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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SERGIO BETANCOURT, on behalf of
himself and others similarly situated,

Plaintiff,

vs.

MERCEDES-BENZ USA, LLC,

Defendant.

Case No.

CLASS ACTION

COMPLAINT FOR:

**VIOLATIONS OF BUSINESS AND
PROFESSIONS CODE
SECTION 17200, *et seq.***

**VIOLATION OF CIVIL CODE
SECTION 1750, *et seq.***

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19 Sergio Betancourt and others similarly situated

1 Plaintiff Sergio Betancourt (“Plaintiff” or “Betancourt”), individually and
2 on behalf of all other California citizens similarly situated, brings this action
3 against Defendant Mercedes-Benz USA, LLC, (“Defendant” or “Mercedes-
4 Benz”), upon information and belief, except as to his own actions, the
5 investigation of his counsel, and the facts that are a matter of public record, and
6 alleges as follows:

7 INTRODUCTION

8 1. This matter arises from Defendant Mercedes-Benz’s unlawful failure
9 to tender a statutorily compliant California Emissions Warranty for the vehicles
10 that Mercedes-Benz distributes in the state of California.

11 2. In 1990, the California Air Resources Board (“CARB”) submitted,
12 and the Legislature adopted, California Code of Regulation §§ 2035, *et seq.*,
13 which, requires all vehicle manufacturers to ensure that any new motor vehicle
14 sold in California is accompanied by a “statutorily compliant” general emissions
15 warranty. (“California Emissions Warranty”)

16 3. In order to be “statutorily compliant,” the emissions warranty must
17 provide coverage for defects “which cause the failure of a warranted part [or]
18 which would cause the vehicle’s on-board diagnostic (“OBD”) malfunction
19 indicator light (“MIL”) to illuminate, for a period of three years or 50,000 miles,
20 whichever occurs first[.]” [13 CCR § 2037(b)(2)].

21 4. A “warranted part” is defined as any part installed by a manufacturer
22 “which affects any regulated emission from a motor vehicle or engine[.]” [13 CCR
23 § 2035(c)(2)(B)].

24 5. When the part is considered to be a “high-priced” warranted part, the
25 manufacturer must extend the emissions warranty from three years/50,000-miles,
26 to 7-years or 70,000-miles. [13 CCR § 2037(b)(3)].

27 6. In an effort by Mercedes-Benz to minimize its warranty exposure,
28 Mercedes-Benz unilaterally and unlawfully limited the parts that are covered

1 under Mercedes-Benz's application of the California Emissions Warranty as
2 covered by the high-priced emissions warranty, and when these parts are
3 defective, instead of covering the parts and related repairs under the California 7-
4 years 70,000-miles Emissions Warranty, Mercedes-Benz refuses to cover the parts
5 under said California Emissions Warranty, harming its customers.

6 7. Relevant to this case are the engine pistons installed in vehicles
7 distributed by Mercedes-Benz in California under the Mercedes-Benz brand name
8 ("Class Vehicles"). As set forth herein, the engine pistons in Class Vehicles are
9 high-priced, emissions related parts which should have been covered for 7-years
10 or 70,000-miles pursuant to the California Emissions Warranty requirements.

11 8. As will be detailed further below, the California Air Resources Board
12 has already definitively stated that engine pistons installed in internal combustion
13 engines are emissions related parts. The total retail cost of the parts and labor to
14 replace a engine piston installed in the Class Vehicles is such that the engine
15 pistons are high-priced and thus covered under the 7-years or 70,000-miles
16 California Emissions Warranty for high-priced emissions related parts.

17 9. Specifically, in June of 1990, the California Air Resources Board
18 published an emission-related parts list, which listed examples of components that
19 were emission related parts as defined in 13 California Code of Regulations
20 Section 1900(b)(3). In the publication, located in Section III Mechanical
21 Components, Subsection B Combustion Chamber, the engine piston was
22 specifically identified as being an emission related part. Furthermore, any time a
23 engine piston installed in a Class Vehicle requires replacement, the retail cost of
24 parts and labor for the replacement will always exceed \$1,000.00, thus always
25 exceeding the high-cost threshold. Furthermore, when a engine piston installed in
26 a Class Vehicle is defective, the defect will cause the MIL to illuminate and will
27 cause the Class Vehicle to fail a California smog check. Thus, engine pistons
28 installed in Class Vehicles are "warranted parts" covered under the

1 California emissions warranty.

2 10. As alleged in greater detail below, not only are the engine pistons
3 installed in Class Vehicles “warranted parts,” but they are “high-priced” warranted
4 parts because the retail cost of the parts and labor to replace engine pistons exceed
5 the “high-priced” threshold. Thus, repair or replacement is covered under the
6 California Emissions Warranty for 7-years or 70,000-miless.

7 11. Yet, in an effort to minimize its warranty costs, Mercedes-Benz has
8 unilaterally, wrongfully, and unlawfully excluded many parts, including but not
9 limited to engine pistons, from being covered under Mercedes-Benz’s emissions
10 warranty as “high-priced” warranted parts. On information and belief, Mercedes-
11 Benz has never treated engine pistons as “high-priced” warranted parts. As a
12 result, Class Members, including Plaintiff, have wrongfully been denied warranty
13 coverage.

14 12. As a result of Mercedes-Benz’s systematic refusal to provide the
15 proper emissions warranty coverage, Mercedes-Benz wrongfully required
16 Plaintiff, and thousands of other Class Members, to pay out-of-pocket for repairs
17 which should have been conducted free of charge under the 7-years or 70,000-
18 miles emissions warranty.

19 13. Further, as alleged below, by failing to cover the engine pistons under
20 the California Emissions Warranty, Mercedes-Benz also failed to provide a fully
21 compliant California Emissions Warranty for all Class Vehicles at the time of sale,
22 resulting in Class members overpaying for their vehicles.

23 14. Plaintiff, on behalf of himself and all others similarly situated, seeks
24 redress for Mercedes-Benz’s violations of California law based on the causes of
25 action set forth below. By this action, Plaintiff primarily seeks an order declaring
26 that, *inter alia*, Mercedes-Benz’s current and past practices with respect to the
27 engine piston and/or other parts as described herein do not comply with the CCRs
28 and with the California Emissions Warranty and an injunction to remedy NNA’s

misconduct directing Mercedes-Benz to, *inter alia*, provide warranty coverage for the repair and replacement of defective Class Vehicle engine pistons during the first 7-years or 70,000 miles of vehicle service. Ancillary to that relief, Plaintiff also seeks reimbursement for, *inter alia*, all out of pocket costs paid for repairs that should have been covered specifically for the engine piston under the 7-year 70,000-mile and California Emissions Warranty.

BACKGROUND

15. In order to understand the widespread effect of Mercedes-Benz's unlawful conduct, it is important to identify the statutory provisions at issue.

16. In September 1990, and pursuant to its broad authority to regulate and reduce vehicle emissions under Health and Safety Code §§ 43013(a) and 43205, CARB submitted, and the Legislature adopted, California Code of Regulations ("CCR") §§ 2035, *et seq.*, otherwise known as the "Emission Control System Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Trucks, and Medium-Duty Vehicles."

17. The Regulations require manufacturers to provide warranty coverage for defects relating to "warranted parts." As defined by the Regulations, a "warranted part" includes any part whose malfunction is required to, or can, cause the vehicle's MIL to illuminate—even though the primary function of the defective component is not directly related to emissions control. 13 CCR § 2035(c)(2)(B).

18. The MIL is a light located on the driver's side instrument panel that, when illuminated, is amber in color and displays either a "Check Engine/Powertrain" message; a "Service Engine/Powertrain Soon" message; or the International Standards Organization's "engine symbol."

19. The MIL illuminates to notify the driver of detected malfunctions in the vehicle's on-board diagnostic emission systems. In layman's terms, this means that when the MIL is illuminated, an emissions-related defect has been detected in

1 the vehicle.

2 20. One type of “warranted part” is an emissions-related part. An
3 “emissions-related part” is defined in 13 CCR § 1900(b)(3) as any automotive part
4 which affects any regulated emission from a motor vehicle which is subject to
5 California or federal emission standards. This includes, at a minimum, those parts
6 identified in the “Emissions-Related Parts List,” adopted by CARB on November
7 4, 1977, as last amended June 1, 1990.

8 21. Any defect which “cause[s] the failure of a warranted part [or] which
9 would cause the vehicle’s on-board diagnostic malfunction indicator light to
10 illuminate” is entitled, by statute, to warranty coverage “for a period of 3-years or
11 50,000 miles, whichever occurs first[.]” 13 CCR § 2037(b)(2).

12 22. As will be further detailed below, the engine pistons installed in Class
13 Vehicles are “warranted parts” and “emissions-related parts” because their failure
14 causes the MIL to illuminate, and their failure increases regulated emissions.

15 23. As set forth above, repair or replacement of any emissions-related
16 components are generally covered by a California statutory 3-years or 50,000-
17 miles emission warranty. However, if these emissions-related parts are determined
18 to be “high-priced,” then 13 CCR § 2037(c)(3) requires that the warranty coverage
19 be extended from 3-years or 50,000 miles, to 7-years or 70,000 miles.

20 24. A “high-priced warranted part” is defined as a warranted part whose
21 individual replacement cost at the time of certification exceeds the cost limit
22 established by the annual average nationwide urban Consumer Price Index
23 (“CPI”) for the calendar year two years prior to the model-year for which the cost
24 limit is being calculated. [13 CCR § 2037(c)(3)]. Thus, to determine the cost limit
25 for a high-priced warranted part in 2018, the calculation would need to utilize the
26 annual average nationwide urban CPI for 2016.

