11 undetected and undetectable, because Defendants are expected to continue to negligently and
 12 wrongfully market and sell zMAX and other non-Genuine parts, as described above. Injunctive
 13 relief is therefore necessary in order to avoid multiplicity in actions; to avoid the rendering of a
 14 judgment ineffectual; and to avoid causing Plaintiffs further irreparable harm in the probability
 15 of an undetected reuse of zMAX and consequent impact on any remaining CPO warranties, all of
 16 which are in the category of damage claims difficult to ascertain, yet still very real.

17 263. Accordingly, Plaintiffs request injunctive relief in the form of an injunction
 18 requiring Defendants Sonic Automotive, and Autobahn Motors to cease the distribution, sale and
 19 use of zMAX products in Mercedes-Benz Automobiles, and in any automobile in which the
 20 manufacturers or other third-party warranties are rendered void or voidable by the use of zMAX;
 21 or such other injunctive relief this court deems just and appropriate.

22 264. Plaintiffs further seek such other relief as the Court deems just and appropriate,
 23 including without limitation disgorgement of profits, return of funds deemed to constitute unjust
 24 enrichment, and injunctive relief; or such other equitable relief as the Court deems appropriate.

25 WHEREFORE Plaintiffs Pray for relief as set forth below in the Prayer for Relief.

26 **COUNT VIII**
UNJUST ENRICHMENT
(Class Action Claim Against Defendants Sonic and Autobahn)

1 265. Plaintiffs incorporate by reference paragraphs 1 through 153 as if fully set forth
2 herein.

3 266. Defendants Autobahn Motors and Sonic Automotive have benefitted from selling
4 and leasing CPO Class vehicles whose value was artificially inflated by Defendants'
5 concealment of the non-OEM parts and products installed in the vehicles, and Plaintiffs and
6 Class members have overpaid for the vehicles.

7 267. Defendants Autobahn Motors and Sonic Automotive have benefitted from selling
8 and installing non-OEM parts and products at OEM prices, and from concealing their use and
9 sale of non-OEM parts and products at OEM prices, and Plaintiffs and Class members overpaid
10 for repairs made to their vehicles.

11 268. Defendants Autobahn Motors and Sonic Automotive have received and retained
12 unjust benefits from the Plaintiffs and Class members, and inequity has resulted.

13 269. It is inequitable and unconscionable for Defendants Autobahn Motors and Sonic
14 Automotive to retain these benefits.

15 270. Because Defendants Autobahn Motors and Sonic Automotive concealed their
16 fraud and deception, Plaintiffs and Class members were not aware of the true facts concerning
17 the Class Vehicles and did not benefit from Defendants' misconduct.

18 271. Defendants Autobahn Motors and Sonic Automotive knowingly accepted the
19 unjust benefits of their fraudulent conduct.

20 272. As a result of Defendants Autobahn Motors and Sonic Automotive's misconduct,
21 the amount of its unjust enrichment should
22 be disgorged and returned to Plaintiffs and Class members, in an amount to be proven at trial.

23 WHEREFORE Plaintiffs Pray for relief as set forth below in the Prayer for Relief.

24 **COUNT IX**
25 **COMMON LAW FRAUD**

(Individual Claim by Plaintiffs against All Defendants)

1
2 273. Plaintiffs incorporate by reference paragraphs 1 through 153 as if fully set forth
3 herein.

4 274. This is a non-class claim for relief by all Plaintiffs against Defendants Sonic
5 Automotive, Mercedes-Benz USA, LLC, and Autobahn Motors.

6 275. As a proximate result of defendants' fraudulent conduct involving the installation
7 and use of non-Genuine parts when Genuine Parts were specified, the CPO Program
8 misrepresentations, the use of zMAX in Mercedes-Benz vehicles, and the misrepresentations
9 regarding the longevity and superiority of Genuine Parts, as set forth more fully herein, and
10 aiding and abetting the fraudulent conduct, Plaintiffs have been damaged in an amount according
11 to proof.

12 276. Defendants engaged in the fraudulent conduct described herein in order to entice
13 consumers to enter into transactions involving higher priced Genuine Mercedes-Benz Parts, and
14 Plaintiffs relied on these representations and were damaged as a result. Plaintiffs relied upon
15 these misrepresentations and paid for Genuine Parts they did not receive, paid more for a CPO
16 vehicle that did not comply with the CPO Program, paid for zMAX as if it were an approved
17 product, and were led to believe that Genuine Parts were of superior quality when compared to
18 all other aftermarket parts.

19 277. Defendants' conduct was willful, deceptive, fraudulent, and was done with
20 premeditation, and deliberate indifference to the rights of Plaintiffs, which warrants the
21 imposition and award of punitive damages in an amount according to proof.

22 278. Plaintiffs will be irreparably harmed and are without a remedy at law unless
23 injunctive relief is granted. Plaintiffs seek an injunction stopping defendants from this pattern
24 and practice of falsely stating that MB genuine parts have numerically designated longevity over
25 non-Genuine parts.

