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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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. 20-cv-00377-RS

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

- (1) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE, SECTION 17200, *et seq.***
- (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”), and upon information and belief, except as to her own actions, the
4 investigation of her counsel, and facts that are a matter of public record, alleges as follows:

5 **INTRODUCTION**

6 1. This class action arises out of MBUSA’s failure to accurately and
7 comprehensively identify all of the Mercedes C-Class 300 vehicle parts that should properly be
8 classified as “high-cost emissions warranty parts” under California’s emission warranty
9 requirements and covered under the emissions warranty for 7-years and 70,000 miles.

10 2. In an effort to minimize MBUSA’s warranty costs, MBUSA has unilaterally and
11 unlawfully limited the parts that it designates as high-cost emissions warranty parts, in order to
12 limit the parts for which it provides 7-years and 70,000-mile coverage.

13 3. By not identifying all of the parts that should be included as high-priced
14 emissions warranted parts, MBUSA has attempted to wrongfully limit the warranty coverage for
15 many emissions-related parts to MBUSA’s standard 4-year and 50,000-mile warranty.

16 4. To date, Plaintiff has identified three (3) vehicle parts in Mercedes C-Class 300
17 vehicles that should properly be classified as “high-cost emissions warranty parts” under
18 California’s emission warranty requirements and covered under the emissions warranty for 7-
19 years and 70,000 miles: (1) the coolant thermostat (which was properly identified as a high-
20 priced emissions part in MY 2017 and MY 2018 C-Class vehicles but not in MY 2015 and MY
21 2016 vehicles); (2) the coolant pump; and (3) the vacuum pump. Not only were the coolant
22 pump and the vacuum pump not identified by MBUSA as high-priced emissions parts, they
23 were not identified by MBUSA as emissions-related parts at all.

24 5. By this action, Plaintiff seeks reimbursement for, *inter alia*, all out of pocket
25 costs paid for the repairs identified herein for the three vehicle parts, and other parts, that should
26 have been covered by MBUSA under the 7-years and 70,000-mile emissions warranty. Plaintiff
27 also seeks an injunction requiring MBUSA to properly identify and cover, under the California
28 high-priced emissions warranty, repair/replacement of each of the three parts at issue and all

1 other parts that MBUSA has failed to properly identify which should be covered under the 7-
2 years and 70,000-mile warranty for high-cost emissions warranted parts.

3 **JURISDICTION AND VENUE**

4 6. This Court has removal jurisdiction over this action pursuant to 28 U.S.C.
5 § 1441 and § 1332(d)(2)(A). Members of the Class are citizens of a state different from that of
6 Defendant MBUSA, and aggregating the claims of individual Class members, the total matter
7 in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs.
8 Further, 28 U.S.C. § 1332(d)(5) does not apply because (i) MBUSA is not a state, state
9 official, or other governmental entity against whom the Court may be foreclosed from
10 ordering relief, and (ii) the number of members of the Class in the aggregate exceeds 100.

11 7. This Court has personal jurisdiction over Defendant because Defendant has
12 sufficient minimum contacts with California, having intentionally availed itself of the
13 California market so as to render the exercise of jurisdiction over it by this District Court
14 consistent with traditional notions of fair play and substantial justice. Further, by removing
15 this action to this Court, Defendant concedes personal jurisdiction.

16 8. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because Defendant
17 conducts business within the State of California and a substantial part of the events giving rise
18 to the claims alleged herein occurred in this District.

19 **PARTIES**

20 9. Plaintiff Cory Hazdovac is, and at all times relevant hereto has been, a resident
21 and citizen of the State of California, County of Kern.

22 10. MBUSA was and is, upon information and belief, a Delaware limited liability
23 company doing business in California.

24 11. The true names and capacities of Defendants sued in this Complaint as Does 1
25 through 10, inclusive, are currently unknown to Plaintiff, and therefore Plaintiff sues such
26 Defendants by such fictitious names.

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

3 18. Pursuant CCR Section 2035, with regard to 1990 and subsequent model year
4 vehicles, a warranted part is defined as, any part installed on a motor vehicle or motor vehicle
5 engine by the vehicle or engine manufacturer, or installed in a warranty repair, which affects
6 any regulated emission from a motor vehicle or engine which is subject to California emission
7 standards.

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

- 11 (1) Designed, built, and equipped so as to conform with all applicable regulations
12 adopted by the Air Resources Board pursuant to its authority in chapters 1 and 2,
13 part 5, division 26 of the Health and Safety Code; and
14 (2) Free from defects in materials and workmanship which cause the failure of a
15 warranted part to be identical in all material respects to the part as described in
16 the vehicle or engine manufacturer's application for certification, including any
17 defect in materials or workmanship which would cause the vehicle's on-board
18 diagnostic malfunction indicator light to illuminate, for a period of three years or
19 50,000 miles, whichever first occurs; and
20 (3) Free from defects in materials and workmanship which cause the failure of a
21 warranted part described in section (c) below for seven years or 70,000 miles,
22 whichever first occurs.”

23 20. California Code of Regulations Section 2037(c) deals with high-priced warranted
24 parts under the California Emission Control System Warranty and states:

- 25 (1) Each manufacturer shall identify in its application for certification the high-
26 priced warranted parts which are:
27 (a) For 1990 through 2007 model year vehicles: [i] included on the Board's
28 “Emissions Warranty Parts List” as last amended February 22, 1985,

1 incorporated herein by reference, and; [ii] have an individual replacement
2 cost at the time of certification exceeding the cost limit defined in section
3 (c)(3);

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

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

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

12
$$\text{Cost limit } \{n\} = \$300 \times (\text{CPI}\{n-2\}) / 118.3$$

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

15 21. In summary, any part that either effects a vehicle's emissions, or causes a
16 vehicle's on-board diagnostic malfunction indicator light to illuminate is, for the purpose of
17 determining coverage under the CCR, considered a warranted part. If a part is a warranted part,
18 the part shall have a 3-year and 50,000-mile California emissions warranty.

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

23 **PLAINTIFF'S FACTS**

24 ***Vehicle Purchase***

25 23. On October 25, 2018, Plaintiff purchased a used 2015 Mercedes C300, VIN
26 55SWF4JBXFU060151 ("Vehicle"), from Bakersfield Acura (the "Bakersfield Dealership")
27 located in Kern County, California. The Bakersfield Dealership is a vehicle dealership
28 authorized to sell new and used vehicles in the state of California.

1 24. At the time that Plaintiff purchased the Vehicle, the Vehicle still had in place the
2 remainder of the factory warranty, the remainder of the federal emissions warranty, and the
3 remainder of the California emissions warranty. Plaintiff received a warranty book. The
4 warranty booklet provided to Plaintiff indicated that the Vehicle's warranty included coverage
5 pursuant to the California emissions warranty.

6 ***Thermostat Repair***

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

12 26. Alfano ran a short test, and found fault code P021700 present, indicating that the
13 coolant temperature was too high. This is a fault code stored in the Vehicle's diagnostic system.
14 Alfano diagnosed the Vehicle as having a faulty coolant thermostat. Alfano subsequently
15 notified Plaintiff that there was no warranty coverage provided by MBUSA at that time relating
16 to the coolant thermostat, and that Plaintiff had to pay out of pocket for the repairs. The Vehicle
17 at that time was below the 7-year and 70,000-mile mark.