27 25. In calculating whether a particular part’s individual replacement cost
28 at the time of certification exceeds the cost limit, “the replacement cost shall be

1 the retail cost to a vehicle owner and include the cost of the part, labor, and
 2 standard diagnosis.” 13 CCR § 2037(c)(1). This calculation must utilize a price-
 3 point as would be charged “in the highest-cost metropolitan area of California.” 13
 4 CCR § 2037(c)(2).

5 26. This cost limit shall be calculated using the following equation:

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

7 27. Cost limit_n is the cost limit for the applicable model year of the
 8 vehicle rounded to the nearest ten dollars.

9 28. If, upon conducting this calculation, the price of replacement exceeds
 10 the CPI cost limit, the part is a “high-priced” warranted part, and the manufacturer
 11 is statutorily required to extend warranty coverage for the part’s repair or
 12 replacement from 3-years or 50,000 miles, to 7-years or 70,000 miles. 13 CCR §
 13 2037(b)(3).

14 29. When using the methodology required by the California Code of
 15 Regulations to calculate the cost of engine piston replacement, the retail cost of
 16 parts and labor is extensive and is always *greater* than \$1,000.00. However, the
 17 high-price cost limit has *never exceeded* \$1,000. Thus, the cost of a engine piston
 18 replacement in a Class Vehicle always exceeds the cost limit, and the engine
 19 piston in Class Vehicles is a “high-priced” part.

20 30. Because the engine pistons in Class Vehicles are “high-priced”
 21 warranted parts as defined by 13 CCR § 2037(c)(1), their repair or replacement
 22 should have been covered by Mercedes-Benz under the 7-years or 70,000 miles
 23 California Emissions Warranty. Unfortunately, Mercedes-Benz does not extend 7-
 24 years or 70,000 miles California Emissions Warranty coverage for the engine
 25 pistons installed in the Class Vehicles.

26 31. While this action focuses on the engine piston specifically, Plaintiff
 27 also alleges that Mercedes-Benz has been using the wrong standard generally to
 28 determine if an emissions part, such as the engine piston, is a warranted part and is

1 “emissions-related,” as detailed below. Mercedes-Benz also systemically has
2 been using the wrong standard for calculating the retail labor cost in determining
3 whether a part is a “high-priced part” under the California Code of Regulations.
4 Instead of using the retail labor cost *i.e.*, the number of labor hours that the
5 *customer pays* for the repair (“customer pay”), Mercedes-Benz uses, and has
6 always used, the number of hours that the *manufacturer pays its dealers to*
7 *perform the repairs under warranty* (“warranty pay”), which is a lesser amount.
8 As a result, Mercedes-Benz is grossly understating the parts that are designated as
9 high-priced warranted parts under the CCR, including the engine pistons.

10 JURISDICTION AND VENUE

11 32. This Court has original jurisdiction over the subject matter of this
12 action pursuant to 28 U.S.C. § 1332(d)(2)(A) because: (i) members of the Class
13 are citizens of a state different from that of Mercedes-Benz; and (ii) aggregating
14 the claims of individual Class members, the total matter in controversy exceeds
15 the sum or value of \$5,000,000, exclusive of interests and costs. Further, 28
16 U.S.C. § 1332(d)(5) does not apply because (i) Mercedes-Benz is not a state, state
17 official, or other governmental entity against whom the Court may be foreclosed
18 from ordering relief, and (ii) the number of members of the Class in the aggregate
19 exceeds 100.

20 33. This Court has personal jurisdiction over Mercedes-Benz because
21 Mercedes-Benz has sufficient minimum contacts with California, having
22 intentionally availed itself of the California market so as to render the exercise of
23 jurisdiction over it by this District Court, Eastern Division, consistent with
24 traditional notions of fair play and substantial justice.

25 34. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because a
26 substantial part of the events giving rise to the claims alleged herein occurred in
27 this District and division.

28 ///

1 **PARTIES**

2 35. Plaintiff Sergio Betancourt is, and at all times relevant hereto has
3 been, an individual. At all times relevant, Plaintiff resided in San Bernardino
4 County, California. The repairs that give rise to this action were made to
5 Betancourt's vehicle in San Bernardino County, California.

6 36. Defendant Mercedes-Benz was and is, a Delaware corporation,
7 headquartered in Sandy Springs, Georgia, doing business in the State of
8 California. Mercedes-Benz sells Vehicles, including the Class Vehicles, in the
9 State of California.

10 37. Plaintiff reserves the right to expand, limit, modify, or amend these
11 allegations at any time, based upon, changing circumstances and/or new facts
12 obtained during discovery.

13 **SUBSTANTIVE ALLEGATIONS**

14 38. Betancourt purchased and is the owner of a 2015 Mercedes-Benz
15 C300, VIN 55SWF4JB9FU066099 ("Subject Vehicle"). The Subject Vehicle was
16 purchased by Betancourt in the state of California and registered in the state of
17 California.

18 39. On January 28, 2022, at 51,672 miles, the Subject Vehicle was
19 presented for repairs to Mercedes-Benz of Ontario, located at 3787 East Guasti
20 Road, Ontario, California 91761, because the Subject Vehicle was malfunctioning.
21 Mercedes-Benz of Ontario is a Mercedes-Benz authorized repair facility.
22 Mercedes-Benz of Ontario determined that the cylinder 1 engine piston was
23 cracked, causing crankcase pressure to blow oil into the cylinder, resulting in
24 white smoke coming out of the exhaust. Mercedes-Benz of Ontario provided
25 Plaintiff with a quote which indicated that the parts and labor to replace the engine
26 piston far exceeded \$1,000.00. Furthermore, Plaintiff was charged \$215.00 to
27 diagnose what was wrong with the Subject Vehicle. Mercedes-Benz refused to
28 cover the engine piston repair under the California Emissions Warranty, even

1 though the defect related to a high-priced warranted part, even though the Subject
2 Vehicle had been in service for less than 7-years, and even though the vehicle had
3 been driven less than 70,000-miles. Betancourt paid the diagnostic fee out-of-
4 pocket, and was advised that he would have to pay for the engine piston
5 replacement. Betancourt paid the diagnostic fee, and did pay for the repairs, which
6 cost several thousand dollars. Thus, Betancourt suffered damage.

7 40. The entire cost of the diagnosis and repairs relating to the engine
8 piston should have been covered and paid for by Mercedes-Benz under the 7-year
9 or 70,000-miles California Emissions Warranty. This is because, pursuant to 13
10 CCR § 2037(c), the engine piston should have been identified as a high-priced
11 emissions-related part, and the parts relating to that repair should have been
12 covered under the California Emissions Warranty pursuant to under regulation
13 2037(c).

14 41. Mercedes-Benz's failure to classify the engine pistons installed in the
15 Class Vehicles as covered parts under the California Emissions Warranty was an
16 omission by Mercedes-Benz designed to limit its warranty exposure.

17 42. Plaintiff's experience is just one of many examples of Mercedes-
18 Benz's scheme to avoid providing a true and comprehensive list of all parts which
19 should be covered under either a 3-year or 50,000 mile or 7-years or 70,000-miles
20 California Emission Warranty.

21 43. The details of how Mercedes-Benz actually applied the CCR and the
22 CCR cost limit formula with respect to engine piston replacements in the Class
23 Vehicles are exclusively within Mercedes-Benz's possession— as is the
24 information regarding what other parts Mercedes-Benz improperly omitted from
25 its list of parts entitled to coverage under the California Emissions Warranty.

26 44. Plaintiff presented the Subject Vehicle to a Mercedes-Benz
27 authorized repair facility for repairs prior to the end of the 7-years or 70,000-miles
28 California Emissions Warranty period for high-priced emissions parts. Instead of

1 conducting these repairs under warranty as required by the regulations, Mercedes-
2 Benz unlawfully denied warranty coverage for the engine piston—a “high-priced”
3 emission part which should have been covered under the 7-years or 70,000-miles
4 California Emissions Warranty.

5 45. The reason that Plaintiff was charged for the repairs was not the
6 result of an individual oversight by Mercedes-Benz of Ontario in failing to
7 identify the repairs as being covered under the 7-years or 70,000-miles California
8 Emissions Warranty. Instead, Plaintiff was denied warranty coverage because
9 Mercedes-Benz, in a systematic and organized attempt to increase profit,
10 deceptively omitted from warranty booklets and internal dealership literature,
11 parts which should have been identified as “emissions-related”, “warranted parts”
12 and as “high-priced” warranted parts entitled to extended statutory coverage.

13 46. Pursuant to 13 CCR § 2037(c)(1)(B), Mercedes-Benz is required to
14 identify “high-priced warranted parts...which have an individual replacement cost
15 at the time of certification exceeding the cost limit defined in section (c)(3).”

16 47. Mercedes-Benz intentionally failed to identify all these components
17 in order to increase profit vis-à-vis reducing the amount of money it spends on
18 warranty-related repairs.

19 48. If Mercedes-Benz complied with California law and properly
20 identified all the parts which should have been identified as “high priced,” then
21 Mercedes-Benz dealerships would properly provide warranty coverage for high-
22 priced warranted parts, and Plaintiff would never have paid out-of-pocket for
23 repairs which were covered under warranty.

