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BY: MMB
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
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2010

11 UNITED STATES DISTRICT COURT
12
13 CENTRAL DISTRICT OF CALIFORNIA—WESTERN DIVISION

14
15 TIGRAN CHOLAKYAN, individually,
16 and on behalf of a class of similarly
17 situated individuals,

18 Plaintiff,

19 v.

20 MERCEDES-BENZ USA, LLC,

21 Defendant.

Case Number **CV 10 5944** - mmm
(50)

22 **CLASS ACTION COMPLAINT**
23 **FOR:**

- 24 (1) **Violations of California**
25 **Consumer Legal Remedies Act**
- 26 (2) **Violations of Unfair Business**
27 **Practices Act – Secret**
28 **Warranty**
- (3) **Violations of Unfair Business**
Practices Act
- (4) **Breach of Implied Warranty**
pursuant to Song-Beverly
Consumer Warranty Act

JURY TRIAL DEMANDED

Case No.:

1/5
2/1

INTRODUCTION

1
2 1. Plaintiff Tigran Cholakyan (“Plaintiff”) brings this action for himself
3 and on behalf of all similarly situated persons (“Class Members”) who purchased
4 or leased certain defective Mercedes-Benz E-Class vehicles sold by defendant
5 Mercedes-Benz USA, LLC (“Defendant” or “MBUSA”).

6 2. Defendant designed, manufactured, distributed, sold, and leased
7 model year 2002 through 2009 Mercedes-Benz E-Class W-211 vehicles (“Class
8 Vehicles”) to Plaintiff and Class Members.

9 3. Beginning in 2002, if not before, Defendant knew or should have
10 known that the Class Vehicles contain one or more design and/or manufacturing
11 defects that causes them to be highly prone to water leaks and flooding (the “water
12 leak defect”), including but not limited to defects in the Class Vehicles’ water
13 drainage system, which is designed to prevent water from entering the vehicle
14 during rain or when the vehicle is washed.

15 4. The Class Vehicles’ water drainage system is uniformly and
16 inherently defective in materials, design, and workmanship because it fails to
17 prevent water from entering a vehicle’s interior cabin, causing electrical failure
18 due to the water damaging the computer, electrical system, and interior
19 components of a Class Vehicle.

20 5. The Class Vehicles present a safety hazard and are unreasonably
21 dangerous to consumers because of the danger of catastrophic engine and/or
22 electrical system failure as a result of water entering and flooding a vehicle’s
23 interior cabin while the vehicle is in operation. Thus, the water leak defect can
24 cause engine failure, suddenly and unexpectedly, at any time and under any
25 driving condition or speed, thereby contributing to traffic accidents, which can
26 result in personal injury or death.
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1 6. In addition to the safety hazards, the costs of the water leak defect to
2 consumers can be exorbitant because consumers will be required to pay hundreds,
3 if not thousands, of dollars both to diagnose and repair the water leak defect and to
4 repair the extensive damage that it causes to a vehicle's electrical system,
5 computer system, and other damage that can occur as a result of the water leak
6 defect.

7 7. Plaintiff is informed and believes and based thereon alleges that
8 Defendant knew or should have known that the Class Vehicles are defective and
9 not fit for their intended purpose of providing consumers with safe and reliable
10 transportation. Nevertheless, Defendant has actively concealed and failed to
11 disclose this defect from Plaintiff and the Class Members at the time of purchase
12 or lease and thereafter.

13 8. Plaintiff is informed and believes and based thereon alleges that as
14 the number of consumer complaints about the water leak defect increased, in
15 2008, Defendant issued a secret technical service bulletin ("TSB") to only its
16 dealers, acknowledging the water leak defect by implementing cheaper, albeit
17 temporary, fixes: namely, clearing and/or cleaning the water drainage system,
18 adding seam sealers to parts of the vehicle that are susceptible to the water leak
19 defect, and modifying the a Class Vehicle's water drainage system by "[d]rill[ing]
20 [an] additional drain hole" ("drainage system modification").

21 9. Although Defendant normally attributes water leaks suffered by the
22 Class Vehicles to outside influences and does not cover them under warranty, the
23 2008 TSB directs MBUSA dealers to perform the clearing, cleaning, resealing,
24 and drainage system modification at no cost to consumers under warranty.
25 However, Defendant's clandestine, free clearing, resealing and drainage system
26 modification TSB programs are strictly limited to the most persistent customers
27 and only those who complain loudly enough, regardless of whether or not their
28 vehicles are covered under MBUSA's warranty.

1 10. Plaintiff is also informed and believes and based thereon alleges that
2 to mollify those consumers who complain loudly enough, Defendant implemented
3 another clandestine program to secretly reimburse or pay for repair costs of those
4 Class Vehicles that suffer from the water leak defect and the related damage it
5 causes (*e.g.*, damage to a vehicle's computer and electrical system), even when the
6 water leak defect and the related damage that it causes occurs outside a vehicle's
7 4-year/50,000-mile express warranty period.

8 11. As with its secret TSB program, including the cost-free temporary
9 fixes, Defendant's secret repair and/or reimbursement program for the water leak
10 defect and the damage it causes is also strictly limited to the most persistent
11 customers who complain loudly enough. For example, Defendant refused to
12 provide Plaintiff and prospective Class Members with any of the free
13 modifications or the cost-free repairs for damage that occurred as a result of the
14 water leak defect, while it has paid and/or reimbursed and/ modified the water
15 drainage system of other noisy consumers who continuously persisted and
16 demanded free repairs, modifications, or reimbursements for water-leak-defect-
17 related damage.

18 12. Upon information and belief, Plaintiff alleges that if Defendant's
19 secret, temporary fixes, including the modification of the drainage system, is
20 successful, the effect of these fixes only last long enough to ensure that the
21 manifestation of the water leak defect occurs outside of the warranty period, but
22 they will not permanently remedy the water leak defect. This ultimately leaves
23 consumers with defective vehicles that are substantially certain to again
24 experience the water leak defect, the consequent damage caused by the water leak
25 defect, and the associated safety hazards.