18 27. The total cost of the repairs on June 14, 2019 was \$1,040.85. Plaintiff had an
19 aftermarket service contract that paid for \$992.85 of the repairs. Plaintiff paid \$148.00 out of
20 pocket for the remaining portion of the cost of the repairs.

21 ***Vacuum Pump Repair***

22 28. On June 26, 2019, at 59,229 miles, the Vehicle again underwent repairs at
23 Sangera Automotive Group ("Sangera"), an authorized MBUSA repair facility, where
24 consumers can present their vehicles for repair pursuant to the MBUSA warranty. Plaintiff
25 visited Sangera because the check engine light was illuminated.

26 29. Sangera ran a short test, and found fault code P029921, indicating that the boost
27 pressure for the turbo charger was too low. This fault code is stored in the Vehicle's diagnostic
28 system. Sangera diagnosed the Vehicle as having a non-functioning turbo charger. Sangera

1 determined that the problems with the turbo charger were the result of a malfunctioning vacuum
2 pump. Sangera subsequently notified the Plaintiff that there was no warranty coverage being
3 provided by MBUSA at that time relating to the vacuum pump and that she had to pay for the
4 repairs. The Vehicle at that time was below the 7-year and 70,000-mile mark.

5 30. The total cost of the repairs on July 2, 2019 was \$873.26. Plaintiff had an
6 aftermarket service contract that paid \$773.26 for the repairs. Plaintiff paid \$100.00 out of
7 pocket for the remaining portion of the cost of the repairs.

8 ***Coolant Pump Repair***

9 31. On July 19, 2019, at 59,693 miles, the Vehicle again underwent repairs at
10 Sangera because the Vehicle's check engine light was illuminated. Sangera generated Invoice
11 157444 relating to this repair visit.

12 32. Sangera ran a short test, and found fault code 260013, indicating a fault in the
13 coolant pump. This fault code is stored in the Vehicle's diagnostic system. Sangera
14 subsequently notified the Plaintiff that there was no warranty coverage being provided by
15 MBUSA at that time relating to the coolant pump and that she had to pay for the repairs. The
16 Vehicle at that time was below the 7-year and 70,000-mile mark.

17 33. The total cost of the repairs on July 19, 2019 was \$882.50. Plaintiff had an
18 aftermarket service contract that paid \$782.50 for the repairs. Plaintiff paid \$100.00 out of
19 pocket for the remaining portion of the cost of the repairs.

20 **MBUSA'S CONDUCT**

21 34. At all times herein relevant, for each new motor vehicle intended to be
22 distributed by MBUSA in the State of California, at the time of distribution, MBUSA has
23 purported to accurately notify CARB of the parts which should be covered under the 7-year and
24 70,000-mile California emissions warranty.

25 35. Furthermore, at all times herein relevant, for each new vehicle intended to be
26 distributed by MBUSA in the State of California, at the time of distribution, MBUSA has
27 purported to provide accurate written warranty documents with the vehicles, including a
28

1 warranty booklet, which purports to accurately identify all of the vehicle parts that are covered
2 under the 7-year and 70,000-mile California emissions warranty.

3 36. MBUSA has engaged in a systematic business practice of omitting from the
4 MBUSA warranty book provided to owners and lessees at the time of sale or lease, and in
5 resources provided by MBUSA to its dealerships both at the time of sale or lease and
6 afterwards, identification of all of the parts that should be identified as high-priced emissions
7 warranted parts, covered under the 7-year and 70,000-mile California emissions warranty.
8 MBUSA classifies *some* of the “high-priced” warranted parts as being parts covered under the
9 7-year and 70,000-mile California emissions warranty, but not all of the high-priced warranted
10 parts that should be covered under the 7-year and 70,000-mile California emissions warranty.

11 37. Thereafter, when MBUSA vehicles are presented by consumers to MBUSA
12 authorized repair facilities for repair, MBUSA fails to provide coverage under the 7-year and
13 70,000-mile California emissions warranty for all of the repairs that should be covered under the
14 California emissions warranty.

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

17 39. MBUSA engages in the alleged misconduct in order to reduce the amount of
18 money that MBUSA has to pay out for warranty related repairs and warranty claims.

19 40. If MBUSA properly identified all of the high-priced emissions warranty parts
20 that should be correctly identified as such, then MBUSA dealerships would properly provide
21 coverage for said high-priced parts under warranty.

22 41. The failure by MBUSA to properly identify parts as “high-priced” warranted
23 parts under the CCR violates California Business and Professions Code Section 17200, *et seq.*
24 (the “UCL”) and the California Consumers Legal Remedies Act, Cal. Civ. Code Section 1750,
25 *et seq.* (the “CLRA”), and is intended to minimize the amount of money that MBUSA has to
26 pay out in warranty claims.

27 42. Plaintiff and other consumers have suffered damage and lost money or property
28 as a result of MBUSA’s wrongful conduct.

1 43. Plaintiff's theory does not depend on the premise that CARB was deceived by
2 the information that MBUSA submitted, and Plaintiff is not accusing CARB of mismanagement
3 or blaming CARB for MBUSA's inaccuracy. MBUSA alone is responsible for selecting and
4 identifying to CARB the parts that MBUSA has unilaterally identified as high-priced emissions
5 warranty parts as part of its application for vehicle certification. That list may be correct as far
6 as CARB may know. But, as Plaintiff alleges, the list is incomplete, as evidenced by Plaintiff's
7 own experience.

8 **THE COOLANT THERMOSTAT IS A HIGH-PRICED WARRANTY PART**

9 44. The coolant thermostat installed in the Thermostat Class Vehicles regulates the
10 flow of coolant throughout the engine cooling system.

11 45. MBUSA's warranty books for the Thermostat Class Vehicles acknowledges that
12 the coolant thermostat is an emissions-related part, and the MBUSA warranty book for MY
13 2017 through MY 2018 Mercedes C300 vehicles also identifies the coolant thermostat as being
14 a high-priced emissions warranted part covered for 7 years or 70,000 miles.

15 46. However, the MBUSA warranty book for the MY 2015 and MY 2016 Mercedes
16 C300 vehicles ("Thermostat Class Vehicles") does *not* identify the coolant thermostat as being a
17 high-cost emissions warranty part. As a result, the warranty coverage for the coolant thermostat
18 for the Thermostat Class Vehicles is limited to 4 years and 50,000 miles. The parts and labor
19 costs to replace the coolant thermostat are the same for all of the Thermostat Class Vehicles,
20 MY2015-2018.

21 47. As explained below, the cost associated with diagnosing and replacing a
22 defective coolant thermostat for Thermostat Class Vehicles exceeds the high-priced emissions
23 warranted parts threshold. Thus, the coolant thermostat for Thermostat Class Vehicles should
24 have been classified as a high-priced warranty part entitled to extended warranty coverage for 7-
25 years 70,000-miles under the California High-Cost Emissions-Related Parts Warranty.

26 48. The following analysis identifies the applicable cost limit for the MY 2015 and
27 2016 Thermostat Class Vehicles and the estimated replacement cost for the coolant thermostats
28 installed in the Thermostat Class Vehicles.