24 49. In addition, Mercedes-Benz’s failure to provide a comprehensive
25 California Emissions Warranty that covered the engine pistons resulted in Plaintiff
26 and the Class overpaying for their vehicles. In essence, Class Members paid for
27 vehicles that purported to cover all required parts, including the engine pistons,
28 pursuant to the California Emissions Warranty, but did not. Mercedes-Benz’s

1 refusal to include in its written warranty booklets coverage for the engine pistons
2 in Class Vehicles under the California Emissions Warranty resulted in Mercedes-
3 Benz's unjust enrichment and detriment to Plaintiff and the Class. This is because
4 Class Members were supposed to be provided with warranty coverage which
5 complied with Mercedes-Benz's California Emissions Warranty obligations. A
6 compliant warranty has a value to Class Members and has a cost to Mercedes-
7 Benz. Instead of Mercedes-Benz providing a compliant warranty, Mercedes-Benz
8 has provided a deficient warranty which does not cover the engine pistons under
9 the California Emissions Warranty, which Mercedes-Benz is lawfully obligated to
10 cover. The non-compliant warranty provides less coverage and thus exposes Class
11 Members to more financial risk and is less valuable to Class Members. Similarly,
12 the non-compliant warranty costs Mercedes-Benz less money, because it exposes
13 Mercedes-Benz to less risk and will result in Mercedes-Benz paying out less in
14 warranty claims.

15 50. Class Members were entitled to a compliant California Emissions
16 Warranty but were provided with a deficient warranty. As a result, Mercedes-Benz
17 has been unjustly enriched by providing a deficient warranty which reduced
18 Mercedes-Benz's costs, and Class Members have been damaged by not receiving
19 the warranty that they were legally entitled to receive.

20 51. In fact, irrespective of whether a Class Member's Class Vehicle
21 underwent a repair to a engine piston defect, Class Members were sold cars which
22 were worth less than what Class Members actually paid for, by virtue of
23 Mercedes-Benz's systematic failure to provide a warranty that covered the engine
24 pistons under the California Emissions Warranty.

25 52. Mercedes-Benz's conduct violates the Unfair Competition Law,
26 California Business and Professions Code section 17200, et seq. (the "UCL") as
27 well as the Consumer Legal Remedies Act, California Civil Code Section 1750, et
28 seq., (the "CLRA").

1 Compliance Division of CARB regarding the California Emissions Warranty. The
2 Declaration (hereinafter, the “CARB Declaration”) was made “for the sole
3 purpose of educating the Courts about CARB’s interpretation and implementation
4 of California’s warranty requirements.” The CARB Declaration sets forth CARB’s
5 interpretation of certain of the foregoing CCR provisions, including how to define
6 a “warranted part” and a “high-priced” warranted part for purposes of the
7 California Emissions Warranty.

8 57. The CARB Declaration states, in relevant part, that “warranted parts”
9 under the California Emissions Warranty “include any components that can or are
10 required to illuminate the OBD Malfunction Indicator Light (MIL) in the event of
11 a malfunction, even if the primary function of the component is not emission
12 control, within the warranty period. (Cal. Code Regs., tit. 13, § 2037, subd.
13 (b)(2).) The MIL is a light located on the driver’s side instrument panel that, when
14 illuminated, is amber in color and displays “Check Engine/Powertrain,” “Service
15 Engine/Powertrain Soon,” or the International Standards Organization (ISO)
16 engine symbol; the MIL illuminates to notify the driver of detected malfunctions
17 of OBD-monitored emissions systems on the vehicle. (Cal. Code Regs., tit. 13, §
18 1968.2, subds. (a), (d)(2.1.1) & (2.2.).)”

19 58. The CARB Declaration also clarifies the standard for determining
20 whether a warranted part is emissions-related. According to CARB, as set forth
21 above, any vehicle part that causes the MIL to illuminate and/or affects regulated
22 emissions is an emissions-related part under the California Emissions Warranty
23 law. This is not the standard that Mercedes-Benz has been using.

24 59. The CARB Declaration further provides that “When calculating the
25 cost of labor portion of the replacement cost equation, in order to determine if a
26 part is a “high-priced” warranted part for the purposes of California Code of
27 Regulations, title 13, section 2037, subdivision (c), manufacturers first calculate
28 the amount of time it would take to diagnose and repair or replace the part (the

1 labor hours). A dollar amount is then attributed to the number of labor hours to
2 come up with a cost of labor for each part. In doing this, manufacturers should use
3 the labor hours and associated costs that would be charged to consumers to
4 perform any required diagnosis and repairs to or replacement of the part, not the
5 labor hours that manufacturers' service dealerships are allowed to charge
6 manufacturers."

7 60. Thus, based on the CARB Declaration, Mercedes-Benz is required to
8 provide 7-years or 70,000-miles warranty coverage for all components whose
9 failure affects any regulated emission and can or are required to illuminate the
10 MIL, even if the primary function of the component is not emissions control, and
11 which are considered high-priced based on the amount a consumer would pay for
12 the parts and labor associated with a defective component's diagnosis and
13 replacement.

14 61. Although the engine pistons installed in Class Vehicles affects
15 regulated emissions and is considered a high-priced emissions related part, as
16 further set forth below, Mercedes-Benz, as a matter of custom and practice, has
17 failed to cover engine pistons installed in Class Vehicles for 7-years or 70,000-
18 miles as required by the CCR.

19 62. Further, as set forth above, MBUSA has an obligation to provide 7-
20 year/70,000- mile coverage under the California Emissions Warranty for all "high-
21 priced" emissions-related components. MBUSA is supposed to determine if a
22 component is high-priced by analyzing the cost to the consumer to diagnose and
23 repair the component, including what the consumer would pay for parts and labor.

24 63. As part of the certification process for a vehicle, the manufacturer
25 determines which parts it considers to be "emissions parts" and submits a list of
26 those parts to CARB. Section 2037(c). At the same time, the manufacturer also
27 identifies the parts from the emissions parts list that the manufacturer has
28 determined, based on the cost calculation set forth in the CCR, exceeds the cost

1 limit and therefore are “high-priced” parts entitled to extended 7- year/70,000-
2 mile coverage.

3 64. California Code of Regulations Section 2037(c)(1) states, in relevant
4 part, that in calculating whether an individual replacement cost at the time of
5 certification exceeds the cost limit, “the replacement cost shall be the retail cost to
6 a vehicle owner and include the cost of the part, labor, and standard diagnosis.”
7 Emphasis added. Similarly, Section 2037(c)(2) states that “the replacement cost
8 shall be the retail cost to a vehicle owner and include the cost of the part, labor,
9 and standard diagnosis.” Emphasis added.

10 65. As the CARB Declaration confirms, when calculating the retail cost
11 of labor portion of the replacement cost equation, in order to determine if a part is
12 a “high-priced” warranted part for the purposes of complying with the California
13 Code of Regulations, “manufacturers should use the labor hours and associated
14 costs that would be charged to consumers to perform any required diagnosis and
15 repairs to or replacement of the part, not the labor hours that manufacturers’
16 service dealerships are allowed to charge manufacturers.” This is also consistent
17 with the language in the CCRs which states that the “the replacement cost shall be
18 the retail cost to a vehicle owner and include the cost of the part, labor, and
19 standard diagnosis.”

20 66. However, MBUSA does not use, and has never used, the retail labor
21 cost i.e., the number of labor hours that the customer pays for the repair
22 (“customer pay”). Instead, MBUSA incorrectly uses the number of hours that the
23 manufacturer pays its dealers to perform the repairs under warranty (“warranty
24 pay”). MBUSA is using the wrong standard and, in so doing, is failing to the
25 comply with the express terms of the CCR.

26 A PISTON’S FUNCTION AND IMPACT ON EMISSIONS

27 67. A piston as used inside an internal combustion gasoline engine is a
28 lubricated sliding shaft that fits tightly inside a cylinder. The cylinder is also

1 referred to as a combustion chamber. The piston's purpose is to compress a
2 gasoline-air mixture, then when the compressed gasoline-air mixture is
3 compressed, it is ignited by a spark generated from a spark plug, creating a small
4 explosion. When the small explosion occurs, the piston's purpose is to transfer the
5 force generated by the small explosion into energy. The transfer of energy occurs
6 because downward pressure is placed on the piston from the explosion. The piston
7 is connected by a connecting rod to a crankshaft. When the small explosion
8 occurs, the piston is forced in a downward motion, turning the crankshaft in a
9 spinning motion. The spinning motion is ultimately transferred through the
10 transmission, driveshaft and axles, to the wheels of a vehicle, causing forward and
11 reverse vehicle motion. Modern internal combustion vehicle engines usually have
12 between 4 and 8 pistons, depending on engine and vehicle size. All of the engine's
13 pistons work in harmony with each other and are connected to the crankshaft.

14 68. In order for the piston to be able to compress the gasoline-air mixture,
15 the piston and combustion chamber must create a sealed environment, so that
16 when the piston slides up, no gasoline or air leaks outside of the combustion
17 chamber, causing the gasoline and air to compress. If any gasoline or air leak
18 outside of the combustion chamber, the gasoline and air that leak out are wasted
19 and not transferred into energy to drive the vehicle. This results in an increase in
20 regulated emissions. Furthermore, because the gasoline and air that does ignite
21 inside the combustion chamber is not the intended quantity of gasoline and air,
22 and because the pounds per square inch of compression is not as intended, the
23 small explosion that is generated is not as powerful as it would otherwise be, again
24 increasing regulated emissions. Finally, the aforementioned leaking that occurs if
25 the piston and combustion chamber are not a sealed environment may also
26 cause engine misfire, which increases regulated emissions.

