

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

GREG SUDDRETH AND PAUL DUNTON,)
 On Behalf Of Themselves And All Others)
 Similarly Situated,)
)
 Plaintiffs,)
)
 v.)
)
 MERCEDES-BENZ USA, LLC)
)
 Defendant.)
 _____)

Civil Action No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

NATURE OF THE ACTION

1. Plaintiffs Greg Suddreth and Paul Dunton bring this action on behalf of themselves and all other similarly situated owners and lessees of Mercedes Benz branded automobiles in the United States equipped with Mercedes' M272 or M273 engines.¹ As detailed, herein, the subject engines are equipped with defective gears in their balance shafts (in the event of the M272 engines) or with defective idle gears (in the case of the M273 engines). These defective gears wear out prematurely, excessively, and without warning, causing the vehicle to malfunction, the "check engine light" to remain illuminated, and the vehicle to misfire and/or stop driving. The

¹ Mercedes' M272 engine is a V-6 engine first introduced in 2004, and found in the following Mercedes model vehicles in the following model years: Mercedes C 230, SLK 280, SLK 350, and CLS 350 (2004 to present); E 230, CLS 280, CLK 280, C 280, E 280, SL 280, C 350, E 350, S 350, SL 350, and Viano (2005 to present); R 280, R 350, ML 350, and Sprinter (2006 to present); S 280 (2007 to present); CLC 230, and CLC 350 (2008 to present). Mercedes' M273 engine is a V-8 engine first introduced in the model year 2006, and found in the following Mercedes model vehicles in the following model years: E 500/E 550, CL 500/CL 550, CLS 500/CLS 550, and GL 500/GL 550 (2006); GL 450, S 450, and ML 450 (2007); ML 500/ML 550 (2008); and, CLK 500/CLK 550 (2006 and 2009). The class seeks to represent owners and lessees of the foregoing model vehicles who also meet the additional criteria set forth in paragraphs 19 and 20 of this Class Action Complaint.

only recourse is to have the balance shaft or idle gear replaced, which is a large scale repair job, taking numerous days and costing several thousand dollars. Prior to and/or during the relevant time period as alleged herein, Defendant Mercedes-Benz USA, LLC (“Defendant” or “Mercedes”) has known of the existence and manifestation of this defect, as is documented in its own internal documents, but has failed to take appropriate corrective or remedial action, and has concealed the existence of this defect from unsuspecting owners and lessees. Both Plaintiffs are among the numerous owners of such vehicles that have had faulty balance shaft or idle gears, and have incurred thousands of dollars’ worth of repair bills as a result. Defendant’s conduct with regards to the sale, distribution, and repair (or lack thereof) of these vehicles amounts to a violation of Defendant’s common law and statutory duties, as detailed more fully herein.

JURISDICTION AND VENUE

2. This Court has subject matter over this action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332 (as amended 2005) because the Complaint pleads a nationwide class action involving more than \$5 million in controversy, and involves a putative plaintiff class of diverse citizenship than Defendant.

3. This Court has personal jurisdiction over Defendant Mercedes-Benz USA, LLC because Defendant’s principal place of business is located within this judicial district at 3 Mercedes Drive in Montvale, New Jersey 07645.

4. Venue is proper in this district because Defendant is located and headquartered within this judicial district, such that the injection of the subject vehicles into the United States’ stream of commerce took place from within this judicial district. In addition, given Defendant’s headquarters in this district, most or a significant amount of documentary evidence and witnesses

are reasonably likely to be located within this judicial district. Venue in this district is therefore proper pursuant to 28 U.S.C. § 1391.

THE PARTIES AND THEIR EXPERIENCES

5. Plaintiff Greg Suddreth is a resident of Illinois, and an owner of a 2006 Mercedes ML-350 that he purchased from an authorized Mercedes dealer on approximately October 2006. The vehicle is equipped with Mercedes' M272 engine. On approximately February 2009, Plaintiff's vehicle began experiencing engine misfires, and had the "check engine light" illuminate without prior warning. Upon experiencing these issues, Plaintiff brought his vehicle in for repairs at the authorized Mercedes dealership. The dealership purported to repair the vehicle, kept it at the repair shop for approximately four weeks while repairs were being done, but in fact, failed to replace the vehicle's balance shaft, even though this was the actual cause of the vehicle's misfires and this problem was already known to Mercedes and its dealers. Shortly after receiving his vehicle back from the Mercedes dealership, Mr. Suddreth's vehicle again had its "check engine light" illuminate. Mr. Suddreth returned with his vehicle to the dealership's service department in November 2009. The Mercedes diagnostic scanner tool output a "Code 064," indicative of a problem with the vehicle's balance shaft, as had already been acknowledged in an internally disseminated Mercedes Technical Service Bulletin. Nevertheless, the dealership and Mercedes declined to replace the balance shaft, and demanded payment of \$500 just to "diagnose" the problem, even though Mercedes and its dealerships knew all along of the balance shaft issues plaguing Mr. Suddreth's vehicle. The problems continued to persist. In February 2010, almost one year to the day since the symptoms first exhibited themselves, Mr. Suddreth's vehicle again began misfiring.