1 ***Cost Limit Analysis – Generally***

2 49. CARB publishes Manufacturer’s Advisory Correspondence (MAC) every year,
3 advising manufacturers of the cost threshold for the upcoming model year vehicles. The cost
4 threshold is supposed to be used by manufacturers in determining if an emissions related part is
5 a high-priced emissions warranty part. The analysis is supposed to be performed prior to
6 distributing the vehicles. If the manufacturer determines that the total cost to the customer of
7 diagnosing the defective emissions related part, paying for the labor to replace the part, and
8 paying for the replacement part exceeds the threshold, then the part must be deemed a high-
9 priced emissions warranty part. If it is deemed a high-priced emissions warranty part, the
10 manufacturer shall provide a 7-year and 70,000-mile warranty for the part.

11 50. On July 9, 2014, CARB published the MAC for model year 2015 vehicles,
12 including the Class Vehicles. The MAC indicated that the threshold for the cost to diagnose and
13 replace emissions related parts was \$590.00.

14 51. On March 26, 2015, CARB published the MAC for model year 2016 vehicles,
15 including the Class Vehicles. The MAC indicated that the threshold for the cost to diagnose and
16 replace emissions related parts was \$600.00.

17 52. Thus, if the cost to diagnose and repair the coolant thermostats installed in the
18 Thermostat Class Vehicles exceeded \$590 for MY 2015 or \$600 for MY 2016, the part should
19 have been identified as a high-priced emissions warranty part covered for 7-years or 70,000-
20 miles.

21 ***Cost Limit Analysis – Thermostat***

22 53. There is no legitimate reason why the coolant thermostats installed in the
23 Thermostat Class Vehicles were not identified as high-priced emissions warranty parts and did
24 not receive 7-years and 70,000-mile warranty when the same identical part, with the same
25 functionality, the same repair procedures and protocols, and the same costs of repair was
26 properly identified as a high-priced emissions warranty part for MY 2016-2018 vehicles.

27 54. The coolant thermostat is the same part number in MY 2015-2018 C Class
28 vehicles, the engine serviced by the coolant thermostat is the same in MY 2015-2018 C Class

1 vehicles, and the functionality of the coolant thermostat in all of the Thermostat Class Vehicles
2 did not change from MY 2015 through MY2018.

3 55. Further, the reason that MBUSA determined that the part was a high-priced
4 warranty part in 2017-2018, but not in 2015-2016 is not due to an increase in the cost of the
5 repair for MY 2017-2018. The cost of repair for the coolant thermostat did not change
6 significantly from MY 2015-2018. This is because the repair protocol relating to the coolant
7 thermostat has not changed from Model Year 2015 through 2018 and therefore the time needed
8 to perform the repair also has not have changed. Thus, (1) the labor cost to diagnose and repair
9 the part did not significantly change; (2) The cost of the part did not significantly change; and
10 (3) The consumer price index has grown very little from 2015 to 2020. The growth in the
11 consumer price index has been so low that there is only a \$50.00 increase in the high-priced cost
12 threshold from 2015 to 2020 and the amount that Plaintiff was charged at a MBUSA factory
13 authorized repair facility in 2019 to replace the coolant thermostat was \$1,040.85, which is
14 \$450.85 above the high-priced threshold. This is far greater than the \$50.00 increase in the
15 consumer price index. Furthermore, the function of the coolant thermostat did not change from
16 2015 through 2018. Thus, there is no legitimate explanation as to why the coolant thermostat
17 would not be included as a high priced emissions part in 2015-2016, but included as a high
18 priced emissions part in 2017-2018 based upon the price of the part or the functionality of the
19 part. Rather, MBUSA wrongfully failed to include the thermostat as a high-priced emissions
20 part for the 2017-2018 Mercedes C300 vehicles.

21 56. The retail cost of the repairs, even when taking into consideration the escalation
22 in cost over time, clearly exceeds the high-priced emissions parts threshold. There is no
23 legitimate reason for this increase.

24 57. Therefore, pursuant to California law, MBUSA is required to provide 7-year and
25 70,000-mile warranty coverage for the coolant thermostat installed in Thermostat Class
26 Vehicles. MBUSA currently unlawfully fails to provide this coverage. The reason that the
27 coolant thermostats installed in the Thermostat Class Vehicles did not receive 7-year and
28 70,000-mile warranty coverage, and as to why the Thermostat Class Vehicles' MBUSA

1 warranty books did not state that the coolant thermostats were entitled to 7-year and 70,000-mile
2 warranty coverage, is because MBUSA engaged in wrongful conduct by failing to properly
3 identify the coolant thermostats installed in the Thermostat Class Vehicles as high-priced
4 emissions warranty parts.

5 **THE COOLANT PUMP IS A HIGH-PRICED WARRANTY PART**

6 58. The coolant pump is an emissions related part. The engine's coolant pump
7 creates circulation so that coolant can flow through the engine's cooling system, similar to the
8 function of the coolant thermostat. If either the coolant pump or the coolant thermostat stops
9 functioning, then there will not be coolant flowing through the engine's cooling system. For the
10 same reasons that MBUSA designated the coolant thermostat in the Thermostat Class Vehicles
11 as being an emissions related part, MBUSA should have designated the coolant pump as being
12 an emissions related part.

13 59. The distinction between the coolant pump and the engine thermostat, from an
14 emissions perspective, is that the engine thermostat has the ability to prevent coolant from
15 circulating through the engine when the engine is cold. This shortens the time period for the
16 engine to reach operating temperature, which reduces vehicle emissions. If the thermostat
17 malfunctions, and coolant circulates through the engine while the engine is cold, this increases
18 emissions. Similarly, the lack of coolant circulation through the engine after the engine has
19 reached operating temperature, as the result of a defect in the coolant pump or the thermostat,
20 will also result in an increase in regulated emissions. The reason that regulated emissions will
21 increase when coolant is not circulating through the engine is that the engine will overheat.
22 Overheating results in head gasket failure. Head gasket failure results in the combustion of
23 coolant and engine oil, which results in an increase in regulated emissions.

24 60. When Plaintiff's Vehicle experienced the failure of the coolant pump, the check
25 engine light illuminated and the Vehicle's engine began to overheat. When an engine overheats,
26 the overheating increases regulated emissions. The fact that a defective coolant pump results
27 both in the illumination of the check engine light and in increased regulated emissions mean that
28 the coolant pump should be designated as an emissions related part.

1 61. As explained below, the coolant pump should also have been designated as a
2 high-priced warranted part for the Coolant Pump Class Vehicles because the cost associated
3 with diagnosing and replacing a defective coolant pump for the Coolant Pump Class Vehicles
4 exceeds the high-cost emission parts threshold. Thus, it is unlawful for MBUSA to not provide
5 7-year and 70,000-mile warranty coverage for the coolant pumps installed in the Coolant Pump
6 Class Vehicles.

7 62. The MBUSA warranty book for Coolant Pump Class Vehicles does not identify
8 the coolant pump as being a high-cost emissions warranty part. As a result, the warranty
9 coverage for the coolant pump is limited to 4 years and 50,000 miles. The parts and labor costs
10 to replace the coolant pump are the same for all of the Coolant Pump Class Vehicles.

11 ***Cost Limit Analysis – Coolant Pump***

12 63. As set forth above, the costs limits, per CARB, for 2015 and 2016, were \$590
13 and \$600, respectively.

14 64. On March 15, 2016, CARB published the MAC for model year 2017 vehicles,
15 including the Coolant Pump Class Vehicles. The MAC indicated that the threshold for the cost
16 to diagnose and replace emissions related parts was \$600.00.