27 69. Similarly, if the piston and combustion chamber do not create a
28 sealed environment, when the gasoline and air ignite, creating the small explosion

1 inside the combustion chamber, some of the pressure generated by the small
2 explosion leaks. The leaked pressure reduces the amount of force being applied to
3 the piston. This reduces the velocity of the piston's downward motion, wasting the
4 power that is generated, and increasing regulated emissions.

5 70. When a piston has a crack, hole, or structural defect ("Piston
6 Defect"), the Piston Defect will typically result in the combustion chamber no
7 longer being a sealed environment, resulting in an increase in regulated emissions.
8 As a result, the automotive industry as well as CARB regard pistons as emissions-
9 related parts.

10 71. In June of 1990, CARB published an emission-related parts list,
11 which listed examples of components that were emission related parts as defined
12 in 13 California Code of Regulations Section 1900(b)(3). In the publication,
13 located in Section III Mechanical Components, Subsection B Combustion
14 Chamber, the engine piston was specifically identified as being an emission
15 related part.

16 72. Furthermore, the engine pistons installed in Class Vehicles are
17 "warranted parts" and "emissions-related parts" because their failure triggers an
18 OBD fault code and causes the MIL to illuminate, and their failure increases
19 regulated emissions, as stated herein.

20 73. The foregoing framework and analysis addresses and precludes any
21 potential "slippery slope" argument or concern that every vehicle part could
22 potentially be "emissions-related." CARB has specifically stated that engine
23 pistons are "emission-related." Thus, engine pistons are required to be covered
24 under the California emissions warranty.

25 74. MBUSA is well aware of what component failures cause a MIL to
26 illuminate and cause an increase in regulated emissions. MBUSA's conduct in this
27 case underscores its failure to comply with the Regulations. The failed engine
28 piston installed in Plaintiff's Vehicle caused an emissions-related fault code

(which, on information and belief, has been identified by MBUSA on MBUSA's OBDII fault codes summaries submitted to CARB) to be triggered, the MIL to illuminate and an increase in regulated emissions. Yet, MBUSA fails to provide Emissions Warranty coverage for this component, which is also illustrative of MBUSA's systemic failure to provide coverage for numerous other components in the entire line of vehicles distributed by MBUSA.

ENGINE PISTONS ARE HIGH-PRICED WARRANTED PARTS

75. As part of the certification process for a vehicle, the manufacturer determines which parts it considers to be "emissions parts" and submits a list of those parts to CARB. Section 2037(c). At the same time, the manufacturer also identifies the parts from the emissions parts list that the manufacturer has determined, based on the cost calculation set forth in the CCR, exceeds the cost limit and therefore are "high-priced" parts entitled to extended 7- year/70,000-mile coverage.

76. California Code of Regulations Section 2037(c)(1) states that in calculating whether an individual replacement cost at the time of certification exceeds the cost limit, "the replacement cost shall be the retail cost to a vehicle owner and include the cost of the part, labor, and standard diagnosis." Similarly, Section 2037(c)(2) states that "the replacement cost shall be the retail cost to a vehicle owner and include the cost of the part, labor, and standard diagnosis."

77. When using the methodology required by the California Code of Regulations to calculate the cost of engine piston replacement, the retail cost of parts and labor is extensive and is always *greater* than \$1,000.00. However, the high-price cost limit as calculated by CARB and disclosed every year by CARB has *never exceeded* \$1,000. Thus, the cost of a engine piston replacement in a Class Vehicle always exceeds the cost limit, and the engine piston in Class Vehicles is a "high-priced" part.

78. Specifically, with regard to the Subject Vehicle, according to Alldata

1 Repair, a subscription based repository of information regarding automotive repair
2 costs, the consumer labor cost to replace one piston is no less than 27.3 hours of
3 labor. Even using an hourly rate of \$100.00 per hour, which understates the hourly
4 rate paid by consumers in 2015, the labor cost alone to replace one piston exceeds
5 \$2,700.00. Thus, with regard to all Class Vehicles, the piston is a high-priced part.

6 79. Because the engine pistons in Class Vehicles are “high-priced”
7 warranted parts as defined by 13 CCR § 2037(c)(1), their repair or replacement
8 should have been covered by Mercedes-Benz under the 7-years or 70,000 miles
9 California Emissions Warranty. Unfortunately, Mercedes-Benz does not extend 7-
10 years or 70,000 miles California Emissions Warranty coverage for the engine
11 pistons installed in the Class Vehicles.

12 80. With regard to Plaintiff’s vehicle, On January 28, 2022, at 51,672
13 miles, the Subject Vehicle was presented for repairs to Mercedes-Benz of Ontario.
14 Mercedes-Benz of Ontario determined that the cylinder 1 engine piston was
15 cracked, causing crankcase pressure to blow oil into the cylinder, resulting in
16 white smoke coming out of the exhaust. Mercedes-Benz of Ontario provided
17 Plaintiff with a quote which indicated that the parts and labor to replace the engine
18 piston far exceeded \$1,000.00.

19 81. Since the cost to replace engine piston 1 was above the high-priced
20 cost limit, and because the engine piston is an emissions related part as set forth
21 herein, the engine piston is a high-priced warranted part which should have been
22 covered for 7-years or 70,000-miles pursuant to the California Emissions
23 Warranty.

24 82. Furthermore, the cost to replace the engine piston for all model year
25 Class Vehicles is above the high-priced warranted part threshold in the model
26 years they were produced.

27 83. Thus, by failing to provide a 7-years or 70,000-miles warranty for the
28 engine piston in Class Vehicles, Mercedes-Benz violated the UCL and the CLRA.

CLASS ACTION ALLEGATIONS

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

85. Plaintiff brings this action on his own behalf, as well as on behalf of all Class members similarly situated, pursuant to Federal Rules of Civil Procedure Rules 23(a), (b)(1), (2) and/or (3) and/or (c)(4).

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

87. Mercedes-Benz's California Emission Warranty applies to vehicles purchased and registered in States which, in the year the vehicle was distributed, had adopted the California Emissions Warranty, i.e., "Reg. 177 States" or "Section 177 States".

88. Defendant's emissions warranty representations arise out of California law that Defendant must apply outside of California to the vehicles in the States listed. Accordingly, Defendant's conduct was specifically intended to have effects outside of California and was specifically intended to apply to vehicles and members of the Classes in those States that Defendant chose to include by the express terms of the California Emissions Warranty.

89. Under these unique circumstances, California has a specific interest in regulating conduct outside of California that specifically invokes California emissions requirements and California emissions regulations and has an interest in preventing illegal practices that involve breach of California Emissions Warranty law that Defendant has chosen to invoke outside of California in the States covered by the Reg. 177 Class and Subclass. As Defendant seeks to apply the California Emission System Warranty to members of the Classes and vehicles in the listed States outside of California, members of the Classes in those States likewise should be included in a claim that seeks to vindicate their rights under

1 that same warranty in California and should have the ability to have their rights
2 under that warranty asserted in California and pursuant to California law.

3 90. Mercedes-Benz's own express application of the California
4 Emissions Warranty constitutes a sufficient connection between California and
5 out-of-state potential Class members. Further, Mercedes-Benz's misconduct,
6 namely, Mercedes-Benz's failure to identify all emissions-related, high-priced
7 warranted parts to CARB, a California regulator, occurred in California, and even
8 out-of-state purchasers were harmed by Mercedes-Benz's conduct that occurred in
9 California. Mercedes-Benz failed to disclose, in its submissions to CARB, the
10 parts that are properly covered by the California Emissions Warranty, including,
11 but not limited to, engine pistons.

12 91. Mercedes-Benz is solely responsible for selecting and identifying to
13 CARB all of the parts that should be classified as "high-priced" emissions
14 warranted parts, and high-priced warranted parts, and Mercedes-Benz failed to
15 include the engine piston and other components. Californians and out-of-state
16 potential Class members in the additional States covered by the California
17 Emissions Warranty suffered an identical harm – they were forced to pay the costs
18 of engine piston defect diagnosis, repair, or replacement, which should have been
19 covered under the California Emissions Warranty, and were provided with
20 warranties which were less valuable than the warranties they were legally entitled
21 to at the time they purchased or leased their Class Vehicle. Under these unique
22 circumstances, California has the greater interest in applying California's
23 consumer laws to enforce compliance with the California Emissions Warranty
24 than the other States have in using their consumer laws to enforce the same
25 Regulation. California has a specific interest in regulating conduct outside of
26 California that invoke California emissions requirements and regulations, and
27 California has an interest in preventing illegal practices that involve breach of
28 California emissions law that Defendant has chosen to invoke outside of

1 California in the specific States covered. California also has a supreme interest in
2 applying its own consumer protection laws in ensuring that the California
3 Emissions Warranty is properly interpreted and applied wherever Mercedes-Benz
4 has chosen to invoke it.

5 92. Under the facts of this case, the law of California should be applied
6 because California's interest would be impaired if its consumer laws to enforce the
7 California Emissions Warranty were subordinated to consumer laws of the other
8 States. Other jurisdictions' interests in applying their own consumer protection
9 laws to their own residents do not strongly outweigh the interest California has in
10 applying its consumer protection laws to enforce the California Emission
11 Warranty with respect to the specific potential out-of-state members of the Classes
12 identified herein. Therefore, the Classes alleged herein include persons who
13 purchased or leased Class Vehicles that are registered in States other than
14 California.