6. Unable to obtain satisfactory repair at the Mercedes dealership, Mr. Suddreth

brought his vehicle to an independent Mercedes-Benz repair shop. That garage correctly diagnosed the source of the problem as a defective balance shaft gear that had worn prematurely and excessively. In addition, as a result of the ongoing wear on the balance shaft gears, the vehicle's cam sensor (which had already been replaced once by the Mercedes dealer) and air intake system had to be replaced, as metal shavings from the deteriorating balance shaft had been and were entering the air intake system. The independent Mercedes garage also showed Mr. Suddreth a Technical Service Bulletin that Mercedes had released internally to Mercedes technicians, acknowledging the problem with the balance shaft gears in the M272 engines. Replacement of the balance shaft, which was what was actually required, was to be an arduous and costly endeavor, and one for which the independent Mercedes repair shop was not equipped to undertake. Armed with this information, Mr. Suddreth returned with his vehicle to a Mercedes dealership. The dealership now confirmed that Mr. Suddreth's vehicle had a worn balance shaft gear that required replacement, and informed him that the repair would cost approximately \$6,000 and require several days' worth of work. Mercedes refused to cover the repair under the factory warranty, arguing that, as the vehicle had approximately 65,000 miles on it at the time of the defect's manifestation, the vehicle was now outside the warranty coverage term. This, despite the fact, that Mercedes had known all the while about the defect caused by its own making. Mr. Suddreth then contacted Mercedes Benz USA, LLC, but the representative to whom he spoke, Susan C., explicitly denied that there were any commonly occurring problems or defects affecting the balance shafts in vehicles like the one owned by Mr. Suddreth. This representation was directly contradicted by the written Technical Service Bulletins issued internally by Mercedes, which acknowledged and described the problem. Mercedes refused to assist Mr. Suddreth or cover any cost of the needed repairs to his vehicle, and instead, the

Mercedes dealership continued to demand the payment of money to diagnose the problem. To date, Mr. Suddreth has already expended several thousand dollars in repairs for his vehicle as a result of the alleged defect.

7. Plaintiff Paul Dunton is a resident of Massachusetts and the original owner of a 2006 Mercedes ML-350 that he purchased from an authorized Mercedes dealership. His vehicle is equipped with Mercedes' M272 engine. At some time in 2009, his vehicle's "check engine light" illuminated without prior warning, and the vehicle exhibited misfiring. As a result, Mr. Dunton's vehicle would not have passed Massachusetts' required state automobile inspection for renewal of its registration.

8. Mr. Dunton took his vehicle for repairs to an authorized Mercedes dealership. The dealership diagnosed the problem as a worn balance shaft gear that required replacement. Personnel at the Mercedes dealership confided to Mr. Dunton that this was a common problem known to Mercedes and affecting automobiles like his. The dealership informed Mr. Dunton that it would cost approximately \$4,200 to complete the required repairs. As a purported gesture of so-called "goodwill," recognizing the pervasiveness of this problem, the dealership agreed to contribute approximately \$2,100 towards the cost of the repair, leaving Mr. Dunton to pay the remaining \$2,100 approximate balance, which he did. The dealership took approximately 3 to 4 weeks total to complete the repairs. Subsequently, Mr. Dunton contacted Mercedes-Benz USA, LLC, but personnel there contradicted what the dealer informed him, and instead told Mr. Dunton (falsely) that there were no common problems with the balance shafts in vehicles like his.

9. Defendant Mercedes-Benz USA, LLC is a limited liability corporation having its

principal place of business at 3 Mercedes Drive in Montvale, New Jersey 07645. Defendant is a subsidiary of Daimler, Inc., the manufacturer of Mercedes-branded vehicles. Founded in 1965, Mercedes-Benz USA, LLC is responsible for the distribution and marketing of Mercedes and Maybach automobiles within the United States. Defendant was the entity responsible for injecting the Mercedes vehicles currently owned by Plaintiffs into the United States stream of commerce.

THE PERVASIVE NATURE OF THE PROBLEM

10. Plaintiffs' experiences are but two of the many similar situations encountered by owners or lessees of M272 or M273 engine-equipped Mercedes vehicles in the United States. Upon information and belief, the defect in the subject vehicles appears to be attributable to a defect in the materials selection and/or the manufacture or design of the balance shaft gear (in the case of the M272 engines) or the idle gear (in the case of the M273 engines) that causes the sprockets on the balance shaft in the M272 engine to wear prematurely and excessively, and likewise to cause the guide on the idler gear that drives the timing chain in the M273 engine to wear prematurely and excessively. Indeed, so pervasive is the problem, that a host of message boards for aggrieved Mercedes owners have arisen online. Even a cursory sampling of these documents how pervasive the problem is.