26 13. Plaintiff is also informed and believes and based thereon alleges that
27 Defendant is aware that the resealing and water drainage system modification does
28 not fix the water leak defect. Rather, Defendant has implemented these temporary

1 fixes to prolong the amount of time that will elapse before the water leak defect
2 again manifests itself, thus helping ensure that the water leak defect occurs outside
3 of the warranty period so that Defendant can easily and unfairly shift financial
4 responsibility for the water leak defect to Class Members and their insurers.

5 14. Plaintiff is informed and believes and based thereon alleges that
6 despite notice of the defect from numerous consumer complaints and dealership
7 repair orders, Defendant has not recalled the Class Vehicles to repair the defect,
8 has not offered its customers a suitable repair or replacement free of charge, and
9 has not offered to reimburse the Class Vehicles' owners and leaseholders the costs
10 they incurred relating to diagnosing and repairing the water leak defect and related
11 damage caused by the water leak defect, including but not limited to repairing or
12 replacing electrical components, detailed cleaning and drying, repairs for water
13 damage, increased insurance premiums, vehicle rental costs, etc.

14 15. Defendant knew and concealed the defects that are contained in every
15 Class Vehicle, along with the attendant dangerous safety problems and associated
16 repair costs, from Plaintiff and Class Members both at the time of sale and repair
17 and thereafter. Had Plaintiff and the Class Members known about these defects at
18 the time of sale or lease, Plaintiff and Class Members would not have purchased
19 the Class Vehicles or would have paid less for them. As a result of their reliance
20 on Defendant's omissions and/or misrepresentation, owners and/or lessees of the
21 Class Vehicles have suffered ascertainable loss of money, property, and/or value
22 of their Class Vehicles.

23 16. Additionally, as a result of the water leak defect in the Class
24 Vehicles, Plaintiff and the Class Members have been harmed and have suffered
25 actual damages in that the Class Vehicles are experiencing continuous,
26 progressive, and repeated problems associated with the water leak defect and/or
27 are substantially certain to experience problems associated with the water leak
28 defect before the expected useful life of their Class Vehicles has run.

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PARTIES

Plaintiff:

17. Plaintiff Tigran Cholakyan is a California citizen who lives in Los Angeles County, California. On August 7, 2008, Mr. Cholakyan purchased a used Certified Pre-Owned (7-year/ 100,000-mile warranty) 2005 E-320 Mercedes Benz, with approximately 28,841 miles on its odometer, from Mercedes-Benz of Calabasas, in Calabasas, California. Mr. Cholakyan purchased this vehicle primarily for his personal, family, or household purposes. This vehicle was manufactured, sold, distributed, advertised, marketed, and warranted by Defendant, and bears the Vehicle Identification No. WDBUF65J25A615928.

18. In January 2010, Mr. Cholakyan parked his vehicle at the Burbank Airport before leaving for a weekend trip to Las Vegas. Upon his return and after a couple of days during which it had rained there, Mr. Cholakyan found that, *inter alia*, water had entered and flooded the interior cabin of his vehicle as a result of the defects mentioned herein.

19. In or about March 2010, with approximately 44,226 miles on his odometer, Mr. Cholakyan's vehicle again suffered from the water leak defect mentioned herein when, *inter alia*, water entered the interior cabin of his vehicle.

20. As a result of the January and March 2010 incidents, Mr. Cholakyan brought his vehicle to a Mercedes-Benz authorized dealer, Mercedes-Benz of Calabasas, complaining about the water leak defect and the damage that it had caused. The dealer verified the water leak defect and advised Mr. Cholakyan that he would have to pay several hundred more dollars than he had already paid to repair the water leak defect and the damage that it had caused. The dealer further advised Mr. Cholakyan that the cost to repair the defect and the damage that it had

1 caused was not covered under MBUSA's 100,000 miles Certified Pre-Owned
2 warranty.

3 21. At all times, Plaintiff, like all Class Members, has driven his vehicle
4 in a foreseeable manner and in the manner in which it was intended to be used.
5 Similarly, like other Class Members, Plaintiff has not received and/or been denied
6 the available free fixes outlined in Defendant's 2008 secret TSB.

7 **Defendant:**

8 22. Defendant MBUSA is a corporation organized and in existence under
9 the laws of the State of New Jersey and registered with the California Department
10 of Corporations to conduct business in California. At all times mentioned herein,
11 Defendant was engaged in the business of designing, manufacturing, constructing,
12 assembling, marketing, and selling automobiles and other motor vehicles and
13 motor vehicle components in Los Angeles County, and throughout the United
14 States of America.

15 **JURISDICTION**

16 23. This is a class action.

17 24. Members of the proposed Plaintiff Class are citizens of California, a
18 state different from the home state of Defendant.

19 25. On information and belief, the aggregate claims of individual Class
20 Members exceed \$5,000,000, exclusive of interest and costs.

21 26. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d).

22 **VENUE**

23 27. Defendant, through its business of distributing, selling, and leasing its
24 Class Vehicles, has established sufficient contacts in this district such that it is
25 subject to personal jurisdiction here. Defendant is deemed to reside in this district
26 pursuant to 28 U.S.C. § 1391(a).

1 28. In addition, a substantial part of the events or omissions giving rise to
2 these claims and a substantial portion of the property that is the subject of this
3 action are in this district.

4 29. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a).

5 **APPLICABLE LAW**

6 30. California State law applies to all claims in this action.

7 **FACTUAL ALLEGATIONS**

8 31. For years, Defendant has designed, manufactured, distributed, sold,
9 and leased the Class Vehicles. Upon information and belief, it has sold, directly
10 or indirectly through dealers and other retail outlets, thousands, if not tens of
11 thousands, of Class Vehicles in California and nationwide.

12 32. The Class Vehicles are defective, including but not limited to defects
13 in their water drainage system. The Class Vehicles water drainage system is
14 defective because it fails to prevent water from entering the interior cabin of the
15 Class Vehicles.