15 93. There is sufficient similarity among all the Class Vehicles and
16 Mercedes-Benz's conduct as defined herein in that, among other things, all of the
17 vehicles in the proposed Classes are subject to the same California Emissions
18 Warranty and the same requirements that Mercedes-Benz report all emissions-
19 related defects to CARB pursuant to the CCR. Mercedes-Benz has acted in a
20 uniform manner with respect to all Class Vehicles by failing to properly cover
21 engine pistons in the Class Vehicles as required under the California Emissions
22 Warranty and as described herein.

23 94. Accordingly, Plaintiff's proposed Class and Subclasses consist of and
24 are defined as follows:

25 California Class and Subclass:

26 All persons in the State of California who have been
27 owners or lessees of Class Vehicles and whose engine
28 pistons are not covered for 7-years or 70,000-miles (the
"California Class").

1 All persons in the State of California who have been
 2 owners or lessees of Class Vehicles and who have paid
 3 for repairs and parts pertaining to defective engine pistons
 4 which occurred outside of the Class Vehicle's new car
 warranty period but prior to 7-years or 70,000-miles (the
 "California Out-of-Pocket Subclass").

5 Reg. 177 Class and Subclass:

6 All persons who have been owners or lessees of Class
 7 Vehicles in a State which, in the year their vehicle was
 8 distributed, had adopted the California Emissions
 9 Warranty (i.e., "Reg. 177 States" or "Section 177 States")
 and whose engine pistons are not covered for 7-years or
 70,000-miles (the "Reg. 177 Class").

10 All persons who have been owners or lessees of Class
 11 Vehicles in a State which, in the year their vehicle was
 12 distributed, had adopted the California Emissions
 13 Warranty (i.e., "Reg. 177 States" or "Section 177 States")
 14 and who have paid for repairs and parts pertaining to
 15 defective engine pistons which occurred outside of the
 Class Vehicle's new car warranty period but prior to 7-
 years or 70,000-miles (the "Reg. 177 Out-of-Pocket
 Subclass").

16 Excluded from the Classes and Subclasses are Defendant,
 17 and its subsidiaries and affiliates; its current and former
 18 officers, directors, and employees (and members of their
 19 immediate families); and the legal representatives, heirs,
 20 successors or assigns of any of the foregoing. Also
 21 excluded are any judge, justice, or judicial officer
 22 presiding over this matter and the members of their
 23 immediate families and judicial staff.

24 95. Plaintiff's primary goal on behalf of the Classes is to obtain
 25 injunctive relief requiring MBUSA to comply with the California Emissions
 26 Warranty and declaratory relief with respect to the proper interpretation of the
 27 California Emissions Warranty and MBUSA's obligations pursuant to the CCRs
 28 and the California Emissions Warranty. Plaintiff's claim for monetary relief is
 secondary to her claim for injunctive or declaratory relief. Even in the absence of
 possible monetary recovery, Plaintiff would bring this action to obtain the

1 injunctive and declaratory relief sought. Any monetary relief that would flow to
2 the members of the Classes would be ancillary to the injunctive or declaratory
3 relief obtained.

4 96. On behalf of the members of the Classes, Plaintiff seeks declaratory
5 judgment/relief pursuant to 28 U.S.C. section 2201 et seq as to, *inter alia*, (1) that
6 the engine piston in the Class Vehicles is an ‘emissions-related part’ and high-
7 priced’ warranty part; (2) that MBUSA has used, and continues to use, the wrong
8 or incorrect standards for identifying “emission-related” parts and “high-priced
9 warranty parts” under the California Emissions Warranty; (3) that MBUSA failed
10 and is failing to properly identify and warrant under the California Emissions
11 Warranty all of the parts, components or systems in addition to the engine piston,
12 that should have been properly covered for emissions-related defects as identified,
13 *inter alia*, per the fault codes on the Class Vehicles OBD2 Summaries described
14 herein, per Appendix B to the CARB regulations and/or as high-priced warranty
15 parts; and/or, (4) that Plaintiff and members of the Classes are entitled to warranty
16 coverage under California Emissions Warranty for all Mercedes vehicle parts not
17 properly identified as warranted parts under the California Emissions Warranty as
18 described or defined herein.

19 97. On behalf of the members of the Classes, Plaintiff seeks
20 reimbursement or restitution for the out of pocket expenses, including diagnostic
21 fees for amounts wrongfully paid by Plaintiff and members of the Classes relating
22 to repairs that should have been covered by the MBUSA California Emissions
23 Warranty during the Class periods. Plaintiff’s claim for restitution is distinct from
24 her claim for damages. The damages claim under the CLRA seeks, *inter alia*, the
25 diminished value of a California Emissions Warranty that does not cover all parts
26 that should properly be included in the California Emissions Warranty. Moreover,
27 Plaintiff does not seek the same sum in restitution as she seeks in damages, and
28 the two remedies do not compensate for the same harm. The restitutionary

1 remedy, which seeks out of pocket reimbursement, will not compensate Plaintiff
2 and members of the Classes for damages incurred due to the Class Vehicles
3 having a California Emissions Warranty that has less value because the Warranty
4 does not properly cover all parts that should properly be covered under the
5 California Emissions Warranty and will not compensate for the excess amounts
6 and profits that MBUSA pocketed due to its misconduct and in being able to avoid
7 paying warranty claims that should have been covered under the California
8 Emissions Warranty.

9 98. The damages remedy under the CLRA also is not an adequate remedy
10 at law for the equitable claims alleged herein under the UCL. “Damages” under
11 the CLRA are for actual damages as described herein and distinct from a
12 “restitution” remedy under the UCL which compensates Plaintiff and members of
13 the Classes for out of pocket losses. The same recovery available for “restitution”
14 under the CLRA is not available as “damages” under the CLRA because the
15 monetary recoveries address different losses. Moreover, Plaintiff and members of
16 the Classes do not seek the same amount in restitution as they seek in damages.

17 99. Further, the harm suffered by Plaintiff and members of the Classes
18 and perpetrated by MBUSA, is not adequately compensable with damages. The
19 entire purpose of the California Emissions Warranty is to protect the environment.
20 The California Emissions Warranty was enacted by the State of California to
21 restrict harmful greenhouse gas from gasoline and hybrid gasoline engines. The
22 fundamental purpose of the emissions requirements is to reduce emissions, limit
23 fuel consumption and increase fuel efficiency, by forcing manufacturers to repair
24 and/or replace failed emissions-related vehicle components under warranty,
25 thereby decreasing greenhouse gas emissions, including carbon dioxide emissions.
26 169. Indeed, motor vehicle use is the single greatest source of U.S. air pollution
27 and is the cause of more air pollution than any other human activity. (Cars, Fuels,
28 and Clean Air: A Review of Title II of the Clean Air Act Amendments of 1990

1 (1991) 21 Env'tl. L. 1947, 1949). Many of these pollutants consist of hydrocarbons
2 and nitrous oxides which react to form photochemical oxidants in the atmosphere.
3 The most notorious of these photochemical oxidants is ozone – the primary
4 component of urban smog. (California Air Resources Bd., Staff Report: Proposed
5 Regulations for Low-Emission Vehicles and Clean Fuels (Aug. 13, 1990) at p. 3).
6 Cars also produce nearly two-thirds of all carbon dioxide emissions. Carbon
7 dioxide content in the atmosphere is closely linked to global temperature because
8 the temperature of the Earth is primarily determined by the balance between its
9 absorption of energy from the Sun, and the reflection of a portion of this energy
10 back into space. Carbon dioxide – a greenhouse gas – traps the energy and heat
11 which would have otherwise escaped back into space, and re-emits it, causing the
12 warming of our atmosphere. This process is known as the “greenhouse effect.”

13 100. Therefore, the State of California highly regulates emissions from
14 gasoline and hybrid gasoline engines, specifically greenhouse gas emissions. In
15 September 1990, pursuant to its broad authority to regulate and reduce
16 environmentally harmful vehicle emissions under Health and Safety Code §§
17 43013(a) and 43205, CARB submitted, and the Legislature adopted, California
18 Code of Regulation §§ 2035, et seq., which requires all manufacturers to provide a
19 statutorily compliant emissions warranty to all vehicles distributed and registered
20 in California.

21 101. In September 2004, CARB approved the “Pavley” Greenhouse Gas
22 Regulations to control greenhouse gas emissions from new LEV II vehicles
23 beginning with the 2009 model year. These Greenhouse Gas Regulations added
24 four greenhouse gas air contaminants to the vehicular criteria and toxic air
25 contaminant emissions that California was already carbon dioxide (CO₂), methane
26 (CH₄), nitrous oxide (N₂O), and hydrofluorocarbons (air conditioner refrigerants).
27 The State and federal government have specifically focused on regulating
28 greenhouse gas emissions, including carbon dioxide emissions. If a gas vehicle

1 has a defect which increases fuel consumption, that defect increases carbon
2 dioxide emissions.