11. Attached as Exhibit 1 hereto are postings at an online message board found at a website entitled benzworld.org. The message board topic begins with a posting of an owner of a 2006 Mercedes C230 with only 31,000 miles that had to have the balance shaft replaced. (Ex. 1 at Posting No. 1). The reply postings reveal a steady stream of owners similarly affected. One poster relates that: "That's exactly what happened to mine. The CEL [check engine light] came on for both cams being out of time. When they tore the motor apart it turned out that the balance

shaft actually was worn causing it. Hopefully this won't happen again?" (*Id.*). Another owner posts that: "love my MB but am a real novice about anything automotive. CEL [check engine light] went on two days ago, brought it into MB and they told me that I needed to replace my balance shaft for a 06 E350 with 90k miles on it. Is this a common problem? I am being told it will take 3 days and \$4,000 to fix this which seems unbelievable when I have never had an issue with the car before." (*Id.* at Posting No. 12). Another post (this one by Plaintiff Dunton), relates that, "The dealer told me I had the same problem with the balance shaft, and told me it was a common problem, they would fix it for \$4000 and mercedes would kick in \$2000 because it is a common problem." (*Id.* at Posting No. 22). Yet another posting (this one by Plaintiff Suddreth) relates that "Was just told by my mechanic I have this issue." (*Id.* at Posting No. 37). Yet another poster to the same message board also informed that, "I was just informed that my 2006 e-350 needs to get the balance shaft replaced. Unfortunately, I am out of warranty; if they would have caught this problem 3 weeks ago when i brought it in for service, my warranty would have covered it." (*Id.* at Posting No. 52). And the postings continue, as another owner describes that, "I am about to have a Gear on the balance shaft on my 2006 C240 replaced. The CEL [check engine light] stays on after servicing. Estimated at \$4000.00. Is this normal? I have 68,000 miles." (*Id.* at Posting No. 61). Yet another aggrieved Mercedes owner posts that, "I have a 2006 ML350 with 56,000 miles at the dealer right now to replace the balance shaft. I've started a facebook page for owners who have had the same problems with that motor to get everyone together with this issue. Maybe a possible class action in the future??" (*Id.* at Posting No. 63).

12. The foregoing are but selected postings in only one online message board, but the problem is so pervasive that several other online message boards with similar experiences exist. Another message board entitled "ML-350 3.5L Balance Shaft Failure" at the peachparts.com

site, attached hereto as Exhibit 2, contains the following posting from a Mercedes owner, “What a surprise!.. Wife's '06 ML350 had intermittent CEL [check engine light]. Last year, dealer replaced cam /timing position sensors. Problem continued to occur with CEL coming on even more frequently. NOW, they tell me that the Balance Shaft has a bad gear and it is deteriorating. 73K miles. Thank goodness for extended warranties. Finding from other web site threads and blogs that MB USA is not consistent with the treatment of customers... some customers are bearing the full cost of the repair while others are being offered "good will" discounts. Appears there had been a service bulletin out for 2 1/2 years on this problem with no sign that MBUSA is stepping up to cover a known fault. roughly 10 updates to the bulletin adding vehicles to the list.” (Ex. 2 at Posting No. 1). In response, a poster to the same message board that is evidently a Mercedes mechanic relates that, “I've got two at my shop right now, an ML and an R Class. It looks like two of my guys will be busy for the next few days. They're both out of warranty, but I'm sure MB will help out.” (*Id.* at Posting No. 15).

MERCEDES ACTUAL KNOWLEDGE AND INTENTIONAL CONCEALMENT OF THE DEFECT

13. Mercedes has known all along about the existence of a defect with the balance shaft gears in its M272 engines and idle gears on its M273 engine, yet it has concealed that knowledge and deliberately omitted any information or dissemination about its existence to the unsuspecting putative class members.

14. Mercedes' knowledge of the defect is evidenced by the fact that at least as early as August 2007, Mercedes issued an internal Technical Service Bulletin that documented the problem and informed Mercedes technicians how to diagnose it and replace the defective balance shaft or idle gears. Further, to date, since the August 2007 initial release of the internal Technical Service Bulletin, Mercedes has issued approximately 10 amendments, supplements

or additional Technical Service Bulletins, all of which acknowledge the problem brought about by the defective balance shaft or idle gears.

15. The Technical Service Bulletins were disseminated internally by Mercedes to its repair technicians, and were not designed to and did not inform the general public, drivers, or lessees of affected vehicle about the defect. To the contrary, even while knowing all the while of the existence of this defect, Mercedes continued to offer for sale and sell the subject vehicles equipped with the M272 and M273 engines, and took no steps to replace the defective parts, or to otherwise remedy the defect.