16 33. This defect is substantially and unreasonably dangerous because of
17 the danger of catastrophic engine and/or electrical system failure that can occur as
18 a result of the water entering and flooding the interior cabin of the vehicle and
19 damaging its interior components while the vehicle is in operation. Thus, the
20 water leak defect can cause engine and electrical failure, suddenly and
21 unexpectedly, at any time and under any driving condition or at any speed, thereby
22 contributing to traffic accidents, which can result in personal injury or death.

23 34. Plaintiff is informed and believes and based thereon alleges that
24 Defendant acquired its knowledge of the water leak defect through sources not
25 available to Class Members, including but not limited to pre-release testing data,
26 early consumer complaints about the water leak defect to Defendant and its
27 dealers who are its agents for vehicle repairs, testing conducted in response to
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1 those complaints, aggregate data from Defendant's dealers, and from other
2 internal sources.

3 35. Hundreds, if not thousands, of purchasers and lessees of the Class
4 Vehicles have experienced the water leak defect and the associated safety risks
5 and hazards described herein. Indeed, customers have reported the water leak
6 defect in the Class Vehicles to Defendant directly and through its dealers.
7 Defendant is fully aware of the water leak defect in the Class Vehicles. Despite
8 this, Defendant has actively concealed the existence and nature of the defect from
9 Plaintiff and the Class Members at the time of purchase or lease and thereafter.
10 Specifically, Defendant has:

- 11 a. failed to disclose, at and after the time of purchase or lease and
12 repair, any and all known material defects or material
13 nonconformity of the Class Vehicles, including the defective
14 water drainage system contained in the Class Vehicles;
- 15 b. failed to disclose at the time of purchase or lease and repair
16 that the Class Vehicles, including their water drainage system,
17 were not in good working order, were defective and required
18 modification, and were not fit for their intended purpose; and
- 19 c. failed to disclose or actively concealed the fact that the Class
20 Vehicles and their water drainage system were defective,
21 despite the fact that Defendant learned of such defects through
22 consumer complaints, as well as other internal sources, as early
23 as 2002, if not before.

24 36. Defendant has caused Plaintiff and Class Members to expend money
25 at its dealerships or other third-party facilities to diagnose the water leak defect,
26 clean and/or repair their vehicles, replace parts, and/or take other remedial
27 measures related to the water leak defect of the Class Vehicles, as well as to repair
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1 or replace items damaged by water leaks and flooding resulting from the water
2 leak defect, despite Defendant's knowledge of the water leak defect.

3 37. Defendant has not recalled the Class Vehicles to repair the water leak
4 defect, has not offered to its customers a suitable repair or replacement of parts
5 free of charge, has not offered to reimburse Class Vehicle owners and leaseholders
6 who incurred costs relating to repairs associated with the water leak defect, and
7 has not offered to reimburse Class Members any other cost associated with
8 repairing or addressing problems caused by the water leak defect.

9 38. The Class Members have not received the value for which they
10 bargained when they purchased or leased the Class Vehicles.

11 39. As a result of the defect, the value of the Class Vehicles has
12 diminished, including without limitation their resale value.

13 **VIOLATION OF CALIFORNIA SECRET WARRANTY LAW**

14 40. Defendant has violated, and continues to violate, California Civil
15 Code section 1795.90 *et seq.* (the "California Secret Warranty Law"). The
16 California Secret Warranty Law was enacted to abolish "secret" warranties. The
17 term "secret warranty" is used to describe the practice by which an automaker
18 establishes a policy to pay for repair of a defect without making the defect or the
19 policy known to the public at large. A secret warranty is usually created when the
20 automaker realizes that a large number of its customers are experiencing a defect
21 not covered by a factory warranty, and decides to offer warranty coverage to
22 individual customers only if, for example, the customer complains about the
23 problem first. The warranty is considered "secret" because all owners are not
24 notified of it. Instead, the automaker usually issues a TSB to its regional offices
25 and/or dealers on how to deal with the defect, although a TSB or other formal
26 document is not necessary to create a secret warranty. Because owners are kept in
27 the dark about the cost-free repair, the automaker only has to reimburse those
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1 consumers who complain loudly enough; the quiet consumer either does not fix
2 the problem or pays to fix the defect by him or herself.

3 41. Defendant is a “manufacturer” as that term is defined by section
4 1795.50 of the California Secret Warranty Law. Section 1795.2 of the California
5 Secret Warranty Law imposes several duties on auto manufacturers like
6 Defendant, each of which is designed to do away with secret warranties.

7 42. Plaintiff and members of the proposed Class are consumers as that
8 term is defined by section 1795.90(a) of the California Secret Warranty Law. The
9 California Secret Warranty law requires automakers to notify consumers, by first-
10 class mail, within 90 days of adoption, whenever they enact “any program or
11 policy that expands or extends the consumer’s warranty beyond its stated limit or
12 under which [the] manufacturer offers to pay for all or any part of the cost of
13 repairing, or to reimburse consumers for all or any part of the cost of repairing,
14 any condition that may substantially effect vehicle durability, reliability, or
15 performance”

16 43. The California Secret Warranty Law also requires automakers to
17 provide the New Motor Vehicle Board with a copy of the notice described above,
18 so the public can view, inspect, or copy that notice.

19 44. Additionally, the California Secret Warranty Law requires
20 automakers to advise their dealers, in writing, of the terms and conditions of any
21 warranty extension, adjustment, or reimbursement program.

22 45. The California Secret Warranty Law also requires an automaker to
23 “implement procedures to assure reimbursement of each consumer eligible under
24 an adjustment program who incurs expenses for diagnosis and repair of a
25 condition subject to the program prior to acquiring knowledge of the program.”