3 102. Notwithstanding State and federal regulations designed to protect our
4 air, monitoring shows that over 90 percent of Californians breathe unhealthy
5 levels of one or more air pollutants during some part of the year. Despite CARB's
6 best efforts, in 2020, "there were 157 bad air days for ozone pollution—the
7 invisible, lung-searing gas in smog—across the vast, coast-to-mountains basin
8 spanning Los Angeles, Orange, Riverside and San Bernardino counties. That's the
9 most days above the federal health standard since 1997." (Barboza, Tony (Dec. 6,
10 2020) L.A. Began 2020 With A Clean-Air Streak but Ended with Its Worst Smog
11 in Decades, Los Angeles Times [[https://www.latimes.com/42alifornia/story/2020-
12 12-06/2020-laair-quality-southern-california-pollution-analysis](https://www.latimes.com/42alifornia/story/2020-12-06/2020-laair-quality-southern-california-pollution-analysis)].) One of the
13 reasons that our environment is in such a state of crisis is that corporations are not
14 following our very thoroughly formulated rules.

15 103. Accordingly, damages are inadequate to compensate for the
16 foregoing harms caused by MBUSA's violation, and continuing violation, of the
17 California Emissions Warranty. Money damages will not fix the harm caused by
18 Defendant's violation of emissions laws, which requires equitable relief.

19 104. Further, MBUSA and car manufacturers should not be able to shirk
20 their legal responsibilities simply by paying damages. Simply paying off
21 consumers undermines the entire purpose of the California Emissions Warranty
22 and will leave MBUSA in the position of being able to continue to violate the law
23 and increase harmful vehicle emissions by just paying damages. Ironically, this
24 result will leave Plaintiff and members of the Classes in an even worse
25 position than by simply receiving monetary compensation alone.

26 105. Moreover, payment of damages does not ensure that the emissions
27 parts will actually be repaired. That result will only be ensured by forcing
28 MBSUA to cover the repair under the California Emissions Warranty as required.

1 106. Further, equitable relief is required because damages alone will not
2 be sufficient for Class members to identify all parts whose defects result in fault
3 codes identified in the OBD2 Summaries being triggered. Only MBUSA has done
4 the analysis and knows the fault code logic that would allow for identification of
5 all required fault codes to CARB and all parts that give rise to those fault codes so
6 that those parts can be identified and properly covered under the California
7 Emissions Warranty. In effect, Plaintiff's request for equitable relief is the only
8 way to get MBUSA to do what it is required to do.

9 107. There are common questions of law and fact as to members of the
10 Class and Subclasses that predominate over questions affecting only individual
11 members, including, but not limited to:

- 12 (a) Whether Mercedes-Benz has failed and is failing to acknowledge that
13 the engine pistons installed in the Class Vehicles should be covered
14 under the 7-year, 70,000-mile California Emissions Warranty,
15 pursuant to California law;
- 16 (b) Whether Mercedes-Benz's failure to comply with the California
17 Emissions Warranty by failing to provide a 7-year, 70,000-mile
18 California Emissions Warranty for the engine pistons installed in the
19 Class Vehicles damaged Class members when they purchased or
20 leased a Class Vehicle with a less valuable warranty than they were
21 entitled to;
- 22 (c) Whether Mercedes-Benz engaged in and is engaging in a systematic
23 business practice of failing to identify that the engine pistons installed
24 in the Class Vehicles should be covered under the 7-year,
25 70,000-mile California Emissions Warranty, pursuant to California
26 law;

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28 ///

- 1 (d) Whether Mercedes-Benz's conduct is an unlawful and unfair business
2 practice in violation of California Business & Professions Code
3 section 17200, *et seq.*;
- 4 (e) Whether Mercedes-Benz's conduct is a violation of California
5 Business & Professions Code section 1750, *et seq.*;
- 6 (f) Whether Plaintiff and Class members are entitled to declaratory and
7 injunctive relief regarding Mercedes-Benz's failure to identify that
8 the engine pistons installed in the Class Vehicles should be covered
9 under the 7-year, 70,000-mile California Emissions Warranty,
10 pursuant to California law;
- 11 (g) The appropriate remedy for Mercedes-Benz's violations of California
12 law.

13 108. There is a well-defined community of interest in the litigation and the
14 Class members are readily ascertainable:

- 15 (a) Numerosity: The Class members are so numerous that joinder of all
16 Class members would be unfeasible and impractical. The
17 membership of the entire Class is unknown to Plaintiff at this time;
18 however, the Class is estimated to be greater than one hundred (100)
19 individuals and the identity of such membership is readily
20 ascertainable by inspection of Defendant's records.
- 21 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
22 protect the interests of each Class member with whom he has a well-
23 defined community of interest, and Plaintiff's claims (or defenses, if
24 any) are typical of all Class members as demonstrated herein.
- 25 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
26 protect the interests of each Class member with whom he has a well-
27 defined community of interest and typicality of claims, as
28 demonstrated herein. Plaintiff acknowledges that he has an obligation

1 to make known to the Court any relationship, conflicts or differences
 2 with any Class member. Plaintiff's attorneys, the proposed Class
 3 counsel, are versed in the rules governing class action discovery,
 4 certification, and settlement. Plaintiff has incurred, and throughout
 5 the duration of this action, will continue to incur costs and attorneys'
 6 fees that have been, are, and will be necessarily expended for the
 7 prosecution of this action for the substantial benefit of each Class
 8 member.

9 (d) Superiority: The nature of this action makes the use of class action
 10 adjudication superior to other methods. A class action will achieve
 11 economies of time, effort, and expense as compared with separate
 12 lawsuits, and will avoid inconsistent outcomes because the same
 13 issues can be adjudicated in the same manner and at the same time for
 14 the entire class.

15 **TOLLING OF THE STATUTE OF LIMITATIONS**

16 109. Mercedes-Benz engaged in misleading and dishonest conduct relating
 17 to its failure to identify all of the parts, including the engine pistons, that should be
 18 covered pursuant to the California Code of Regulations regarding the 7-years
 19 70,000-miles California Emissions Warranty. Despite acting diligently, Plaintiff
 20 and Class members lacked the resources and had no realistic ability to identify the
 21 specific parts that should have been covered. Plaintiff and Class members cannot
 22 be reasonably expected on their own to learn or discover what parts should be
 23 covered under the California Emissions Warranty. Therefore, the delayed
 24 discovery rule is applicable to the claims asserted by Plaintiff and Class members,
 25 and the statute of limitations for bringing the claims set forth herein should be
 26 tolled.

27 110. Mercedes-Benz has actual and constructive knowledge that it is
 28 violating California law by failing to identify all of the parts that should be

1 covered under the California Emissions Warranty. Mercedes-Benz has concealed
2 from Plaintiff and Class members that Mercedes-Benz is violating California law
3 as set forth herein. Any applicable statute of limitation is tolled by Mercedes-
4 Benz's wrongful conduct set forth herein, and Mercedes-Benz is estopped from
5 relying on any statute of limitation because of its conduct.

6 **FIRST CAUSE OF ACTION**

7 **Violation of California Unfair Competition Law**

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

9 **By Plaintiff, the California Class, and the Reg. 177 Class Against All**

10 **Defendants**

11 111. Plaintiff re-alleges and incorporates by reference each allegation set
12 forth above.

13 112. California Business and Professions Code section 17200, *et seq.* (the
14 "UCL") prohibits "any unlawful, unfair or fraudulent business act or practice."
15 Mercedes-Benz has committed acts of unfair competition proscribed by the UCL,
16 including the acts and practices alleged herein.

17 113. The UCL imposes strict liability. Plaintiff need not prove that
18 Mercedes-Benz intentionally or negligently engaged in unlawful or unfair
19 business practices – only that such practices occurred.

20 114. Mercedes-Benz is a "person" as defined by Business & Professions
21 Code § 17201.

22 115. As a direct and proximate result of Mercedes-Benz's acts and
23 practices in violation of the UCL, Plaintiff and members of the Classes have
24 suffered injury in fact and lost money or property as set forth above and will
25 continue to do so.

26 ///

27 ///

28 ///

Unlawful Prong

116. A business practice is “unlawful” under the UCL if it is forbidden by law or regulations, including standard of professional conduct. The violation of any law or regulation may serve as the predicate for a violation of the “unlawful” prong of the UCL.

117. Mercedes-Benz failed to comply with the California Emissions Warranty requirements pursuant to the CCR by failing to provide 7-year and 70,000-mile warranty coverage for the engine pistons installed in the Class Vehicles where coverage should be provided pursuant to the CCR. The California Emissions Warranty applies to all Class Vehicles. 13 CCR 2037(a). Pursuant thereto, manufacturers shall warrant that vehicles conform with the California Air Resources Board regulations, and are free from defects which cause the failure of a warranted part to perform as described in the application for certification, including defects which would cause the vehicle's on-board diagnostic malfunction indicator to illuminate, for 3 years or 50,000 miles. 13 CCR 2037(b)(1)- (2). The vehicle manufacturer is Mercedes-Benz, which is the manufacturer granted certification for the Class Vehicles. 13 CCR 2035(c)(5). The parts at issue are all warranted parts. The warranty period shall be 7-years and 70,000-miles for high-priced emissions parts. 13 CCR 2037(b)(3). High-priced emissions parts are those parts which, when taking into consideration the cost to diagnose, replace and pay for the failed part, exceed the cost limit defined in 13 CCR 2037(c)(3). The California Air Resources Board published memos which calculated the cost limit for the Class period. Although the engine pistons installed in the Class Vehicles exceeded the cost limit for the correlating years and should have received California Emissions Warranty coverage, Mercedes-Benz failed to provide 7-year and 70,000-mile warranty coverage for said parts. The failure has resulted in damage to Plaintiff and members of the Classes.