16. That Mercedes knew and has known all along about the defect in its balance shaft gears is also independently confirmed by review of their diagnostic codes and manuals. When a Mercedes vehicle is brought in for repairs to an authorized Mercedes dealership, the technician may connect the vehicle to an electronic diagnostic scanner that will output a series of codes, which purport to store in the vehicle's computer memory a set of conditions that the vehicle has experienced. Armed with these codes, the Mercedes technician can turn to Mercedes repairs manuals that may document potential diagnoses of fault tree procedures to follow, given certain diagnostic code outputs from the scanner tool. For several years now, Mercedes diagnostic manuals have alerted its technicians that in vehicles equipped with the M272 engine, if the scanner outputs codes that correspond to retarded cam shafts on the engine, the Mercedes diagnostic manual instructs the repair technician to check for probable balance shaft gear wear, thereby highlighting that Mercedes already knew of this defect, its symptoms, and manifestations, yet concealed its existence from the driving and buying public.

17. Mercedes' knowledge and concealment of the defect is also independently evidenced

by the fact that, upon information and belief, only sometime in 2009, Mercedes eventually replaced the balance shaft gear in its M272 engine and the idle gear in its M273 engine for new vehicles coming off the assembly line with these engines. Yet, while it did that going forward, Mercedes took no action and made no disclosure as to the defective balance shaft and idle gears on the then existing Mercedes vehicles equipped with the M272 or M273 engines.

18. Mercedes' concealment and its omission of any disclosure of the defect in the affected automobiles was not merely a case of innocent omission or misrepresentation, but rather represents an intentional campaign to fraudulently deceive the buying public. Mercedes knew that, if it disclosed its knowledge of the existence of the defect in the balance shaft and idle gears, it would be liable for their replacement, and would face adverse consequences to its reputation and sales. In addition, failing to disclose the defect would allow Mercedes' dealerships to generate additional significant revenues from the cost associated with the replacement of the defective balance shaft and idle gears in vehicles that had experienced the manifestations of the defect. As a result, Mercedes sought to avoid this liability and adverse consequences, and at the same time to enhance the revenue stream to its dealership's repair garages, by intentionally and fraudulently concealing this defect.

CLASS ACTION ALLEGATIONS

19. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs bring this action as a class action on behalf of all owners and lessees within the United States of Mercedes vehicles equipped with either the M272 or M273 engines, subject to the qualifications listed herein. Specifically, with respect to owners or lessees of Mercedes vehicles equipped with the M272, that portion of the class is limited to those owners of vehicles with M272 engines bearing serial numbers up to 2729..30 468993. With respect to owners or lessees of Mercedes vehicles

equipped with the M273, that portion of the class is limited to those owners of vehicles with M273 engines bearing serial numbers up to 2739..30 088611. Collectively, the foregoing vehicles are referred herein as the “subject vehicles.” Plaintiffs are both current owners of subject vehicles. Specifically excluded from the class are all judicial officers assigned to this case, as well as all federal and state employees, and the employees of Defendant or its corporate affiliates. Also excluded from the class definition are any individuals who allegedly have suffered personal injuries as a result of the alleged defects. Plaintiffs reserve to amend or supplement this class definition as discovery or other case development warrant.

20. In addition to the foregoing class definition, applicable to Counts I and II of this Complaint, for Counts III-VIII, Plaintiffs also seek to certify a subclass consisting of owners and lessees within the State of Illinois of the foregoing vehicles, and of owners and lessees within the Commonwealth of Massachusetts of the foregoing vehicles.

21. Although the exact number of class members is presently unknown, Plaintiffs are informed and believe and thereon allege that the class as well as the subclasses will number in the thousands of consumers, thereby making joinder impracticable.

22. Class certification is also appropriate because there are questions of fact and/or law that are common to the class members. Among these common questions of fact and/or law are:

- a. Whether Defendant is responsible for injecting allegedly defective vehicles in to the United States’ stream of commerce;
- b. Whether the subject vehicles are defective, and, if so, the nature of the defect;
- c. Whether Defendant’s conduct violates the New Jersey Consumer Fraud Act;
- d. Whether Defendant breached any duty imposed upon it by law;

- e. Whether any warranties, expressed or implied, were breached in connection with the sale and/or distribution of the subject vehicles;
- f. Whether class members are entitled to the relief sought, and if so, the proper scope of such relief, including, but not limited to the proper measure of damages.

23. Plaintiffs' claims are typical of the claims of the absent class members in that Plaintiffs, like all the absent class members, claim that they are either the owners or lessees of a Mercedes vehicle that is equipped with either an M272 or M273 engine that is defective. Plaintiffs are members of the class they seek to represent, and the claims they advances on their own behalf are identical to the claims asserted on behalf of the class.