26 **MBUSA’s 2008 TSB**

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1 46. In February 2008, Defendant issued to only its dealers a TSB that
2 describes various problems with all the Class Vehicles and their water drainage
3 system. In that bulletin, MBUSA describes the water leak defect as follows:

4 Water Entry at A-Pillar

5 If you receive customer reports in the above model vehicles [*i.e.*, the Class
6 Vehicles] of water entry in the driver/front passenger foot well and in some
7 cases accompanied with *electrical faults due to water in the control units*,
8 this may be caused by a few different issues.

9 (Emphasis added.)

10
11 47. The TSB then describes three possible causes for the water leak
12 defect:

- 13 1. Blocked water drain in the upper longitudinal member¹ under the
14 front fender (blocked by debris)
- 15 2. Rising water penetrates the interior compartment because of a lack
16 of seam sealer on the double panel of the firewall/longitudinal
17 member on the inside at the top
- 18 3. Mounting hole for the tilting/sliding roof drain hose, water may
19 back up and overflow into interior.

20 48. The TSB then describes a series of steps that will “remedy these
21 possible causes”

22 49. In order to fix the first cause, a blocked water drain in the upper
23 longitudinal member under front fender, the TSB simply instructs (after removing
24 the front fenders): “Clean the areas of the upper longitudinal member under the
25 front fender.”

26
27 ¹ The longitudinal member is part of the water drainage system located
28 under the hood and front fender.

1 50. Then, in order to fix the second cause, rising water penetrating the
2 interior compartment because of a lack of seam sealer, the TSB simply instructs:
3 “Apply seam sealing to the double panel of the firewall/longitudinal member
4 toward the cross member under the wind deflector”

5 51. Finally, “[t]o *permanently* fix the water drain problem” (emphasis
6 added), the TSB states that “a water drain hole with reinforcement plate must be
7 made”² To do this, using several illustrations, the TSB instructs:

- 8 • Drill [an] additional drain hole;
- 9 • Remove the lower bolt on the fender bracket . . . and bend the bracket
10 upwards;
- 11 • Mark the position for the additional water drain hole 7 mm away
12 from the edge of the seam sealer . . . ;
- 13 • Drill a 10 mm hole in incremental steps . . . ;
- 14 • Make a 1.5 mm thick metal plate, using mild sheet metal (locally
15 purchased), with 6.5 mm holes drilled for 5 rivets . . . ;
- 16 • Using the metal plate as template, make sure that the second rivet
17 hole is positioned under the drilled water drain . . . ;
- 18 • Remove seam sealer in the area of the reinforcement plate, mark and
19 drill five 6.5 mm holes . . . ;
- 20 • Deburr all drilled holes and clean the shop-made metal plate. To
21 prevent corrosion; apply primer (primer stick A000 986 05 50) to the
22 inside of the drilled holes and allow to dry;
- 23 • Rivet the reinforcement plate . . . using rivets A0003 990 35 97;

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26 ² Thus, the TSB acknowledges that the Class Vehicles and their water
27 drainage system are defectively designed and/or manufactured because, among
28 other things, the water drainage system becomes blocked and fails to prevent
water from entering the interior cabin of the Class Vehicles.

- Apply seam sealant in the area of the reinforcement plate, A-pillar and rivet heads; and
- Brush on cavity sealant (A000 986 72 70 10).

52. The TSB then provides the dealers with several “labor operations” and “time allowance[s]” that allow MBUSA dealers to secretly submit any or all of the above-described alleged fixes under warranty.

53. Plaintiff is informed and believes and based thereon alleges that the free water leak defect repairs outlined in Defendant’s secret TSB is applicable to all Class Vehicles.

54. Plaintiff is also informed and believes and based thereon alleges that Defendant does not typically pay for repairing the water leak defect under its new car warranty (or any other warranty) because Defendant considers water leaks to be the result of outside influences and, therefore, not covered by Defendant’s warranty. In fact, upon information and belief, Defendant or Defendant’s authorized dealers for vehicle repairs typically tell consumers that the water leak defect occurs as a result of outside influences and is therefore not covered under warranty. Thus, by extending its warranties to cover repair of the water leak defect, Defendant has “expand[ed] or extend[ed] the consumer’s warranty beyond its stated limit.”

55. MBUSA also does not typically pay for cleaning/clearing of the water drainage under its New Car Warranty (or any other warranty). MBUSA’s manuals do not consider the water drainage cleaning/clearing to be a maintenance item. Again, this maintenance item is not included as part of the warranty coverage. Thus, by extending its warranties to cover the water drainage cleaning/clearing, MBUSA has “expand[ed] or extend[ed] the consumer’s warranty beyond its stated limit.”

1 56. More importantly, the clearing/cleaning, resealing, and water
2 drainage system modification that the 2008 TSB is intended to address
3 “substantially affect the vehicle durability, reliability, or performance.” These
4 items include, but are not limited to, water leaks, engine and electronic system
5 failure, and water damaging the computer and interior components of the vehicle.
6 Therefore, the cost-free offers to provide cleaning/clearing, resealing, and
7 drainage system modification are considered “adjustment programs” within the
8 meaning of the California Secret Warranty Law for this reason as well.

9 57. Plaintiff is informed and believes and based thereon alleges that
10 Defendant has also extended its warranty in another way; namely, by employing a
11 secret policy to pay for the water-leak-defect-related damage of those consumers
12 who complain loudly enough. Like the 2008 TSB, the decision to offer these free
13 repairs outside the vehicle’s New Car Warranty is not done on an *ad hoc* basis.
14 Rather, it is made pursuant to a systematic policy—communicated to, *inter alia*,
15 regional offices, dealers, and MBUSA customer care personnel—to pacify the
16 most vocal consumers so as to preserve Defendant’s reputation. Upon information
17 and belief, the code names for these policies include but are not limited to good
18 will adjustments or policy adjustments.

