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

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

Plaintiff,

vs.

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

Defendants.

Case No.

RG19045555

CLASS ACTION

COMPLAINT FOR:

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

JURY TRIAL DEMANDED

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

6 INTRODUCTION

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

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

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

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

22 BACKGROUND

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

28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28

12. However, if the part is a “high-priced” warranted part, as defined by 2037(c) of the CCR, the part, the labor cost of diagnosing the part failure, and the labor cost of replacing the part shall have a 7-year 70,000-mile California emissions warranty pursuant to the High-Cost Emissions-Related Parts Warranty.

MBUSA'S CONDUCT

13. At all times herein relevant, for each new motor vehicle intended to be distributed by MBUSA in the State of California, at the time of distribution, MBUSA has purported to accurately notify the CARB of the parts which should be covered under the 7-year 70,000-mile California Emissions Warranty.

14. Furthermore, at all times herein relevant, for each new vehicle intended to be distributed by MBUSA in the State of California, at the time of distribution, MBUSA has purported to provide accurate written warranty documents with the vehicle, including a warranty booklet, which purports to accurately identify all of the vehicle parts that are covered under the 7-year 70,000-mile California Emissions Warranty .

15. MBUSA has engaged in a systematic business practice of omitting from the MBUSA warranty booklet provided to owners and lessees at the time of sale or lease, and in resources provided by MBUSA to its dealerships both at the time of sale or lease and afterwards, all of the parts that should be identified as “high-priced” warranted parts and that should be covered under the 7-year 70,000-mile California Emissions Warranty. MBUSA classifies *some* of the “high-priced” warranted parts as being parts covered under the 7-year 70,000-mile California Emissions Warranty, but not all of the high-priced warranted parts that should be covered under the 7-year 70,000-mile California Emissions Warranty.

16. Thereafter, when MBUSA vehicles are presented by consumers to MBUSA authorized repair facilities for repair, MBUSA fails to provide coverage under the 7-year 70,000-mile California Emissions Warranty for all of the repairs that should be covered under the 7-year 70,000-mile California Emissions Warranty.

17. As a result, California consumers have to pay out of pocket for these repairs which, by operation of California law, should be paid for by MBUSA.

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

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

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

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

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

18 JURISDICTION AND VENUE

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

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

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

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

10 PARTIES

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

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

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

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

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

1 31. Plaintiff reserves the right to expand, limit, modify, or amend these allegations at
2 any time, based upon, inter alia, changing circumstances and/or new facts obtained during
3 discovery.

4 **PLAINTIFF'S FACTS**

5 32. On October 25, 2018, Plaintiff purchased a used 2015 Mercedes C300, VIN
6 55SWF4JBXFU060151 ("Hazdovac Vehicle") from Bakersfield Acura (the "Bakersfield
7 Dealership") located in Kern County, California. The Bakersfield Dealership is a vehicle
8 dealership authorized to sell new and used vehicles in the state of California.

9 33. At the time that Plaintiff purchased the Hazdovac Vehicle, the Hazdovac Vehicle
10 still had in place the remainder of the factory warranty, the remainder of the federal emissions
11 warranty, and the remainder of the California Emissions Warranty. Plaintiff received a warranty
12 booklet. The warranty booklet provided to Plaintiff indicated that the Hazdovac Vehicle's
13 warranty included the California Emissions Warranty.

14 34. On June 10, 2019, at 58,502 miles, the Hazdovac Vehicle underwent repairs at
15 Alfano Motorcars ("Alfano"), an authorized MBUSA repair facility, where consumers can
16 present their vehicles for repair pursuant to the MBUSA warranty. Plaintiff visited Alfano
17 because Plaintiff was reporting that the Hazdovac Vehicle became very hot and almost
18 overheated. Alfano generated Invoice 446775 relating to this repair visit.