24. Plaintiffs are adequate class representatives in that, as members of the class and as current owners of allegedly defective Mercedes vehicles equipped with the M272 or M273 engine, their interests are entirely aligned with those of the class. There are no individual conflicts that prevent Plaintiffs from adequately representing the class. Plaintiffs have also retained competent counsel experienced in class action litigation.

25. Class certification is proper because common questions of fact and law predominate over questions that may affect only individual members of the class or subclasses. The subject vehicles are manufactured on an assembly line setting, subject to a common design and manufacturing plan, such that evidence of a defect in the balance shaft or idle gears would be one that would predominate over the entire class membership, as would evidence of Defendant's course of action, knowledge of the alleged defect, and any alleged concealment thereof.

26. A class action presents a superior form of adjudication over individual litigation.

The costs of litigating this action against a large and sophisticated defendant like Defendant in comparison to the recovery or relief sought would make individual litigation impracticable. In addition, forcing individual litigation would risk the result of inconsistent rulings with respect to Defendant's duties owed to the various vehicle owners and lessees.

27. A class action is manageable. The proposed class represents an identifiable community that can be readily identified, and the relief sought is one that can be overseen by the Court.

COUNT I

(VIOLATION OF NEW JERSEY CONSUMER FRAUD ACT—ON BEHALF OF NATIONWIDE CLASS)

28. Plaintiffs hereby incorporate by reference all of the allegations of this Complaint with the same force and effect as if they had been fully restated herein.

29. Plaintiffs bring this count of their Complaint on behalf of the nationwide class alleged in Paragraph 19 *supra* (subject to Plaintiffs' reservation of rights to amend or supplement this class definition as case circumstances warrant) to seek redress for Defendant's violations of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-2.

30. Defendant's failure to disclose as well as its intentional and fraudulent omission from any of its advertising and sales materials or brochures of the subject vehicles' defects, as well Defendant's denial of warranty coverage for repairs required as a result of these defects that were known to it, but concealed from the public, amount to an unconscionable commercial practice, deception, fraud, false pretense, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of the subject vehicles, thereby violating N.J.S.A. §56:8-2.

31. Among other things, Defendant knew that the subject vehicles had a defect which would cause them to fail before their expected useful life, and intentionally concealed that information from class members, with the purpose of maximizing profit, thereby independently violating the New Jersey Consumer Fraud Act.

32. Plaintiffs and the class members have suffered an ascertainable loss and/or injury as a result of Defendant's violations of the New Jersey Consumer Fraud Act. Plaintiffs have had to expend significant money to cover the repair bills required as a result of the defects. Further, both Plaintiffs and all class members have sustained a diminished value of their vehicles as a result of the subject defect because, once the defect is disclosed as is being done through the filing of this lawsuit, the resale value of the vehicle will be negatively impacted as a specific and predictable result of the subject defect. In addition, each of the class members has further suffered an ascertainable loss or injury because none of them have received the benefit of their bargain in connection with their purchase or lease of the subject vehicle. Instead, each received a vehicle bearing a latent defect in its balance shaft or idle gears.

COUNT II

(BREACH OF EXPRESS WARRANTY – ON BEHALF OF NATIONWIDE CLASS)

33. Plaintiffs hereby incorporate by reference all of the allegations of this Complaint with the same force and effect as if they had been fully restated herein.

34. Plaintiffs Suddreth and Dunton are owners of Mercedes model vehicles equipped with the M272 engine containing the defect in the balance shaft gear detailed herein.

35. Like all such automobiles, when sold, the Plaintiff's vehicles were subject to an express factory warranty issued by Defendant, whose terms purported to provide coverage for repairs and defects for a period of the earlier of 4 years or 50,000 miles since the vehicles' in-service date to the vehicles' original and subsequent owners.

36. Specifically, the Mercedes express warranty provides, in pertinent part, that:

Mercedes-Benz USA, LLC (MBUSA) warrants to the original and each subsequent owner of a new Mercedes-Benz passenger car that any authorized Mercedes-Benz Center will make any repairs or replacements necessary, to correct defects in material or workmanship arising during the warranty period.

The Warranty documentation specifically states that Mercedes' "intention is to repair under warranty, without charge to you, anything that goes wrong with your car during the warranty period which is our fault."

37. As detailed herein, Plaintiffs' and class members' vehicles were defective within the warranty coverage period because a defect within the balance shaft gear or idle shaft was present from the date of the vehicles' manufacture.

38. Defendant has breached the terms of this express warranty by failing to correct, at no charge to class members, the subject defect. Rather, within the warranty coverage period, Defendant routinely denies that any such defect exists, or that its "discovery" has taken place outside the period of warranty coverage, and has therefore refused to repair the class members' vehicles, as required under the terms of Defendants' express warranty.

39. To the extent that Mercedes has claimed and continues to claim that it is justified in refusing to remedy and/or repair the subject defect in certain vehicles because the defect has been "discovered" only after the durational period of warranty coverage has elapsed, that practice amounts to an unconscionable business practice, rendering Mercedes' justification unenforceable, and as a result, Defendant is and should be ordered to remedy the defect under warranty.