19 58. Again, water leaks are not normally included in the Class Vehicles’
20 warranty coverage. Thus, by extending its warranties to cover the water leak
21 defect and/or related damage it causes, Defendant has “expand[ed] or extend[ed]
22 the consumer’s warranty beyond its stated limit.” Thus, Defendant’s temporary
23 repair of the water leak defect and/or repair of damage caused by the water leak
24 defect constitutes an adjustment program under the Secret Warranty Law and
25 constitutes an offer to pay for or to reimburse consumers for the cost of repairing a
26 condition that substantially affects vehicle durability, reliability, or performance.

27 59. As a result of the foregoing, Defendant is obligated to comply with
28 the provisions of the California Secret Warranty Law with respect to its

1 cleaning/clearing, resealing, water drainage system modification, and
2 reimbursement for water leak defect related damage offers. It has not done so.

3 60. Specifically, Defendant did not notify Plaintiff, or any other owner or
4 lessee of a Class Vehicle, of their right to free repair of the water leak defect and
5 consequent damage, or to be reimbursed for the cost of repairing the water leak
6 defect and consequent damage (*e.g.*, cleaning/clearing, resealing, water drainage
7 modification, as well as repair and/or replacement of other components within a
8 vehicle damaged by the water leak defect).

9 61. Defendant has also refused to provide the free water leak repair,
10 modification, or reimbursement to owners or lessees of affected vehicles who have
11 specifically requested it. Moreover, even though Defendant is aware of fixes for
12 this problem, Defendant has refused to notify Plaintiff or any other owner or
13 lessee of a Class Vehicle of these available fixes and has refused to reimburse
14 owners or lessees of Class Vehicles for the consequent damages that the water
15 leak defect causes.

16 62. Additionally, Defendant has refused to reimburse consumers who
17 have paid to diagnose and/or repair the water leak defect and/or paid to repair
18 damage resulting from the water leak defect.

19 63. Upon information and belief, Defendant did not comply with the
20 dealer-notification provisions of the California Secret Warranty Law.

21 64. Upon information and belief, Defendant has also failed to comply
22 with the New Motor Vehicle Board notification procedures.

23 **TOLLING OF THE STATUTE OF LIMITATIONS**

24 65. Since the defects in the design and/or manufacture of the Class
25 Vehicles resulting in water leaks cannot be detected until the defect manifest
26 itself, Plaintiff and Class Members were not reasonably able to discover the
27 problem until long after purchasing or leasing the Class Vehicles, despite their
28 exercise of due diligence.

1 66. Plaintiff and Class Members had no realistic ability to discern the
2 water leak defect until water leaks occurred. In addition, despite their due
3 diligence, Plaintiff and Class Members could not reasonably have been expected
4 to learn or discover that they were deceived or that material information
5 concerning the Class Vehicles and their water leak defect was concealed from
6 them until manifestation of the defect. Therefore, the discovery rule is applicable
7 to the claims asserted by Plaintiff and the Class Members.

8 67. Upon information and belief, Defendant has known of the
9 manufacturing and/or design defects contained in the Class Vehicles since at least
10 2002, if not earlier, and has concealed from or failed to alert owners and lessees of
11 the Class Vehicles the water leak defect.

12 68. Any applicable statutes of limitation have therefore been tolled by
13 Defendant's concealment and denial of the facts alleged herein, including at the
14 time of purchase or lease and repair. Defendant is further estopped from relying
15 on any statutes of limitation because of its concealment of the defective nature of
16 the Class Vehicles.

CLASS ACTION ALLEGATIONS

17
18 69. Plaintiff brings this lawsuit as a class action on behalf of himself and
19 all other California residents similarly situated as members of a proposed Plaintiff
20 Class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and/or (b)(2).
21 This action satisfies the numerosity, commonality, typicality, adequacy,
22 predominance, and superiority requirements of those provisions.

23 70. The Class and Sub-Class are defined as:

24 Class: All persons in the State of California who purchased or leased model
25 years 2002 through 2009 Mercedes-Benz E-Class W-211 vehicles.

26 Sub-Class: All Members of the Class who are "consumers" within the
27 meaning of California Civil Code section 1761(d) ("the CLRA Sub-Class").
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1 Excluded from the Class are Defendant, any entity in which Defendant has
2 a controlling interest or which has a controlling interest of Defendant, and
3 Defendant's legal representatives, assigns, and successors. Also excluded is the
4 judge to whom this case is assigned, as well as any member of the judge's
5 immediate family.

6 71. Claims for personal injury are specifically excluded from the Class.

7 72. Plaintiff reserves the right to amend the Class and Sub-Class
8 definitions if discovery and further investigation reveal that the Class and Sub-
9 Class should be expanded or otherwise limited.

10 73. Numerosity: Although the exact number of Class Members is
11 uncertain and can only be ascertained through appropriate discovery, the number
12 is great enough such that joinder is impracticable. The disposition of the claims of
13 these Class Members in a single class action will provide substantial benefits to all
14 parties and to the Court.

15 74. Typicality: The claims of the representative Plaintiff are typical of the
16 claims of the Class in that the representative Plaintiff, like all Class Members,
17 owns a Class Vehicle designed and manufactured by Defendant and that suffers
18 from the water leak defect. The representative Plaintiff, like all Class Members,
19 has been damaged by Defendant's misconduct in that he has incurred or is
20 substantially certain to incur the cost of repairing the water leak defect or repairing
21 damage caused by the water leak defect. Furthermore, the factual bases of
22 Defendant's misconduct are common to all Class Members and represent a
23 common thread of fraudulent, deliberate, and negligent misconduct resulting in
24 injury to all Class Members.