19 35. Alfano ran a short test, and found fault code P021700 present, indicating the
20 coolant temperature being too high. This is a fault code stored in the Hazdovac Vehicle's
21 diagnostic system. Alfano diagnosed the Hazdovac Vehicle as having a faulty coolant
22 thermostat. Alfano subsequently notified Plaintiff that he had to pay out of pocket for the
23 repairs. Thus, there was no warranty coverage provided by MBUSA at that time relating to the
24 coolant thermostat.

25 36. The total cost of repairs was \$1,040.85. Plaintiff paid for these repairs out of
26 pocket.

27 37. On June 26, 2019, at 59,229 miles, the Hazdovac Vehicle again underwent
28 repairs at Sangera Automotive Group ("Sangera"), an authorized MBUSA repair facility, where

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

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

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

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

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

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

23 43. The cost associated with the diagnosis and repairs relating to all three repairs
24 should have been covered and paid for by MBUSA under the 7-year 70,000-mile California
25 Emissions Warranty. This is because, pursuant to California Code of Regulations section
26 2037(c), the vacuum pump, coolant pump, and coolant thermostat should have been identified
27 as a high-priced emissions warranted parts. Thus, the cost associated with the diagnosis,
28

1 replacement parts, and labor relating to the replacement of the parts, should have been covered
2 under section 2037(c).

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

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

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

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

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

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

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

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

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

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

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

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

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

PLAINTIFF'S CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (d) Whether MBUSA has failed, and is failing, to identify all of the parts that should
4 be identified as high-priced warranted parts and thus covered by the 7-year
5 70,000-mile California Emissions Warranty in an effort to reduce the amount of
6 money that MBUSA spends on warranty related repairs.

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

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

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

17 (h) Whether MBUSA has engaged in, and is engaging in, unlawful and unfair
18 business practices in violation of California Business & Professions Code section
19 17200, *et seq.* with regard to MBUSA's failure to identify all of the high-priced
20 warranted parts that should be covered by the 7-year 70,000-mile California
21 Emissions Warranty.

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

25 (j) The appropriate amount of restitution, or monetary penalties resulting from
26 MBUSA's violations of California law.
27
28

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

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

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

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

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

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

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

8 **TOLLING OF THE STATUTE OF LIMITATIONS**

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

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

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

25 **FIRST CAUSE OF ACTION**

26 **Violation of California Unfair Competition Law**

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

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

78. MBUSA is a “person” as defined by Business & Professions Code § 17201.

Unlawful Prong

81. The violation of any law or regulation may serve as the predicate for a violation of the “unlawful” prong of the UCL.

83. MBUSA's conduct violates CCR section 2037(c)(1)(B) because MBUSA fails to identify all of the high-priced warranted parts as parts that should be covered under the 7-year 70,000-mile California Emissions Warranty.

85. MBUSA's acts of unlawful competition as set forth above present a continuing threat and will persist and continue to do so unless and until this Court issues appropriate

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

3 Unfair Prong

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

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

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

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

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

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

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

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

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

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

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

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

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Fraudulent Prong

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

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

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

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

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

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

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

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

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

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

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

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

12 SECOND CAUSE OF ACTION

13 Violation of California Consumers Legal Remedies Act

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

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

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

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

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

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

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

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

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

25 113. Civil Code section 1780(a) provides that any consumer who suffers damage as a
26 result of a violation of the CLRA may bring an action to recover: 1) actual damages, but in no
27 case shall the total award of damages in a class action be less than \$1,000; 2) an order enjoining
28

1 the methods, acts, or practices; 3) restitution of property; 4) punitive damages; and 5) any other
2 relief that the court deems proper.

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

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

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

7 PRAYER FOR RELIEF

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

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

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

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

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

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

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

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

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

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

1 Civil Procedure § 1021.5;

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

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

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

6
7 Dated: December 3, 2019

Respectfully submitted,

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

10 By: _____

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13 *Attorneys for Plaintiff*
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