///

1 121. As alleged above, Mercedes-Benz engages and has engaged in a
2 systematic business practice of intentionally failing to identify in the Class
3 Vehicles' warranty books at the time of distribution, and in resources provided to
4 its dealerships, numerous parts that Mercedes-Benz is obligated to identify as
5 high-priced warranted parts and emission related parts by operation of law,
6 including specifically the engine pistons installed in the Class Vehicles where
7 coverage should be provided pursuant to the CCR. Mercedes-Benz does this in an
8 effort to reduce the amount of money that Mercedes-Benz spends on warranty-
9 related repairs knowing that it would be very difficult if not impossible for most
10 consumers to discover this unlawful conduct. If Mercedes-Benz complied with
11 California law and properly identified the engine piston as a high-priced warranted
12 part, then Mercedes-Benz dealerships would properly provide warranty coverage
13 for them. Further, Mercedes-Benz's conduct is unfair because it intentionally
14 refuses to provide warranty coverage for the engine pistons installed in the Class
15 Vehicles as defined herein for the sole purpose of wrongfully limiting its warranty
16 claims, with no regard for the fact that the public is being forced to pay for repairs
17 which should be covered under the 7-year and 70,000-mile California Emissions
18 Warranty. Plaintiff and members of the Classes have suffered injury in fact and
19 lost money or property as a result of Mercedes-Benz's unfair business acts and
20 practices as set forth in detail.

21 122. Mercedes-Benz's failure to properly identify the engine pistons
22 installed in the Class Vehicles where coverage should be provided pursuant to the
23 CCR, is a uniform, systematic, and intentional business practice on the part of
24 Mercedes-Benz to minimize the amount of money that Mercedes-Benz has to pay
25 out in warranty claims. This conduct violates California law.

26 123. As a direct and proximate result of Mercedes-Benz's acts and
27 practices in violation of the UCL, Plaintiff and members of the Classes have paid
28 out of pocket to repair or replace engine pistons installed in the Class Vehicles

1 where coverage should be provided pursuant to the CCR and/or other high-priced
2 warranted parts and emissions related parts as defined herein that should have
3 been covered by Mercedes-Benz under the 7-year and 70,000-mile California
4 Emissions Warranty. As a result, consumers were denied warranty coverage,
5 which is unfair.

6 124. Mercedes-Benz's conduct does not benefit consumers or competition.
7 Plaintiff and members of the Classes could not reasonably avoid the injury each of
8 them suffered or will suffer, which injury is substantial. Mercedes-Benz's conduct
9 only benefits Mercedes-Benz, by Mercedes-Benz wrongfully avoiding having to
10 pay warranty claims which should be covered by the California Emissions
11 Warranty.

12 125. The gravity of the consequences of Mercedes-Benz's conduct as
13 described above outweighs the justification, motive or reason therefor, is immoral,
14 unethical and unscrupulous. Mercedes-Benz's conduct also offends established
15 public policy that is tethered to legislatively declared policies as set forth in the
16 laws detailed above, including California laws and regulations regarding the
17 California Emissions Warranty, or is substantially injurious to the public, for the
18 reasons set forth above.

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

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

28 ///

Deceptive Prong

128. Plaintiff's claim under this prong is predicated on omissions, not misrepresentations. While the warranty booklets for Class Vehicles claim to identify all of the parts covered under the 7-year and 70,000-mile California Emissions Warranty, the warranty books omit the engine pistons installed in the Class Vehicles that should have been listed as covered by the 7-years 70,000-mile California Emissions Warranty pursuant to the CCR.

129. Mercedes-Benz engages in a uniform and systematic business practice of intentionally failing to identify in the Mercedes-Benz warranty books, and in resources provided to its dealerships, the engine pistons as high-priced emissions related warranted parts where coverage should be provided pursuant to the CCR installed in the Class Vehicles as high-priced warranted parts. Mercedes-Benz does this in an effort to intentionally conceal the identity of the parts which should be covered under the 7-year and 70,000-mile California Emissions Warranty for high-priced emissions parts. This has intentionally misled consumers with regard to what parts are covered under the 7-year and 70,000-mile California Emissions Warranty for high-priced parts, and reduced the amount of money that Mercedes-Benz spends on warranty-related repairs. As warranted parts necessary for the operation of the vehicles, the parts that Mercedes-Benz failed to properly identify as high-priced relate to the central functionality of the vehicles and are critical to the vehicles' operation. If Mercedes-Benz complied with California law, and properly identified the engine pistons as high-priced warranted parts which should be identified as such, then Mercedes-Benz dealerships would properly provide warranty coverage for said high-priced warranted parts.

130. Mercedes-Benz's failure to properly identify the engine pistons installed in the Class Vehicles as high-priced warranted parts as defined herein is a systematic and intentional business practice on the part of Mercedes-Benz to minimize the amount of money that Mercedes-Benz has to pay out in warranty

1 claims.

2 131. Said conduct is likely to deceive an ordinary consumer as Mercedes-
3 Benz concealed this information from consumers and from Mercedes-Benz's
4 dealerships, in an effort by Mercedes-Benz to minimize the amount of money that
5 Mercedes-Benz has to pay out in warranty claims. One of the ways Mercedes-
6 Benz misleads consumers relates to the information that Mercedes-Benz provides
7 to consumers in the Mercedes-Benz warranty books. Mercedes-Benz intentionally
8 omits information from the warranty books by intentionally failing to classify the
9 engine pistons as high-priced warranted parts that should be covered under the 7-
10 year and 70,000-mile California Emissions Warranty.

11 132. In evaluating the repair costs to be charged, Plaintiff and members of
12 the Classes have justifiably relied on the information in the warranty booklets
13 about parts that should be covered under the high-priced emissions warranty and
14 have been deceived and suffered damage as a result of Mercedes-Benz's
15 intentional and wrongful conduct.

16 133. Mercedes-Benz is fully aware of its obligations pursuant to the CCR
17 and purports to comply with them. However, in derogation of its legal obligations,
18 Mercedes-Benz willfully and intentionally conceals from consumers, and from the
19 Mercedes-Benz dealerships, the engine pistons installed in the Class Vehicles
20 where coverage should be provided pursuant to the CCR as parts that should be
21 covered as high-priced warranted parts and emissions related parts as defined
22 herein pursuant to the California Emissions Warranty, in order to reduce the
23 amount of money that Mercedes-Benz has to pay in warranty claims.

24 134. Mercedes-Benz is and was under a duty to disclose to consumers and
25 to its dealerships that the engine pistons installed in the Class Vehicles are
26 required to be covered under the California Emissions Warranty pursuant to the
27 CCR.

28 ///

1 135. Mercedes-Benz is and was further under a duty to disclose to
2 consumers and to its dealerships all of the parts as defined herein which it is
3 required to cover under the 7-year and 70,000-mile California Emissions Warranty
4 because: (1) Mercedes-Benz is and was in a superior position to know the true
5 state of facts about the duration of the California Emissions Warranty and which
6 parts should be covered as high-priced warranted parts; (2) Mercedes-Benz has
7 made partial disclosures about the extent of the California Emissions Warranty;
8 (3) Mercedes-Benz has actively concealed and failed to identify all of the parts
9 that are covered under the California Emissions Warranty; and, (4) Members of
10 the Classes, including Plaintiff, have suffered actual loss due to Mercedes-Benz
11 concealment and false representations.

12 136. The facts concealed and not disclosed by Mercedes-Benz to Plaintiff
13 and members of the Classes are material. Had Plaintiff and members of the
14 Classes known the true extent of the California Emissions Warranty and had
15 Mercedes-Benz been truthful to its dealerships and members of the Classes with
16 regard to identifying all of the parts and repairs as defined herein that are covered
17 under the California Emissions Warranty, Plaintiff and members of the Classes
18 would have been able to avoid spending money in order to repair Mercedes-Benz
19 vehicles. As a result, Plaintiff and members of the Classes have suffered damage.

20 137. In order to minimize the amount of money that Mercedes-Benz
21 spends on warranty related repairs, Mercedes-Benz continues to conceal that the
22 engine pistons installed in the Class Vehicles are warranted parts that should be
23 covered under the California Emissions Warranty.

24 138. Furthermore, Mercedes-Benz has refused to, and continues to refuse
25 to provide 7-year and 70,000-mile California Emissions Warranty coverage
26 relating to all repairs for the engine pistons installed in the Class Vehicles where
27 coverage should be provided pursuant to the CCR. This refusal is intentional,
28 willful, unfair, and unlawful.

SECOND CLAIM FOR RELIEF

Violation of California Consumers Legal Remedies Act

(Cal. Civil Code § 1750, *et seq.*)

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

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

141. Plaintiff is a consumer who was wrongfully required to pay for repairs which should have been paid for by Mercedes-Benz pursuant to the CCR. The Subject Vehicle was presented by Plaintiff for repairs at a Mercedes-Benz authorized repair facility, in compliance with the terms and conditions of the Mercedes-Benz warranty. The Vehicle required repairs which should have been covered pursuant to the CCR, based upon the Vehicle’s mileage and age. Mercedes-Benz wrongfully failed and refused to pay for the warranty repairs due to the unlawful pattern and practice set forth herein. Thus, Plaintiff suffered damage.

142. Mercedes-Benz knows that it is violating the terms of the CCR, however Mercedes-Benz intentionally violates the CCR in order to save money. Plaintiff and members of the Classes are generally unaware of the terms and scope

1 of the CCR, thus Mercedes-Benz is able to get away with said wrongful conduct.
2 As a result, Plaintiff and members of the Classes have suffered damage.
3 Mercedes-Benz engages in a systemic pattern of denying warranty claims under
4 the CCR relating to high-priced warranted parts.