25 75. Commonality: There are numerous questions of law and fact common
26 to Plaintiff and Class Members that predominate over any question affecting only
27 individual Class Members. These common legal and factual issues include the
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- a. Whether the Class Vehicles and their water drainage system are defectively designed or manufactured such that they are not suitable for their intended use;
- b. Whether Defendant knew or should have known of the inherent design or manufacturing defect contained in its Class Vehicles;
- c. Whether Defendant fraudulently concealed from or failed to disclose to Plaintiff and Class Members the inherent problems with its Class Vehicles and their water drainage system;
- d. Whether Defendant had a duty to Plaintiff and Class Members to disclose the inherent problems with its Class Vehicles and their water drainage system;
- e. Whether the facts concealed or not disclosed by Defendant to Plaintiff and Class Members are material;
- f. Whether as a result of Defendant's concealment of or failure to disclose material facts, Plaintiff and Class Members acted to their detriment by purchasing Class Vehicles manufactured by Defendant;
- g. Whether Defendant failed to adequately warn Plaintiff and Class Members about the limitations of its Class Vehicles and their water drainage system;
- h. Whether Defendant engaged in unfair competition or unfair deceptive acts or practices when it concealed the limitations and failed to warn Plaintiff and Class Members of the defects contained in the Class Vehicles;
- i. Whether Defendant's conduct in marketing, selling, and leasing its Class Vehicles constitutes a violation of the

1 Consumers Legal Remedies Act, California Civil Code section
2 1750 *et seq.*;

- 3 j. Whether Defendant's conduct in marketing, selling, and
4 leasing its Class Vehicles constitutes a violation of the Unfair
5 Business Practices Act, California Business & Professions
6 Code section 17200 *et seq.*;
- 7 k. Whether the resealing and water drainage modification repairs
8 performed under Defendant's clandestine TSB program is an
9 "adjustment program" under the Secret Warranty Law;
- 10 l. Whether Defendant breached its implied warranties in that the
11 Class Vehicles were defectively designed and or manufactured;
- 12 m. Whether Defendant should be declared financially responsible
13 for notifying all Class Members of the problems with its Class
14 Vehicles and for the costs and expenses of repair and
15 replacement of the Class Vehicles and their water drainage
16 system; and
- 17 n. Whether Plaintiff and the Class are entitled to replacement of
18 parts related to the water leak defect.

19 76. Adequate Representation: Plaintiff will fairly and adequately protect
20 the interests of the Class Members. Plaintiff has retained counsel with substantial
21 experience in prosecuting consumer class actions—specifically actions involving
22 defective products. Plaintiff and his counsel are committed to prosecuting this
23 action vigorously on behalf of the Class Members and have the financial resources
24 to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the
25 Class Members.

26 77. Predominance and Superiority: Plaintiff and Class Members have all
27 suffered and will continue to suffer harm and damages as a result of Defendant's
28 unlawful and wrongful conduct. A class action is superior to other available

1 methods for the fair and efficient adjudication of the controversy. Absent a class
2 action, most Class Members would likely find the cost of litigating their claims
3 prohibitively high and would therefore have no effective remedy at law. Because
4 of the relatively small size of the individual Class Members' claims, it is likely
5 that only a few Class Members could afford to seek legal redress for Defendant's
6 misconduct. Absent a class action, Class Members will continue to incur
7 damages, and Defendant's misconduct will continue without remedy. Class
8 treatment of common questions of law and fact would also be superior to multiple
9 individual actions or piecemeal litigation in that class treatment will conserve the
10 resources of the courts and the litigants, and will promote consistency and
11 efficiency of adjudication.

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14 **FIRST CLAIM FOR RELIEF**

15 **(Violation of California's Consumers Legal Remedies Act,**
16 **California Civil Code section 1750 *et seq.*)**

17 78. Plaintiff hereby incorporates by reference the allegations contained in
18 the preceding paragraphs of this Complaint.

19 79. Plaintiff brings this cause of action against Defendant on behalf of
20 himself and on behalf of the Members of the CLRA Sub-Class.

21 80. Defendant is a "person" as defined by Civil Code section 1761(c).

22 81. Plaintiff and Class Members are consumers who purchased or leased
23 the Class Vehicles.

24 82. By failing to disclose and concealing the water leak defect, Defendant
25 violated Civil Code section 1770(a), as it represented that its Class Vehicles had
26 characteristics and benefits that they do not have, and represented that its Class
27 Vehicles were of a particular standard, quality or grade when they were of
28 another. *See* Civ. Code §§ 1770(a)(5) & (7).

1 83. Defendant's unfair or deceptive acts or practices occurred repeatedly
2 in Defendant's trade or business, were capable of deceiving a substantial portion
3 of the purchasing public, and imposed a serious safety risk on the public.

4 84. Defendant knew that its Class Vehicles were defectively designed or
5 manufactured, would fail prematurely, and were not suitable for their intended
6 use.

7 85. Defendant was under a duty to Plaintiff and Class Members to
8 disclose the defective nature of the Class Vehicles and their water drainage
9 system:

- 10 a. Defendant was in a superior position to know the true state of
11 facts about the safety defect and associated repair costs in the
12 Class Vehicles and their water drainage system;
- 13 b. Plaintiff and the Class Members could not reasonably have
14 been expected to learn or discover that the Class Vehicles and
15 their water drainage system had a dangerous safety defect until
16 manifestation of the failure; and
- 17 c. Defendant knew that Plaintiff and the Class Members could
18 not reasonably have been expected to learn or discover the
19 safety defect and the associated repair costs that it causes.

20 86. In failing to disclose the water leak defect and the associated repair
21 costs that result from it, Defendant has knowingly and intentionally concealed
22 material facts and breached its duty not to do so.

23 87. The facts concealed or not disclosed by Defendant to Plaintiff and
24 Class Members are material in that a reasonable consumer would have considered
25 them to be important in deciding whether to purchase Defendant's Class Vehicles
26 or pay a lesser price. Had Plaintiff and the Class known about the defective nature
27 of the Class Vehicles and their water drainage system, they would not have
28 purchased the Class Vehicles or would have paid less for them.

1 88. Plaintiff and Class Members reasonably expected the Class Vehicles
2 and their water drainage system to function properly for the life of their vehicles.
3 That is the reasonable and objective consumer expectation. Plaintiff and Class
4 Members also reasonably expected that this system would be maintenance free,
5 because MBUSA failed to advise Plaintiff or Class Members of the need to
6 maintain the water drainage system.