26 279. WHEREFORE Plaintiffs pray for judgment as set forth below.

**COUNT X
NEGELIGENT MISREPRESENTATION**

(Individual Claim Against All Defendants)

1
2 280. Plaintiffs incorporate by reference paragraphs 1 through 153, and paragraphs 274
3 to 278 as if fully set forth herein.

4 281. Defendants negligently misrepresented, concealed, and made false promises as
5 alleged in paragraphs 1 through 153 above.

6 282. MB USA committed a negligent misrepresentation based on its CPO publications
7 and ICRs, by representing that all Certified Pre-Owned Mercedes were reconditioned with
8 Genuine Mercedes parts.
9

10 283. MB USA committed a negligent misrepresentation by publishing false and
11 misleading statements about the longevity and superiority of its Genuine automobile parts.

12 284. MB USA had no reasonable grounds for believing that the representations it made
13 about the CPO program and its genuine parts longevity superiority were true when it made the
14 representations.
15

16 285. Defendant MB USA intended that Plaintiffs would rely on the representations.

17 286. Plaintiffs reasonably relied on the Defendants' misrepresentations to their
18 detriment by either purchasing but not receiving Genuine Parts during a maintenance visit,
19 purchasing a CPO automobile from Autobahn Motors, and/or by bringing their automobiles into
20 Autobahn Motors for repairs.

21 287. Defendants also negligently misrepresented that all aftermarket products were
22 inferior to Genuine Parts when, in fact, several of its own manufacturers sell the identical
23 product at lower prices.
24

25 288. As a proximate result of defendants' negligent conduct, Plaintiffs have been
26 damaged in an amount according to proof.

1 289. Plaintiffs will be irreparably harmed and are without a remedy at law unless
2 injunctive relief is granted. Plaintiffs seek an injunction stopping defendants from this pattern
3 and practice of regularly placing non-Genuine product into Plaintiffs' cars without Plaintiffs'
4 consent.

5 290. WHEREFORE Plaintiffs pray for relief as set forth below in the Prayer for Relief.

6 **PRAYER FOR RELIEF**

7 WHEREFORE PLAINTIFFS pray for relief as follows:

- 8 1. For compensatory and consequential damages as to each claim for relief allowing damages,
9 as described above, in an amount according to proof.
- 10 2. For prejudgment interest in an amount according to proof.
- 11 3. For exemplary damages against each and every Defendant pursuant to CC Section 3294
12 based on the intentional, oppressive, and fraudulent misconduct described above.
- 13 4. For injunctive relief as to each claim for relief allowing for injunctive relief, as requested
14 above, or such other injunctive relief as the court deems just and proper.
- 15 5. Plaintiffs request injunctive relief for violations of the CLRA Civil Code Section 1770 and
16 B&P Code section 17500 as requested above.
- 17 6. Plaintiffs request the following equitable remedies for their claims of violation of B & P Code
18 Section 17200, as requested above, including without limitation disgorgement of profits,
19 return of funds deemed to constitute unjust enrichment, and injunctive relief, restitution or
20 such other equitable relief as the Court deems appropriate
- 21 7. For Defendants Autobahn Motors and Sonic Automotive to provide an accounting of all
22 profits earned as a result of their mutual transactions pursuant to CCP section 872.140 and
23 B&P Code Section 17200.
- 24 8. For attorneys' fees pursuant to the CLRA Civil Code Section 1770, B & P Code Sections
25 17200 and 17500. The request for reimbursement/payment of attorneys' fees is based on the
26 common fund doctrine in an amount according to proof.
- 27 9. For litigation costs.

1 10. For such other relief as the Court deems just and appropriate.

2
3 **JURY DEMAND**

4 PLAINTIFFS demand a trial by jury as to all claims for relief triable before a jury.

5 Dated: May 22, 2018

Respectfully submitted,

6 /s/ Herman Franck
7 Herman Franck, Esq., SB #123476
8 **FRANCK & ASSOCIATES**
9 910 Florin Road, Suite 212
10 Sacramento, CA 95831
11 Tel. (916) 447-8400; Fax (916) 447-0720

12 /s/ Brian W. Warwick
13 Brian W. Warwick, (Admitted Pro Hac
14 Vice)
15 bwarwick@varnellandwarwick.com
16 Janet R. Varnell, (Admitted Pro Hac Vice)
17 jvarnell@varnellandwarwick.com
18 David Lietz (Admitted Pro Hac Vice)
19 dlietz@varnellandwarwick.com
20 VARNELL & WARWICK, P.A.
21 P.O. Box 1870
22 Lady Lake, FL 32158
23 Telephone: (352) 753-8600
24 Facsimile: (352) 504-3301

25 Attorney for Plaintiffs
26 STEVE FERRARI, MIKE KEYNEJAD, and PATRICIA RUBIN, HAROLD FETHE JOHN
27 DIAZ AND RAY GAPASIN; individually and as representatives of the Class of Persons
28 Similarly Situated