5 143. Plaintiff and members of the Classes have presented Class Vehicles
6 to Mercedes-Benz authorized repair facilities for repairs that should have been
7 covered under the CCR, but coverage has been wrongfully denied to them. As a
8 result, Plaintiff and members of the Classes have thus suffered damage. Plaintiff
9 brings this claim on behalf of himself and the Classes.

10 144. Mercedes-Benz's conduct in warranting, advertising, leasing, selling
11 and distributing Class Vehicles in the State of California, while at the same time
12 knowingly and wrongfully failing to honor the terms of the CCR, constitutes the
13 following violations of Section 1770:

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

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

1 deems proper.

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

4 147. Plaintiff requests injunctive relief pursuant to Civil Code 1782(d).

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

7 149. On March 7, 2022, Mercedes-Benz was served notice via certified
8 mail return receipt of its violations of the Consumer Legal Remedies Act, as set
9 forth herein. A demand was made to Mercedes-Benz that it take corrective action.
10 Mercedes-Benz failed to take the corrective action demanded in the March 7, 2022
11 notice.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of himself and all others similarly
14 situated, prays for relief and judgment against Mercedes-Benz as follows:

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

18 (b) A declaration that Mercedes-Benz is financially responsible for notifying all
19 members of the Classes about the wrongful conduct set forth herein; that
20 Mercedes-Benz's conduct as alleged herein violates the California Emissions
21 Warranty including, without limitation, that Mercedes-Benz has used, and
22 continues to use, the wrong or incorrect standards for identifying "emission-
23 related" parts and "high-priced warranty parts" under the California Emissions
24 Warranty; that Mercedes-Benz failed and is failing to properly identify and
25 warrant under the California Emissions Warranty the engine pistons installed in
26 Class Vehicles; and/or that Plaintiff and the members of the Classes are entitled to
27 warranty coverage under California Emissions Warranty for engine pistons
28 installed in Class Vehicles under the California Emissions Warranty described or

1 defined herein;

2 (c) An order requiring Mercedes-Benz to

- 3 (1) review its warranty books for all Class Vehicles and properly identify
- 4 and warrant all “emissions-related parts” and
- 5 (2) for all such parts, and for all parts that Mercedes-Benz already
- 6 identified in its warranty books or that Mercedes-Benz previously
- 7 identified and submitted to CARB as “emissions parts” or
- 8 “emissions-related parts,” recalculate whether those parts, in fact,
- 9 should properly be characterized as “high priced parts” when the
- 10 correct, rate is used;
- 11 (3) on a going forward basis, use the proper standard for determining
- 12 whether a part is “emissions-related” under the California Emissions
- 13 Warranty;
- 14 (4) otherwise accurately and comprehensively apply the CCR in order to
- 15 properly identify all parts as defined and limited herein that should be
- 16 covered under the California Emissions Warranty; and (5) enjoin
- 17 Mercedes-Benz from further deceptive distribution, sales, and lease
- 18 practices, and to reimburse both Plaintiff and members of the Classes
- 19 for the money wrongfully paid by Plaintiff and members of the
- 20 Classes relating to repairs which should have been covered by
- 21 Mercedes-Benz under the California Emissions Warranty;

22 (d) An award to Plaintiff and members of the Classes of any repair costs they are
 23 owed, reimbursement for all out-of-pocket expenses, including diagnostic costs,
 24 that Class Members paid for repairs that should properly have been covered by
 25 Mercedes-Benz under the California Emissions Warranty and other amounts to
 26 which they may be legally entitled;

27 (e) An award to Plaintiff and members of the Classes of damages in an amount to
 28 be proven at trial;

- 1 (f) An award of attorneys' fees and costs as allowed by law and/or pursuant to
2 California Code of Civil Procedure § 1021.5;
3 (g) An award of pre-judgment and post-judgment interest;
4 (h) Leave to amend the Complaint to conform to the evidence produced at trial;
5 and,
6 (i) Other relief as may be appropriate under the circumstances.

7
8 Dated: August 1, 2022

Respectfully submitted,

9 **POMERANTZ LLP**
10 **THE LAW OFFICE OF ROBERT STARR**
11 **FRONTIER LAW CENTER**

12 By: /s/ Robert Starr

13 Jordan L. Lurie
14 Ari Y. Basser
15 Robert L. Starr
16 Manny Starr
17 *Attorneys for Plaintiff*
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SERGIO BETANCOURT

Plaintiff(s)

v.

MERCEDES BENZ USA, LLC

Defendant(s).

CASE NUMBER:

5:22-cv-01354-JGB-SP

**NOTICE TO PARTIES OF
COURT-DIRECTED ADR PROGRAM**

NOTICE TO PARTIES:

It is the policy of this Court to encourage settlement of civil litigation when such is in the best interest of the parties. The Court favors any reasonable means, including alternative dispute resolution (ADR), to accomplish this goal. *See* L.R. 16-15. Unless exempted by the trial judge, parties in all civil cases must participate in an ADR process before trial. *See* L.R. 16-15.1.

The district judge to whom the above-referenced case has been assigned is participating in an ADR Program that presumptively directs this case to either the Court Mediation Panel or to private mediation. *See* General Order No. 11-10, §5. For more information about the Mediation Panel, visit the Court website, www.cacd.uscourts.gov, under "ADR."

Pursuant to L.R. 26-1(c), counsel are directed to furnish and discuss with their clients the attached ADR Notice To Parties *before* the conference of the parties mandated by Fed.R.Civ.P. 26(f). Based upon the consultation with their clients and discussion with opposing counsel, counsel must indicate the following in their Joint 26(f) Report: 1) whether the case is best suited for mediation with a neutral from the Court Mediation Panel or private mediation; and 2) when the mediation should occur. *See* L.R. 26-1(c).

At the initial scheduling conference, counsel should be fully prepared to discuss their preference for referral to the Court Mediation Panel or to private mediation and when the mediation should occur. The Court will enter an Order/Referral to ADR at or around the time of the scheduling conference.

Clerk, U.S. District Court

August 2, 2022
Date

By /s/ Geneva Hunt
Deputy Clerk

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE TO PARTIES: COURT POLICY ON SETTLEMENT
AND USE OF ALTERNATIVE DISPUTE RESOLUTION (ADR)
Counsel are required to furnish and discuss this Notice with their clients.**

Despite the efforts of the courts to achieve a fair, timely and just outcome in all cases, litigation has become an often lengthy and expensive process. For this reason, it is this Court's policy to encourage parties to attempt to settle their disputes, whenever possible, through alternative dispute resolution (ADR).

ADR can reduce both the time it takes to resolve a case and the costs of litigation, which can be substantial. ADR options include mediation, arbitration (binding or non-binding), neutral evaluation (NE), conciliation, mini-trial and fact-finding. ADR can be either Court-directed or privately conducted.

The Court's ADR Program offers mediation through a panel of qualified and impartial attorneys who will encourage the fair, speedy and economic resolution of civil actions. Panel Mediators each have at least ten years of legal experience and are appointed by the Court. They volunteer their preparation time and the first three hours of a mediation session. This is a cost-effective way for parties to explore potential avenues of resolution.

This Court requires that counsel discuss with their clients the ADR options available and instructs them to come to the initial scheduling conference prepared to discuss the parties' choice of ADR option. The ADR options available are: a settlement conference before the magistrate judge assigned to the case or the magistrate judge in Santa Barbara, the Court Mediation Panel, and private mediation. Counsel are also required to indicate the client's choice of ADR option in advance of the initial scheduling conference. *See* L.R. 26-1(c) and Fed.R.Civ.P. 26(f).

Clients and their counsel should carefully consider the anticipated expense of litigation, the uncertainties as to outcome, the time it will take to get to trial, the time an appeal will take if a decision is appealed, the burdens on a client's time, and the costs and expenses of litigation in relation to the amounts or stakes involved.

Each year thousands of civil cases are filed in this district, yet typically no more than one percent go to trial. Most cases are settled between the parties, voluntarily dismissed, resolved through Court-directed or other forms of ADR, or dismissed by the Court as lacking in merit or for other reasons provided by law.

For more information about the Court's ADR Program, the Mediation Panel, and the profiles of mediators, visit the Court website, www.cacd.uscourts.gov, under "ADR."

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to:

District Judge **Jesus G. Bernal**
Magistrate Judge **Sheri Pym**

The case number on all documents filed with the Court should read as follows:

5:22-cv-01354 JGB (SPx)

District judges in the Central District of California refer all discovery-related motions to the assigned magistrate judge pursuant to General Order No. 05-07. Discovery-related motions should be noticed for hearing before the assigned magistrate judge. Please refer to the assigned judges' Procedures and Schedules, available on the Court's website at www.cacd.uscourts.gov/judges-requirements, for additional information.

Clerk, U.S. District Court

August 2, 2022
Date

By /s/ Geneva Hunt
Deputy Clerk

ATTENTION

The party that filed the case-initiating document in this case (for example, the complaint or the notice of removal) must serve a copy of this Notice on all parties served with the case-initiating document. In addition, if the case-initiating document in this case was electronically filed, the party that filed it must, upon receipt of this Notice, promptly deliver mandatory chambers copies of all previously filed documents to the newly assigned-district judge. See L.R. 5-4.5. A copy of this Notice should be attached to the first page of the mandatory chambers copy of the case-initiating document.