7 89. As a direct and proximate result of Defendant's unfair or deceptive
8 acts or practices, Plaintiff and Class Members have suffered and will continue to
9 suffer actual damages.

10 90. Plaintiff and Class Members are also entitled to equitable and
11 injunctive relief.

12 91. Plaintiff has provided Defendant with notice of its alleged violations
13 of the CLRA pursuant to Civil Code section 1782(a). If, within 30 days of the
14 date of the notification letter, Defendant fails to provide appropriate relief for its
15 violation of the CLRA, Plaintiff will amend this Complaint to seek monetary,
16 compensatory, and punitive damages, in addition to the injunctive and equitable
17 relief that he seeks now.

18 **SECOND CLAIM FOR RELIEF**

19 **(Violation of California's Unfair Business Practices Act, California Business**
20 **& Professions Code section 17200 *et seq.* – Violations of California's Secret**
21 **Warranty Law)**

22 92. Plaintiff hereby incorporates by reference the allegations contained in
23 the preceding paragraphs of this Complaint.

24 93. Plaintiff brings this cause of action on behalf of himself and on behalf
25 of the Class Members.

26 94. By committing the acts and practices alleged herein, Defendant
27 violated the Secret Warranty Law, and by doing so, has engaged in deceptive,
28

1 unfair, and unlawful business practices in violation of the Unfair Competition Law
2 (“UCL”), California Business & Professions Code section 17200 *et seq.*

3 95. Defendant’s violation of the Secret Warranty Law (hence the UCL)
4 continues to this day. As a direct and proximate result of Defendant’s violations
5 of the Secret Warranty Law, hence the UCL, Plaintiff and Class Members have
6 suffered damages related to the water leak defect.

7 96. Pursuant to section 17203 of the UCL, Plaintiff and Class Members
8 seek an order of this Court requiring Defendant to comply with the terms of the
9 California Secret Warranty Law by:

- 10 a. notifying Class Members of the secret program for repairing
11 the water leak defect and reimbursing for damage caused by
12 the water leak defect as required by the California Secret
13 Warranty Law;
- 14 b. providing free clearing/cleaning, repairs, modifications,
15 corrections, and/or replacements to all Class Members as
16 required by the Secret Warranty Law;
- 17 c. identifying and reimbursing all Class Members who have
18 incurred costs related to the water leak defect as required by
19 the Secret Warranty Law;
- 20 d. notifying California dealers of the facts underlying the water
21 leak defect and the terms of the secret program for repairing
22 the water leak defect and reimbursing consumers for damage
23 caused by the water leak defect as required by the Secret
24 Warranty Law; and
- 25 e. notifying California New Motor Vehicle Board of the secret
26 program for repairing the water leak defect and reimbursing
27 consumers for damage caused by the water leak defect as
28 required by the Secret Warranty Law.

1 97. Plaintiff and Class Members also seek an order:

- 2 a. enjoining Defendant from failing and refusing to make full
3 restitution of all moneys wrongfully obtained as a result of its
4 violations of the California Secret Warranty Law; and
5 b. disgorging to Plaintiff and Class Members all ill-gotten
6 revenues and/or profits earned as a result of Defendant's
7 violation of the California Secret Warranty Law, plus an award
8 of attorneys' fees and costs. This is because Defendant
9 profited from its sale of replacement parts to mechanics and
10 dealers because they ultimately replaced, repaired, corrected,
11 or modified the defective water drainage system and/or
12 replaced parts related to the water leak defect and damage
13 caused by the water leak defect.

14 **THIRD CLAIM FOR RELIEF**

15 **(Violation of UCL other than Violation of the Secret Warranty Law,**
16 **California's Unfair Business Practices Act, California Business & Professions**
17 **Code section 17200 *et seq.*)**

18 98. Plaintiff hereby incorporates by reference the allegations contained in
19 the preceding paragraphs of this Complaint.

20 99. Plaintiff brings this cause of action against Defendant on behalf of
21 himself and on behalf of the Class Members.

22 100. California Business & Professions Code section 17200 prohibits acts
23 of "unfair competition," including any "unlawful, unfair or fraudulent business act
24 or practice" and "unfair, deceptive, untrue or misleading advertising."

25 101. Defendant knew its Class Vehicles and their water drainage system
26 were defectively designed and/or manufactured, would fail prematurely, and were
27 not suitable for their intended use.

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1 102. Defendant concealed and failed to disclose to Plaintiff and Class
2 Members the defective nature of the Class Vehicles and their water drainage
3 system:

- 4 a. Defendant was in a superior position to know the true state of
5 facts about the safety defects contained in the Class Vehicles;
6 b. Defendant made partial disclosures about the quality of the
7 Class Vehicles without revealing that they were defective and
8 highly prone to water leakage and flooding; and
9 c. Defendant actively concealed the defective nature of the Class
10 Vehicles from Plaintiff and the Class.

11 103. In failing to disclose the water leak defect, Defendant has knowingly
12 and intentionally concealed material facts and breached its duty not to do so.

13 104. The facts concealed or not disclosed by Defendant to Plaintiff and the
14 Class are material in that a reasonable person would have considered them to be
15 important in deciding whether to purchase the Class Vehicles or pay a lesser price
16 for them. Had Plaintiff and the Class Members known about the defective nature
17 of the Class Vehicles, they would not have purchased the Class Vehicles or would
18 have paid less for them.

19 105. Defendant continues to conceal the defective nature of the Class
20 Vehicles even after Class Members began to report problems. Indeed, to this date,
21 Defendant continues to conceal the true nature of this problem.

22 106. By its conduct alleged herein, Defendant has engaged in unfair
23 competition and unlawful, unfair, and fraudulent business acts and practices.

24 107. Defendant's unfair or deceptive acts or practices occurred repeatedly
25 in Defendant's trade or business and were capable of deceiving a substantial
26 portion of the purchasing public.

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1 108. As a direct and proximate result of Defendant's unfair and deceptive
2 practices, Plaintiff and Class Members have suffered and will continue to suffer
3 actual damages.