17 65. On August 21, 2017, CARB published the MAC for model year 2018 vehicles,
18 including the Coolant Pump Class Vehicles. The MAC indicated that the threshold for the cost
19 to diagnose and replace emissions related parts was \$610.00.

20 66. Thus, if the cost to diagnose and repair the coolant pumps installed in the Coolant
21 Pump Class Vehicles exceeded the foregoing cost limits, these parts should have been identified
22 as a high-cost emissions warranty parts covered for 7 years or 70,000 miles.

23 67. The amount that Plaintiff was charged at a MBUSA factory authorized repair
24 facility in 2019 to replace the coolant pump was \$882.50, which is \$292.50 above the high-
25 priced threshold. There is no legitimate reason for this increase.

26 68. The price of the part did not significantly change from 2015 to 2018.

27 69. The labor cost did not significantly increase. The repair protocol relating to the
28 coolant pump has not changed from Model Year 2015 through MY 2018. The time needed to

1 perform the repair could not have changed. The parts and labor costs to replace the coolant
2 pump are the same for all of the Coolant Pump Class Vehicles. Thus, the reason why the coolant
3 pump was not included in the Coolant Pump Class Vehicles' warranty book is not because the
4 price changed significantly.

5 70. Inflation also did not cause the cost to increase. The consumer price index has
6 grown very little from 2015 to 2020. The growth in the consumer price index has been so low
7 that there is only a \$50.00 increase in the high-priced cost threshold from 2015 to 2020.

8 71. Finally, Plaintiff had an aftermarket service contract that paid \$782.50 for the
9 repairs. The aftermarket service would not have paid that amount if it believed that the MBUSA
10 repair dealership was price gouging for the cost of the part or the repair.

11 72. Accordingly, MBUSA wrongfully failed to identify the coolant pump as a high-
12 priced warranty part. Pursuant to California law, MBUSA is required by law to provide 7-years
13 and 70,000 warranty coverage for the coolant pump installed in the Coolant Pump Class
14 Vehicles. MBUSA currently unlawfully fails to provide this coverage.

15 **THE VACUUM PUMP IS A HIGH-PRICED WARRANTY PART**

16 73. The vacuum pump is an emission part. The vacuum pump in the Vacuum Pump
17 Class Vehicles is used to open and close the turbo charger, in order to create boost. If the
18 vacuum pump is defective, the turbo charger will not work properly. Virtually all of a Vacuum
19 Pump Class Vehicle's systems will work even if the Vacuum Pump Class Vehicle's vacuum
20 pump is defective, however if a Vacuum Pump Class Vehicle has a defective vacuum pump, the
21 defect will cause the Vacuum Pump Class Vehicle's check engine light to illuminate, and will
22 increase the Vacuum Pump Class Vehicle's regulated emissions.

23 74. The warranty book for the Vacuum Pump Class Vehicles designates the turbo
24 charger as being an emissions related component. This is because the failure of the turbo
25 charger to function increases regulated emissions and causes the check engine light to
26 illuminate.

27
28

1 75. The failure of the vacuum pump also increases regulated emissions and causes
2 the check engine light to illuminate. Thus, MBUSA should have designated the vacuum pump
3 as being an emissions related component.

4 76. As explained below, the vacuum pump should also have been designated as high-
5 priced warranted part for the Vacuum Pump Class Vehicles because the cost associated with
6 diagnosing and replacing a defective vacuum pump for the Vacuum Pump Class Vehicles
7 exceeds the high-priced emission parts threshold. Thus, it is unlawful for MBUSA to not
8 provide 7-year and 70,000-mile warranty coverage for the vacuum pumps installed in the
9 Vacuum Pump Class Vehicles.

10 ***Cost Limit Analysis – Vacuum Pump***

11 77. As forth above, the costs limits, per CARB, for 2015 and 2016, were \$590 and
12 \$600, respectively.

13 78. On March 15, 2016, CARB published the MAC for model year 2017 vehicles,
14 including the Vacuum Pump Class Vehicles. The MAC indicated that the threshold for the cost
15 to diagnose and replace emissions related parts was \$600.00.

16 79. On August 21, 2017, CARB published the MAC for model year 2018 vehicles,
17 including the Vacuum Pump Class Vehicles. The MAC indicated that the threshold for the cost
18 to diagnose and replace emissions related parts was \$610.00.

19 80. Thus, if the cost to diagnose and repair the vacuum pumps installed in the
20 Vacuum Pump Class Vehicles exceeded the foregoing cost limits, these parts should have been
21 identified as high-priced emissions warranty parts covered for 7 years or 70,000 miles.

22 81. The amount that Plaintiff was charged at a MBUSA factory authorized repair
23 facility in 2019 to replace the vacuum pump was \$873.26, which is \$283.26 above the high-
24 priced threshold. There is no legitimate reason for this increase.

25 82. The price of the part did not significantly change from 2015 to 2018.

26 83. The labor cost did not significantly increase. The repair protocol relating to the
27 coolant pump has not changed from Model Year 2015 through MY 2018. The time needed to
28 perform the repair could not have changed. The parts and labor costs to replace the vacuum

1 pump are the same for all of the Vacuum Pump Class Vehicles. Thus, the reason why the
2 coolant pump was not included in the Vacuum Pump Class Vehicles' warranty book for the
3 Vacuum Pump Class vehicles is not because the price changed significantly.

4 84. Inflation also did not cause the cost to increase. The consumer price index has
5 grown very little from 2015 to 2020. The growth in the consumer price index has been so low
6 that there is only a \$50.00 increase in the high-priced cost threshold from 2015 to 2020.

7 85. Finally, Plaintiff had an aftermarket service contract that paid \$773.26 for the
8 repairs. The aftermarket service would not have paid that amount if it believed that MBUSA
9 was price gouging for the cost of the part or the repair.

10 86. Accordingly, the only logical explanation is that MBUSA wrongfully failed to
11 identify the coolant pump as a high-priced warranty part.

12 87. Pursuant to California law, MBUSA is required by law to provide 7-year 70,000-
13 mile warranty coverage for the vacuum pump installed in the Vacuum Pump Class Vehicles.
14 MBUSA currently unlawfully fails to provide this coverage.

15 **ADDITIONAL COST LIMIT ANALYSIS ALLEGATIONS AS TO ALL THREE PARTS**

16 88. The cost associated with the diagnosis and repairs relating to the coolant
17 thermostat, vacuum pump, and coolant pump for the Class Vehicles should be covered and paid
18 for by MBUSA under the 7-years and 70,000-mile California emissions warranty. This is
19 because, pursuant to California Code of Regulations section 2037(c), the coolant thermostat,
20 vacuum pump, and coolant pump should have been identified by MBUSA as high-cost
21 emissions warranty parts, and the parts, labor and diagnostic expenses relating to those repairs
22 should have been covered under Section 2037(c).

23 89. Furthermore, the warranty booklet relating to the Class Vehicles should have
24 identified the coolant thermostat, vacuum pump, and coolant pump as being high-priced
25 emissions warranty parts. This is because, at the time of initial distribution, the costs associated
26 with diagnosing the parts as being defective, purchasing the parts, and installing the parts,
27 qualified the parts as high-priced emissions parts, as described in the statute.
28

1 90. On information and belief, there is no legitimate explanation for why, based on
2 these facts, the coolant thermostat, vacuum pump, and coolant pump were not identified by
3 MBUSA as high-priced emission parts relating to the Class Vehicles. To date, MBUSA has not
4 explained the basis for MBUSA's determination.