40. Adhering to the durational period of the warranty is unconscionable because, inter alia, Defendant knew when it sold the subject vehicles (backed with the express warranty) that the defects alleged herein existed and failed to disclose the same to the vehicle owners, or to

exclude coverage for the same within the terms of the express warranty. The nature of the defects are such that they were known to Defendant but were not and could not have been known to, or discovered by, class members upon reasonable inspection of the vehicles prior to their purchase. Defendant's superior knowledge about the quality of the vehicles, including its defects, as well as Defendant being the sole issuer of the express warranty covering the subject vehicles, gave Defendant a superior bargaining power with respect to class members in setting forth the terms of the warranty coverage.

41. As a proximate, foreseeable, and direct result of Defendant's breach of its express warranty, Plaintiffs and the class members have suffered legal and actual injury, including the expenditure of money damages to have their vehicles repaired and associated expenses, damages associated with the loss of use and enjoyment of the vehicle, and damages associated with the decreased value of the vehicle.

COUNT III

(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY— ON BEHALF OF ILLINOIS AND MASSACHUSETTS SUBCLASSES)

42. Plaintiffs hereby incorporate by reference all of the allegations of this Complaint with the same force and effect as if they had been fully restated herein.

43. Plaintiff Greg Suddreth alleges a claim for breach of the implied warranty of merchantability on behalf of a class of Illinois owners and lessees of the subject vehicles, and Plaintiff Paul Dunton alleges a claim for breach of the implied warranty of merchantability on behalf of a class of Massachusetts owners and lessees of the subject vehicles.

44. Defendant is a merchant with respect to the distribution, sale, and leasing of Mercedes automobiles in the United States. With respect to the sale or lease of Plaintiffs' automobiles, the Mercedes dealerships from which Plaintiffs purchased their respective vehicles

were acting as agents of Defendant. They were selected by Defendant, and authorized by Mercedes to represent themselves as Mercedes-authorized dealers. They were further authorized to offer Mercedes warranty coverage on the vehicles only subject to Defendant's authorization and criteria.

45. By operation of law, an implied warranty of merchantability from Defendant attached to each sale and lease of the subject vehicles warranting that the vehicles were of merchantable quality.

46. Because the subject vehicles contain a defect in their balance shaft or idle gears that causes them to be unduly prone to experience engine misfiring, having a "check engine light" condition, or to stop running, they are of unmerchantable quality, and Defendant has breached its implied warranty of merchantability.

47. The subject vehicles are not merchantable because, *inter alia*: they would not pass without objection in the trade under the contract description; they are not of fair average quality within the description; they are not fit for the ordinary uses for which such vehicles are used; and, they are not adequately labeled.

48. As a proximate and foreseeable result of this breach, Plaintiffs and the members of the subclasses have been injured by being forced to operate unmerchantable vehicles that did not correspond to the benefits of the subclass members' bargains.

COUNT IV

BREACH OF EXPRESS WARRANTY—ON BEHALF OF NATIONWIDE CLASS)

49. Plaintiffs hereby incorporate by reference each and every allegation of this complaint with the same force and effect as if it had been fully restated herein.

50. Plaintiffs hereby incorporate by reference each and every allegation of this

complaint with the same force and effect as if it had been fully restated herein.

51. Plaintiff Greg Suddreth alleges a claim for defective design strict liability on behalf of a class of Illinois owners and lessees of the subject vehicles, and Plaintiff Paul Dunton alleges a claim for defective design strict liability on behalf of a class of Massachusetts owners and lessees of the subject vehicles.

52. The subject vehicles are defectively designed automobiles in that they contain a design defect or flaw in their balance shaft or idle gears that causes the vehicles to be unduly prone to experiencing engine misfiring, “check engine light” conditions, or to stop running. The defect at issue is a latent one that would not be apparent to a reasonable consumer upon reasonable inspection. The defective design renders the subject vehicles inherently dangerous for their foreseeable and intended use of vehicular transport.

53. As a proximate and foreseeable result of this defective design, Plaintiffs and the members of the subclasses have been injured by being forced to operate defective and/or inherently dangerous vehicle.

54. Defendant is strictly liable for this design defect.

55. The damages or injury sustained by Plaintiffs and the members of the subclasses as a proximate result of the alleged design defect is the proximate result of Defendant’s business practice of supplying information for the guidance of others in their business transactions. In this regard, it is Defendant that supplies to each of its authorized Mercedes dealers the specific criteria for what repair work will be granted coverage under the Mercedes factory warranty, and what claims will be denied. This information from Defendant, in turn, guides the Mercedes dealers in deciding whether the repair work necessitated by the alleged defects was to be covered under the Mercedes factory warranty. It was Defendant, in exercising its business practice of

supplying such information to each of the independent dealers, that supplied guidelines and criteria pursuant to which the dealers denied warranty coverage for the alleged defect to Plaintiffs and members of the subclasses, even though Defendant knew that the need for repair work was brought about by the alleged defect that Defendant had kept concealed from the public.