5 91. On information and belief, MBUSA's failure to include the coolant thermostat,
6 vacuum pump, and coolant pump installed in the Class Vehicles as high-priced emissions
7 warranty parts was an intentional omission by MBUSA, designed by MBUSA in an effort to
8 reduce the money that MBUSA pays out in warranty claims. On information and belief, this is
9 just one example of MBUSA's scheme to fail to properly and comprehensively identify all of
10 the parts that should be identified as high-priced warranted parts and covered for 7-years and
11 70,000 miles under the California emissions warranty.

12 92. Plaintiff has provided an analysis of why the coolant thermostat, vacuum pump,
13 and coolant pump should have been designated by MBUSA as high-priced emissions warranted
14 parts. The details of how MBUSA applied the CCR formula with respect to the coolant
15 thermostat, vacuum pump, and coolant pump are exclusively within MBUSA's possession.
16 Similarly, the information regarding what other parts satisfied the CCR requirements but were
17 not identified by MBUSA as high-priced emissions warranty parts is also in the exclusive
18 possession of MBUSA.

19 93. When Class Vehicles are presented to MBUSA dealerships for repairs which
20 should be covered under the 7-year and 70,000 mile California emissions warranty, but are not
21 identified by MBUSA's Warranty Information booklet as being covered, MBUSA refuses to
22 provide 7-year and 70,000-mile California emissions warranty coverage. Plaintiff presented the
23 Vehicle to MBUSA authorized repair facilities for repairs to the coolant thermostat, vacuum
24 pump, and coolant pump. All of these repairs should have been covered under the 7-year and
25 70,000-mile California emissions warranty. Plaintiff was wrongfully denied warranty coverage
26 for these repairs, all of which should have been covered under the 7-year and 70,000-mile
27 California emissions warranty.
28

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

9 95. CCR section 2037(c)(1)(B) regarding “High-priced Warranty Parts” requires
10 MBUSA to identify the “high-priced warranted parts . . . which have an individual replacement
11 cost at the time of certification exceeding the cost limit defined in section (c)(3).”

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

17 97. MBUSA’s conduct violates California’s unfair business practices statute,
18 California Business and Professions Code section 17200, *et seq.* (the “UCL”), and violates the
19 Consumers Legal Remedies Act, Civil Code section 1750, *et seq.* (the “CLRA”).

20 98. Plaintiff and other members of the Classes have suffered damage as a result of
21 MBUSA’s wrongful conduct.

22 99. MBUSA may attempt to justify not including the coolant thermostat, vacuum
23 pump, and coolant pump as high-priced emissions parts based upon the amount of money in
24 parts and labor that MBUSA pays its factory authorized repair facilities to perform repairs
25 relating to these parts. But in determining if a part should be considered a high-priced part, a
26 manufacturer is supposed to consider the total amount of money in parts and labor that
27 consumers pay to diagnose and perform repairs to the parts in question, not a negotiated book
28 rate that factory authorized repair facilities are mandated to charge MBUSA. The repairs to the

1 coolant thermostat, vacuum pump, and coolant pump were performed at MBUSA factory
2 authorized repair facilities, that charged Plaintiff the retail cost of these repairs.

3 100. The United States Bureau of Labor and Statistics uses an inflation calculator to
4 estimate how much buying power changes based upon inflation. The calculator can be found at,
5 “<https://data.bls.gov/cgi-bin/cpicalc.pl>.” Using this calculator provides further evidence that the
6 coolant thermostat, vacuum pump, and coolant pump should have been identified by MBUSA as
7 high-priced emissions warranted parts.

8 101. A calculation using the inflation calculator provides guidance. Using the baseline
9 date of January 2010, which significantly predates the relevant date for this analysis, and using
10 January 2020, which is after all of the repairs were performed, \$590.00 in 2010 would have the
11 same buying power as \$702.41 in 2010. This means that MBUSA cannot use inflation as an
12 explanation as to why the costs charged to Plaintiff for the repairs to the coolant thermostat,
13 vacuum pump, and coolant pump in 2019 are so much more than the threshold amount when the
14 original analysis was done. Although Plaintiff does not yet know how MBUSA conducted its
15 analysis, inflation is not an appropriate or reasonable explanation for why the coolant
16 thermostat, vacuum pump, and coolant pump were not considered high-priced emissions
17 warranty parts when the Class Vehicles were sold.

18 102. Furthermore, MBUSA cannot use the explanation that Plaintiff was overcharged
19 by a rogue repair facility. Two separate MBUSA factory authorized repair facilities performed
20 the repairs in question and there is no evidence that either of these repair facilities engaged in
21 price gouging. Quite the opposite is true. A third-party service contract provider paid for a
22 portion of these repairs. The service contract provider is in the business of paying for vehicle
23 repairs and would not pay charges that were inflated or unnecessary.

24 103. The retail cost of the repairs, even when taking into consideration the escalation
25 in cost over time, clearly exceeds the high-priced emissions parts threshold.

26 104. Looking at the MAC for 2020 vehicles, which was published on March 18, 2019
27 further illuminates MBUSA’s wrongful conduct. The MAC for 2020 states that the high-priced
28 emissions parts threshold is \$640.00, which is hundreds of dollars less than the what Plaintiff

1 paid for the repairs to the Vehicle. Thus, an analysis of the repairs to the coolant thermostat,
2 vacuum pump, and coolant pump today would determine that the price of each of the repairs
3 exceeds the high-priced cost threshold.

4 105. Similarly, MBUSA cannot credibly argue that it incorrectly estimated the
5 replacement costs of the coolant thermostat, vacuum pump, or coolant pump as an explanation
6 for why MBUSA wrongfully failed to conclude that these were high-priced emissions warranty
7 parts. Varying designs of coolant thermostats, vacuum pumps, and coolant pumps are used in
8 virtually every vehicle sold and leased in the United States. The repair protocols are equally
9 common. Although the actual parts and repair protocols for each different vehicle do have some
10 unique aspects, these are very common parts. Furthermore, the actual consumer cost to repair
11 the coolant thermostat, vacuum pump and coolant pump for the Class Vehicles is hundreds of
12 dollars above the threshold. And the parts are clearly emissions related parts. Finally, even now,
13 MBUSA only acknowledges the coolant thermostat as being a high-priced emissions related
14 part.

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

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

25 108. By failing to provide a 7-year 70,000-mile warranty for the coolant thermostat,
26 vacuum pump, and coolant pump, MBUSA violated the UCL and CLRA.

27 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

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

1 110. Plaintiff brings this class action pursuant to Federal Rules of Civil Procedure
2 Rules 23(a), (b)(2) and (b)(3) on behalf of herself and members of the Classes as defined below.

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

6 112. All claims alleged on behalf of Plaintiff and members of the Classes herein arise
7 under California law for which Plaintiff seeks relief authorized by California law.

8 113. Plaintiff’s proposed Thermostat Class consists of and is defined as follows:

9 All persons in California who, within the last four years, have been
10 owners or lessees of Mercedes C Class vehicles MY2015-2016 and
11 who have paid for repairs and parts for the thermostat, which should
12 have been covered under the 7-year 70,000 mile California “high-
13 priced” emissions warranty (the “Thermostat Class”).