56. In this regard, Defendant is also the entity responsible for supplying information to each of its authorized dealers, pursuant to which the dealers may initiate a customer satisfaction campaign to notify them of the need for repair or replacement of faulty or defective parts. In exercising that business duty, Defendant affirmatively decided that it would not supply Mercedes dealers within the United States with the requisite information needed for the dealers to implement such a customer satisfaction or other repair campaign.

COUNT V

(STRICT LIABILITY – DEFECTIVE MANUFACTURE-- ON BEHALF OF ILLINOIS AND MASSACHUSETTS SUBCLASSES)

57. Plaintiffs hereby incorporate by reference each and every allegation of this complaint with the same force and effect as if it had been fully restated herein.

58. Plaintiff Greg Suddreth alleges a claim for defective manufacture strict liability on behalf of a class of Illinois owners and lessees of the subject vehicles, and Plaintiff Paul Dunton alleges a claim for defective manufacture strict liability on behalf of a class of Massachusetts owners and lessees of the subject vehicles.

59. The subject vehicles are defectively manufactured automobiles in that they contain a manufacturing defect or flaw in their balance shaft or idle gears that causes the vehicles to be unduly prone to experiencing engine misfiring, “check engine light” conditions, or to stop running. The defect at issue is a latent one that would not be apparent to a reasonable consumer

upon reasonable inspection. The defective manufacture renders the subject vehicles inherently dangerous for their foreseeable and intended use of vehicular transport.

60. As a proximate and foreseeable result of this defective manufacture, Plaintiffs and the members of the subclasses have been injured by being forced to operate defective and/or inherently dangerous vehicle.

61. Defendant is strictly liable for this manufacturing defect.

62. The damages or injury sustained by Plaintiffs and the members of the subclasses as a proximate result of the alleged manufacturing defect are the proximate result of Defendant's business practice of supplying information for the guidance of others in their business transactions. In this regard, it is Defendant that supplies to each of its authorized Mercedes dealers the specific criteria for what repair work will be granted coverage under the Mercedes factory warranty, and what claims will be denied. This information from Defendant, in turn, guides the Mercedes dealers in deciding whether the repair work necessitated by the alleged defects was to be covered under the Mercedes factory warranty. It was Defendant, in exercising its business practice of supplying such information to each of the independent dealers, that supplied guidelines and criteria pursuant to which the dealers denied warranty coverage for the alleged defect to Plaintiffs and members of the subclasses, even though Defendant knew that the need for repair work was brought about by the alleged defect that Defendant had kept concealed from the public.

63. In this regard, Defendant is also the entity responsible for supplying information to each of its authorized dealers, pursuant to which the dealers may initiate a customer satisfaction or similar campaign to notify them of the need for repair or replacement of faulty or defective parts. In exercising that business duty, Defendant affirmatively decided that it would not supply

Mercedes dealers within the United States with the requisite information needed for the dealers to implement such a customer satisfaction or other repair campaign.

COUNT VI

(STRICT LIABILITY – FAILURE TO WARN-- ON BEHALF OF ILLINOIS AND MASSACHUSETTS SUBCLASSES)

64. Plaintiffs hereby incorporate by reference each and every allegation of this complaint with the same force and effect as if it had been fully restated herein.

65. Plaintiff Greg Suddreth alleges a claim for failure to warn strict liability on behalf of a class of Illinois owners and lessees of the subject vehicles, and Plaintiff Paul Dunton alleges a claim for failure to warn strict liability on behalf of a class of Massachusetts owners and lessees of the subject vehicles.

66. The subject vehicles do not contain any warning alerting their users that the vehicles are unduly prone to experience engine misfiring, a “check engine light” situation, or to stop running altogether, as a result of defective balance shaft or idle gears. This omission or failure to warn is unreasonable, and renders the vehicles inherently dangerous. Because the defect at issue is a latent one that would not be apparent to a reasonable consumer upon reasonable inspection, Defendant had a duty to provide a warning about it to the vehicle owners and lessees.

67. As a proximate and foreseeable result of this failure to warn, Plaintiffs and the members of the subclasses have been injured by being forced to operate an inherently dangerous vehicle and/or one that is unsuitable for its intended use.