14 114. Plaintiff’s proposed Vacuum Pump Class consists of and is defined as follows:

15 All persons in California who, within the last four years, have been
16 owners or lessees of Mercedes C Class vehicles MY2015-2018 and
17 who have paid for repairs and parts for the vacuum pump, which
18 should have been covered under the 7-year 70,000 mile California
19 “high-priced” emissions warranty (the “Vacuum Pump Class”).

20 115. Plaintiff’s proposed Coolant Pump Class consists of and is defined as follows:

21 All persons in California who, within the last four years, have been
22 owners or lessees of Mercedes C Class vehicles MY2015-2018 and
23 who have paid for repairs and parts for the coolant pump, which
24 should have been covered under the 7-year 70,000 mile California
25 “high-priced” emissions warranty (the “Coolant Pump Class”).

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

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

1 118. Plaintiff reserves the right to redefine the Classes and to add subclasses as
2 appropriate based on further investigation, discovery, and specific theories of liability.

3 119. Plaintiff reserves the right, based on further investigation and discovery, to
4 redefine or expand the Classes and/or to add subclasses to include other high-priced warranted
5 parts. Further, per the terms of the warranty book, the “California Emission System Warranties
6 apply to vehicles registered in California, Connecticut, Delaware, Maine, Maryland,
7 Massachusetts, New Jersey, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington.”
8 Therefore, Plaintiff reserves the right to expand the Class or subclass to include the same parts
9 on vehicles registered in states other than California.

10 120. As required by Fed. R. Civ. P. 23(a)(2) and (b)(3), there are questions of law and
11 fact common to the Classes, and those common questions predominate over any questions
12 affecting only individual members. Among the common questions of law and fact include:

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

1 warranted parts and thus covered by the 7-year and 70,000-mile California High-
2 Cost Emissions-Related Parts Warranty in an effort to reduce the amount of
3 money that MBUSA spends on warranty related repairs.

4 (e) Whether MBUSA's conduct of failing to identify the vacuum pump, coolant
5 pump, coolant thermostat and/or all parts that should be identified as high-priced
6 warranted parts and thus covered by the 7-year and 70,000-mile California High-
7 Cost Emissions-Related Parts Warranty results in consumers suffering financial
8 loss.

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

14 (g) Whether MBUSA's conduct of failing to identify the vacuum pump, coolant
15 pump, coolant thermostat and/or all parts that should be identified as high-priced
16 warranted parts and thus covered by the 7-year and 70,000-mile California High-
17 Cost Emissions-Related Parts Warranty violates California law.

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

24 (i) Whether Plaintiff and members of the Classes are entitled to injunctive relief
25 regarding MBUSA's failure to identify the vacuum pump, coolant pump, coolant
26 thermostat and/or all of the high-priced warranted parts that should be covered by
27 the 7-year and 70,000-mile California High-Cost Emissions-Related Parts
28 Warranty.

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

3 (k) Whether MBUSA has engaged in, and is engaging, in concealment relating to
4 MBUSA's failure to identify the vacuum pump, coolant pump, coolant
5 thermostat and/or all of the high-priced warranted parts that should be covered by
6 the 7-year and 70,000-mile California High-Cost Emissions-Related Parts
7 Warranty.

8 (l) Whether MBUSA has violated and is violating the Consumers Legal Remedies
9 Act, Civil Code section 1750, *et seq.*, with regard to MBUSA's failure to identify
10 the vacuum pump, coolant pump, coolant thermostat and/or all of the high-priced
11 warranted parts which should be covered by the 7-year and 70,000-mile
12 California High-Cost Emissions-Related Parts Warranty.

13 121. Numerosity: As required by Fed. R. Civ. P. 23(a)(1), the members of the Classes
14 are so numerous that joinder of all members of the Classes would be unfeasible and impractical,
15 and the resolutions of their claims through the procedure of a class action will be of benefit to
16 the Parties and the Court. The membership of the Classes is unknown to Plaintiff at this time;
17 however, the membership of the Classes is estimated to be greater than one hundred (100)
18 individuals and the identity of such membership is readily ascertainable by inspection of
19 Defendant's records.

20 122. Typicality: As required by Fed. R. Civ. P. 23(a)(3), Plaintiff's claims are typical
21 of the claims of all members of the Classes since Plaintiff and all members of the Classes
22 suffered damages as result of Defendant's concealment and wrongful conduct set forth herein.

23 123. Adequacy: As required by Fed. R. Civ. P. 23(a)(4), Plaintiff will fairly and
24 adequately protect the interests of the members of the Classes. Plaintiff has no interests adverse
25 or antagonistic to those of the Classes and has retained counsel competent and experienced in
26 class action litigation who will zealously prosecute this matter on behalf of the Classes to its
27 conclusion
28

1 Resources Board regulations, and are free from defects which cause the failure of a warranted
2 part to perform as described in the application for certification, including defects which would
3 cause the vehicle's on-board diagnostic malfunction indicator to illuminate, for 3 years or 50,000
4 miles. 13 CCR 2037(b)(1)-(2). The vehicle manufacturer is MBUSA, which is the manufacturer
5 granted certification for the Class Vehicles. 13 CCR 2035(c)(5). The parts at issue are all
6 warranted parts. The warranty period shall be 7- years and 70,000 miles for high-priced
7 emissions parts. 13 CCR 2037(b)(3). High-cost emissions parts are those parts which, when
8 taking into consideration the cost to diagnose, replace and pay for the failed part, exceed the
9 cost limit defined in 13 CCR 2037(c)(3). The California Air Resources Board published memos
10 which calculated the cost limit for years 2015, 2016, 2017, and 2018. Although the coolant
11 thermostats installed in the Thermostat Class Vehicles, the vacuum pumps installed in the
12 Vacuum Pump Class Vehicles, and the coolant pumps installed in the Coolant Pump Class
13 Vehicles exceeded the cost limit for years 2015, 2016, 2017, and 2018, MBUSA failed to
14 provide 7-year and 70,000-mile warranty coverage for said parts. The failure has resulted in
15 damage to Plaintiff and members of the Classes.

16 137. Moreover, while Plaintiff does not yet know the specific information that
17 MBUSA did or did not provide to CARB with respect to the coolant thermostats installed in the
18 Thermostat Class Vehicles, the vacuum pumps installed in the Vacuum Pump Class Vehicles, or
19 the coolant pumps installed in the Coolant Pump Class Vehicles, on information and belief,
20 MBUSA did not designate the parts as high-priced warranted parts that should be covered by the
21 7-year and 70,000-mile California High-Cost Emissions-Related Parts Warranty. Thereby,
22 MBUSA also was able to avoid identifying the coolant thermostats installed in the Thermostat
23 Class Vehicles, the vacuum pumps installed in the Vacuum Pump Class Vehicles, and the
24 coolant pumps installed in the Coolant Pump Class Vehicles, as being high-priced warranted
25 parts in the warranty books for the Class vehicles, which purport to identify all parts covered
26 under the high-priced California emissions warranty for 7-year and 70,000-mile California
27 emissions warranty coverage. Thus, MBUSA's violation of Section 2037(c)(1)(B) directly
28 affected communications with consumers. By violating Section 2037(c)(1)(B), MBUSA was

1 able to avoid disclosing in the warranty books all of the parts that should have been included as
2 high-priced warranted parts.

3 138. MBUSA's conduct also violates the unlawful prong in that MBUSA has violated
4 the CLRA as further alleged below.

5 139. MBUSA's acts of unlawful competition as set forth above present a continuing
6 threat and will persist and continue to do so unless and until this Court issues appropriate
7 injunctive relief. Plaintiff also seeks attorneys' fees and costs pursuant to, *inter alia*, C.C.P.
8 Section 1021.5.

9 **Unfair Prong**

10 140. MBUSA's conduct violates the unfair prong of the UCL.

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

18 142. As alleged above, MBUSA engages and has engaged in a systematic business
19 practice of intentionally failing to identify in the Class Vehicles' warranty book at the time of
20 distribution, and in resources provided to its dealerships, numerous parts that MBUSA is
21 obligated to identify as high-priced warranted parts by operation of law, including specifically
22 the coolant thermostats installed in the Thermostat Class Vehicles, the vacuum pumps installed
23 in the Vacuum Pump Class Vehicles, and the coolant pumps installed in the Coolant Pump
24 Class Vehicles. MBUSA does this in an effort to reduce the amount of money that MBUSA
25 spends on warranty-related repairs knowing that it would be very difficult if not impossible for
26 most consumers to discover this unlawful conduct. If MBUSA complied with California law
27 and properly identified all of the parts that should be identified as high-priced warranted parts,
28

1 then MBUSA dealerships would properly provide warranty coverage for said high-priced
2 warranted parts.

3 143. Further, MBUSA's conduct is unfair because it intentionally refuses to provide
4 warranty coverage for the coolant thermostats installed in the Thermostat Class Vehicles, the
5 vacuum pumps installed in the Vacuum Pump Class Vehicles, and the coolant pumps installed
6 in the Coolant Pump Class Vehicles for the sole purpose of wrongfully limiting its warranty
7 claims, with no regard for the fact that the public is being forced to pay for repairs which should
8 be covered under the 7-year and 70,000-mile California emissions warranty. Plaintiff and
9 members of the Classes have suffered injury in fact and lost money or property as a result of
10 MBUSA's unfair business acts and practices as set forth in detail.

11 144. MBUSA's failure to properly identify the coolant thermostats installed in the
12 Thermostat Class Vehicles, the vacuum pumps installed in the Vacuum Pump Class Vehicles,
13 and the coolant pumps installed in the Coolant Pump Class Vehicles , and/or all parts as high-
14 priced warranted parts that should be identified as such, is a uniform, systematic, and intentional
15 business practice on the part of MBUSA to minimize the amount of money that MBUSA has to
16 pay out in warranty claims. This conduct violates California law.

17 145. As a direct and proximate result of MBUSA's acts and practices in violation of
18 the UCL, Plaintiff and members of the Classes have paid out of pocket to repair or replace the
19 coolant thermostats installed in the Thermostat Class Vehicles, the vacuum pumps installed in
20 the Vacuum Pump Class Vehicles, and the coolant pumps installed in the Coolant Pump Class
21 Vehicles, and/or other high-priced warranted parts that should have been covered by MBUSA
22 under the 7-year and 70,000-mile California emissions warranty. As a result, consumers have
23 been forced to pay out of pocket to repair or replace vehicle components that should be covered
24 under warranty is clearly unfair.

25 146. MBUSA's conduct does not benefit consumers or competition. Plaintiff and
26 members of the Classes could not reasonably avoid the injury each of them suffered or will
27 suffer, which injury is substantial. MBUSA's conduct only benefits MBUSA, by MBUSA
28

1 wrongfully avoiding having to pay warranty claims which should be covered by the 7-year and
2 70,000-mile California emissions warranty.

3 147. The gravity of the consequences of MBUSA’s conduct as described above
4 outweighs the justification, motive or reason therefor, is immoral, unethical and unscrupulous.

5 148. MBUSA’s conduct also offends established public policy that is tethered to
6 legislatively declared policies as set forth in the laws detailed above, including California laws
7 and regulations regarding California’s Emission Control System Warranty Requirements, or is
8 substantially injurious to the public, for the reasons set forth above.

9 149. To the extent that any definition of “unfair” requires a balancing test or weighing
10 various factors, such an inquiry is fact intensive and requires a full factual record as to
11 MBUSA’s justification and motives for its conduct, and as to the impact of MBUSA’s conduct
12 on Plaintiff and members of the Classes.

13 150. MBUSA’s acts of unfair competition as set forth above present a continuing
14 threat and will persist and continue to do so unless and until this Court issues appropriate
15 injunctive relief. Plaintiff also seeks attorneys’ fees and costs pursuant to, *inter alia*, C.C.P. §
16 1021.5.

17 **Deceptive Prong**

18 151. Plaintiff’s claim under this prong is predicated on omissions, not
19 misrepresentations. While the warranty booklet for Class Vehicles claims to identify all of the
20 parts covered under the 7-year and 70,000-mile California emissions warranty, the warranty
21 book omits the coolant thermostats installed in the Thermostat Class Vehicles, the vacuum
22 pumps installed in the Vacuum Pump Class Vehicles, and the coolant pumps installed in the
23 Coolant Pump Class Vehicles as parts that that should have been listed as covered by the 7-year
24 and 70,000-mile high-priced emissions warranty.

25 152. MBUSA engages in a uniform and systematic business practice of intentionally
26 failing to identify in the MBUSA warranty book, and in resources provided to its dealerships,
27 the coolant thermostats installed in the Thermostat Class Vehicles, the vacuum pumps installed
28 in the Vacuum Pump Class Vehicles, and the coolant pumps installed in the Coolant Pump

1 Class Vehicles as high-priced warranted parts. MBUSA does this in an effort to intentionally
2 conceal the identity of the parts which should be covered under the 7-year and 70,000-mile
3 California emissions warranty for high-priced emissions parts. This has intentionally misled
4 consumers with regard to what parts are covered under the 7-year and 70,000-mile California
5 emissions warranty for high-priced parts, and reduced the amount of money that MBUSA
6 spends on warranty-related repairs. As warranted parts necessary for the operation of the
7 vehicles, the parts that MBUSA failed to properly identify as high-priced relate to the central
8 functionality of the vehicles and are critical to the vehicles' operation. If MBUSA complied
9 with California law, and properly identified all parts as high-priced warranted parts which
10 should be identified as such, then MBUSA dealerships would properly provide warranty
11 coverage for said high-priced warranted parts.

12 153. MBUSA's failure to properly identify the coolant thermostats installed in the
13 Thermostat Class Vehicles, the vacuum pumps installed in the Vacuum Pump Class Vehicles,
14 and the coolant pumps installed in the Coolant Pump Class Vehicles as high-priced warranted
15 parts is a systematic and intentional business practice on the part of MBUSA to minimize the
16 amount of money that MBUSA has to pay out in warranty claims. This conduct violates
17 California law.

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

25 155. In evaluating the repair costs to be charged, Plaintiff and members of the Classes
26 have justifiably relied on the information in the warranty booklet about parts that should be
27 covered under the high-priced emissions warranty and have been deceived and suffered damage
28 as a result of MBUSA's intentional and wrongful conduct.