68. Defendant is strictly liable for this failure to warn.

69. The damages or injury sustained by Plaintiffs and the members of the subclasses

as a proximate result of the alleged failure to warn are the proximate result of Defendant's business practice of supplying information for the guidance of others in their business transactions. In this regard, it is Defendant that supplies to each of its authorized Mercedes dealers the specific criteria for what repair work will be granted coverage under the Mercedes factory warranty, and what claims will be denied. This information from Defendant, in turn, guides the Mercedes dealers in deciding whether the repair work necessitated by the alleged defects was to be covered under the Mercedes factory warranty. It was Defendant, in exercising its business practice of supplying such information to each of the independent dealers, that supplied guidelines and criteria pursuant to which the dealers denied warranty coverage for the alleged defect to Plaintiffs and members of the subclasses, even though Defendant knew that the need for repair work was brought about by the alleged defect that Defendant had kept concealed from the public.

70. In this regard, Defendant is also the entity responsible for supplying information to each of its authorized dealers, pursuant to which the dealers may initiate a customer satisfaction or similar campaign to notify them of the need for repair or replacement of faulty or defective parts. In exercising that business duty, Defendant affirmatively decided that it would not supply Mercedes dealers within the United States with the requisite information needed for the dealers to implement such a customer satisfaction or other repair campaign.

COUNT VII
(NEGLIGENCE-- ON BEHALF OF ILLINOIS AND MASSACHUSETTS SUBCLASSES)

71. Plaintiffs hereby incorporate by reference each and every allegation of this complaint with the same force and effect as if it had been fully restated herein.

72. Plaintiff Greg Suddreth alleges a claim for negligence on behalf of a class of Illinois

owners and lessees of the subject vehicles, and Plaintiff Paul Dunton alleges a claim for negligence on behalf of a class of Massachusetts owners and lessees of the subject vehicles.

73. As the distributor into the United States' stream of commerce of a mass produced vehicle that would foreseeably be used by thousands of consumers, Defendant owed Plaintiffs and the class members a duty of reasonable care with respect to the distribution of the subject vehicle.

74. Defendant breached this duty of reasonable care by distributing a defective vehicle that was defective in the manner alleged herein.

75. As a proximate and foreseeable result of this breach, Plaintiffs and the members of the subclasses have been injured by, *inter alia*, being forced to operate a defective vehicle, being forced to pay significant repair costs and expenses, and sustaining a diminution of value to the subject vehicles attributable to the alleged defects.

COUNT VIII

(UNJUST ENRICHMENT)

76. Plaintiffs hereby incorporate by reference each and every allegation of this complaint with the same force and effect as if it had been fully restated herein.

77. Plaintiffs and the class members are each owners of Mercedes automobiles whose engines are defective in the manner detailed herein.

78. By purchasing a Mercedes branded automobile, Plaintiffs and the class members conveyed monetary as well as intangible benefits on Defendants, and Defendant appreciated and was enriched by those benefits.

79. As a result of Defendant's unjust and inequitable conduct alleged herein, including its

distribution of defective automobiles into the United States' stream of commerce, as well as its failure to properly remedy those defects, it would be unjust and inequitable for Defendant to be permitted to retain these benefits.

80. Plaintiffs and class members are, therefore, entitled to and hereby pray for a judgment of restitution, ordering Defendant to disgorge its ill-gotten gains to the class members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the class and subclass members pray for judgment against Defendant as follows:

- a) That the Court determine that this action may be litigated as a class action, and that Plaintiffs and their counsel be appointed class representative and class counsel, respectively;
- b) That the Court enter judgment against Defendant and in favor of Plaintiffs, the class and the subclasses on all counts;
- c) That Defendant be required by this Court's Order to create a common fund to remedy the defects alleged herein, and to compensate all members of the class and subclasses for their damages and injuries, as well as to compensate Plaintiffs' counsel for their attorneys' fees and cost of suit; and, that Defendant be ordered to bear the cost of notice the absent class members, as well as of the administration of this common fund;
- d) That damages and/or restitution or disgorgement be awarded to each Plaintiff and class or subclass member according to proof;
- e) That the Court award Plaintiffs and the members of the class and subclasses punitive damages assessed against Defendant;

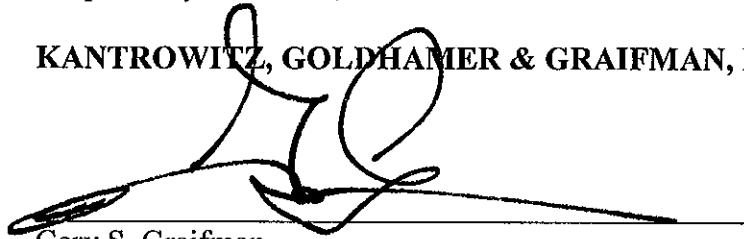
f) That Plaintiff and the class members be awarded all such other relief as this Court deems just and proper.

Plaintiffs request a jury trial on all counts so triable.

Dated this 5th day of October, 2010.

Respectfully submitted,

KANTROWITZ, GOLDHAMER & GRAIFMAN, P.C.

A handwritten signature in black ink, appearing to read 'Gary S. Graifman', is written over a horizontal line. The signature is stylized and cursive.

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