1 156. MBUSA is fully aware of its obligations pursuant to the CCR and purports to
2 comply with them. However, in derogation of its legal obligations, MBUSA willfully and
3 intentionally conceals from consumers, and from the MBUSA dealerships, the coolant
4 thermostats installed in the Thermostat Class Vehicles, the vacuum pumps installed in the
5 Vacuum Pump Class Vehicles, and the coolant pumps installed in the Coolant Pump Class
6 Vehicles as parts that should be covered as high-priced warranted parts pursuant to the
7 California emissions warranty, in order to reduce the amount of money that MBUSA has to pay
8 in warranty claims.

9 157. MBUSA is and was under a duty to disclose to consumers and to its dealerships
10 that the coolant thermostats installed in the Thermostat Class Vehicles, the vacuum pumps
11 installed in the Vacuum Pump Class Vehicles, and the coolant pumps installed in the Coolant
12 Pump Class Vehicles, and/or all the other parts are required to be covered under the 7-year and
13 70,000-mile California emissions warranty.

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

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

26 159. The facts concealed and not disclosed by MBUSA to Plaintiff and members of
27 the Classes are material. Had Plaintiff and members of the Classes known the true extent of the
28 7-year and 70,000 -California emissions warranty, and had MBUSA been truthful to its

1 dealerships and members of the Classes with regard to identifying all of the parts and repairs
2 that are covered under the 7-year and 70,000-mile California emissions warranty, Plaintiff and
3 members of the Classes would have been able to avoid spending money in order to repair
4 MBUSA vehicles sold and leased in California. As a result, Plaintiff and members of the
5 Classes have suffered damage.

6 160. In order to minimize the amount of money that MBUSA spends on warranty
7 related repairs, MBUSA continues to conceal that the coolant thermostats installed in the
8 Thermostat Class Vehicles, the vacuum pumps installed in the Vacuum Pump Class Vehicles,
9 and the coolant pumps installed in the Coolant Pump Class Vehicles are high-priced warranted
10 parts that should be covered under the 7-year and 70,000-mile California emissions warranty.

11 161. Furthermore, MBUSA has refused to, and continues to refuse to provide 7-year
12 and 70,000-mile California emissions warranty coverage relating to all repairs for the coolant
13 thermostats installed in the Thermostat Class Vehicles, the vacuum pumps installed in the
14 Vacuum Pump Class Vehicles, and the coolant pumps installed in the Coolant Pump Class
15 Vehicles which should be covered under said warranty pursuant to California law. This refusal
16 is intentional, willful, unfair, and unlawful.

17 **SECOND CLAIM FOR RELIEF**

18 **Violation of California Consumers Legal Remedies Act**

19 **(Cal. Civil Code § 1750, *et seq.*)**

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

21 163. MBUSA has violated Section 1770 of the California Consumers Legal Remedies
22 Act, Cal. Civ. Code Section 1750, *et seq.* (the “CLRA”). The violation results from MBUSA’s
23 failure to keep its promise to the State of California, and members of the Classes, including
24 Plaintiff, that it would honor the terms of the MBUSA warranty, and by doing so, that it would
25 honor the terms of the CCR. Furthermore, the MBUSA warranty book provided by MBUSA to
26 consumers, including Plaintiff, specifically references the California emissions warranty, and
27 both inferentially and specifically represents that it will honor the terms of the CCR, however
28 MBUSA has refused, and continues to refuse to honor the terms of the CCR, as stated herein.

1 164. Plaintiff is a consumer who was wrongfully required to pay for repairs which
2 should have been paid for by MBUSA pursuant to the CCR. The Vehicle was presented by
3 Plaintiff for repairs at MBUSA authorized repair facilities, in compliance with the terms and
4 conditions of the MBUSA warranty. The Vehicle required repairs which should have been
5 covered pursuant to the CCR, based upon the Vehicle's mileage and age. MBUSA wrongfully
6 failed and refused to pay for the warranty repairs due to the unlawful pattern and practice set
7 forth herein. Thus, Plaintiff suffered damage.

8 165. MBUSA knows that it is violating the terms of the CCR, however MBUSA
9 intentionally violates the CCR in order to save money. Plaintiff and members of the Classes are
10 generally unaware of the terms and scope of the CCR, thus MBUSA is able to get away with
11 said wrongful conduct. As a result, Plaintiff and members of the Classes have suffered damage.
12 MBUSA engages in a systemic pattern of denying warranty claims under the CCR relating to
13 high-priced warranted parts.

14 166. Plaintiff and members of the Classes have presented Class Vehicles to MBUSA
15 authorized repair facilities for repairs that should have been covered under the CCR, but
16 coverage has been wrongfully denied to them. As a result, Plaintiff and members of the Classes
17 have thus suffered damage. Plaintiff brings this claim on behalf of himself and the Classes.

18 167. MBUSA's conduct in warranting, advertising, leasing, selling and distributing
19 Class Vehicles in the State of California, while at the same time knowingly and wrongfully
20 failing to honor the terms of the CCR, constitutes the following violations of Section 1770:

- 21 (a) MBUSA represents and has represented that Class Vehicles sold and leased in
22 the State of California have characteristics or benefits which they did not have (in
23 violation of Section 1770(a)(5));
- 24 (b) MBUSA has falsely represented that Class Vehicles sold and leased in the State
25 of California were of a particular standard, quality, or grade when they were of
26 another (in violation of Section 1770(a)(7)); and,
- 27
28

1 (c) MBUSA advertised Class Vehicles that have been sold and leased in the State of
2 California with the intent not to sell them as advertised (in violation of Section
3 1770(a)(9)).

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

9 169. Civil Code section 1781 provides that Plaintiff may pursue this case as a class
10 action.

11 170. Plaintiff requests injunctive relief pursuant to Civil Code 1782(d).

12 171. Plaintiff is entitled to attorney fees pursuant to Civil Code section 1780(e).

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for
15 relief and judgment against MBUSA as follows:

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

18 (b) A declaration that MBUSA is financially responsible for notifying all members
19 of the Classes about the wrongful conduct set forth herein;

20 (c) An order enjoining MBUSA from further deceptive distribution, sales, and
21 lease practices, and to reimburse both Plaintiff and members of the Classes for the money
22 wrongfully paid by Plaintiff and members of the Classes relating to repairs which should have
23 been covered by MBUSA under the 7-year and 70,000-mile California emissions warranty;

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

26 (e) An award to Plaintiff and members of the Classes of any repair costs they are
27 owed;

28 (f) A declaration that MBUSA must disgorge, for the benefit of the Classes, all or

1 part of the ill-gotten profits it received as a result of the wrongful conduct set forth herein, or
2 make full restitution to Plaintiff and members of the Classes;

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

4 (h) An award of attorneys' fees and costs pursuant to California Code of Civil
5 Procedure § 1021.5;

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

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

8 and

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

10 **DEMAND FOR JURY TRIAL**

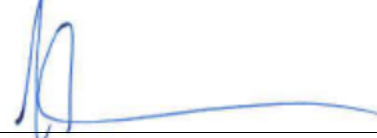
11 Pursuant to Federal Rules of Civil Procure, Rule 38(b), Plaintiff hereby demands a trial
12 by jury as to all claims so triable.

13
14 Dated: June 15, 2020

Respectfully submitted,

15 **POMERANTZ LLP**
16 **THE LAW OFFICE OF ROBERT STARR**

17
18 By: _____



Jordan L. Lurie
Ari Y. Bassar

19
20 *Attorneys for Plaintiff*