4 109. Defendant has been unjustly enriched and should be required to make
5 restitution to Plaintiff and the Class Members pursuant to sections 17203 and
6 17204 of the California Business & Professions Code.

7 **FOURTH CAUSE OF ACTION**

8 **(Breach of Implied Warranty pursuant to Song-Beverly Consumer Warranty**
9 **Act, California Civil Code sections 1792 and 1791.1 et. seq.)**

10 110. Plaintiff hereby incorporates by reference the allegations contained in
11 the preceding paragraphs of this Complaint.

12 111. Plaintiff brings this cause of action against Defendant on behalf of
13 himself and on behalf of the Class Members.

14 112. Defendant was at all relevant times the manufacturer, distributor,
15 warrantor, and/or seller of the Class Vehicles. Defendant knew or had reason to
16 know of the specific use for which the Class Vehicles were purchased.

17 113. Defendant provided Plaintiff and Class Members with an implied
18 warranty that the Class Vehicles and their water drainage system are merchantable
19 and fit for the ordinary purposes for which they were sold. However, the Class
20 Vehicles and their water drainage system are not fit for their ordinary purpose of
21 providing reasonably reliable and safe transportation because, *inter alia*, the Class
22 Vehicles and their water drainage system are defective due to the water leak defect
23 and the resulting damage and safety-related hazards that it can cause.

24 114. Plaintiff and other Class Members never contemplated that their
25 vehicles would be unable to prevent water (*e.g.*, from rain or a carwash) from
26 entering the interior cabin of their vehicles, resulting in flooding, as well as the
27 series of problems associated with such flooding. Plaintiff relied on implied
28 warranties of merchantability made by Defendant concerning the Class Vehicles

1 and sustained substantial damages resulting from the breach of those warranties by
2 the Defendant. Plaintiff could not have reasonably discovered the design and/or
3 manufacturing defects of the Class Vehicles. Defendant's breach of its implied
4 warranties of merchantability was the direct and proximate cause of Plaintiff's and
5 the Class Members' damages.

6 115. Plaintiff and Class Members purchased the Class Vehicles within the
7 State of California. Defendant impliedly warranted that the Class Vehicles were
8 of merchantable quality and fit for such use at the time of sale. This implied
9 warranty included, among other things: (a) a warranty that the Class Vehicles
10 were manufactured, supplied, distributed, and/or sold by Defendant were safe for
11 providing safe and reliable transportation; and (b) a warranty that the Class
12 Vehicles would be fit for their intended use and would not experience flooding as
13 a result of the water leak defect when they are driven within their range of
14 operation and during foreseeable and normal usage.

15 116. Contrary to the applicable implied warranties, the Class Vehicles at
16 the time of sale and thereafter were not fit for their ordinary and intended purpose
17 of providing Plaintiff and the Class Members with durable and safe transportation
18 during normal and/or foreseeable usage. Instead, the Class Vehicles are defective,
19 which defects include, but are not limited to, defects contained in the Class
20 Vehicles' water drainage system.

21 117. Defendant's actions, as complained of herein, breached the implied
22 warranty that the Class Vehicles were of merchantable quality and fit for such use
23 in violation of California Civil Code sections 1792 and 1791.1.

24 **RELIEF REQUESTED**

25 118. Plaintiff, on behalf of himself and all others similarly situated,
26 requests the Court enter judgment against Defendant, as follows:
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- a. an order certifying the proposed Plaintiff Class, designating Plaintiff as the named representative of the Class and designating the undersigned as Class Counsel;
- b. a declaration that Defendant is financially responsible for notifying all Class Members of the problems with its Class Vehicles and the water leak defect;
- c. an order requiring Defendant to comply with the Secret Warranty Law by (i) notifying Class Members of the secret cleaning/clearing of the water drains, secret resealing and modification of the water drainage system, and secret reimbursement for water-leak-defect-related damage, as required by the California Secret Warranty Law; (ii) providing free replacement, modification, and correction related to the water leak defect to all Class Members as required by the Secret Warranty Law; (iii) identifying and reimbursing all Class Members who have paid for repairing and diagnosing the water leak defect, replacement of parts related to the water leak defect, and repair or replacement for damage caused as a result of the water leak defect, as required by the Secret Warranty Law; (iv) notifying California dealers of the facts underlying the water leak defect and associated problems, the terms of MBUSA's secret water leak defect repair program, and the repair, replacement, and reimbursement for water-leak-defect-related damage, as required by the Secret Warranty Law; and (iv) notifying the California New Motor Vehicle Board of MBUSA's secret water leak defect repair program, as well as the secret repair, replacement, and reimbursement for

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- water-leak-defect-related damage, as required by the Secret Warranty Law;
- d. an order enjoining Defendant from further deceptive distribution, sales, and lease practices with respect to its Class Vehicles;
- e. an order to repair the water leak defect and any damage caused by the water leak defect;
- f. an award to Plaintiff and the Class Members of compensatory, statutory, and punitive damages, including interest, in an amount to be proven at trial, except that for now, Plaintiff seeks only equitable and injunctive relief with respect to his claims under California’s Consumer’s Legal Remedies Act, California Civil Code section 1750 *et seq.*
- g. an award to Plaintiff and the Class Members of all incidental and consequential damages, including interest, which have resulted from Defendant’s breach of its implied warranties;
- h. any and all remedies provided pursuant to the Song-Beverly Act, including California Civil Code section 1794;
- i. a declaration that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of its Class Vehicles, or to make full restitution to Plaintiff and the Class Members;
- j. an award of attorneys’ fees and costs pursuant to California Code of Civil Procedure section 1021.5, the common fund theory, or any other applicable statute, theory, or contract;
- k. an award of pre-judgment and post-judgment interest, as provided by law;

- 1 l. leave to amend the Complaint to conform to the evidence
2 produced at trial; and
3 m. such other or further relief as may be appropriate under the
4 circumstances.

5
6 **DEMAND FOR JURY TRIAL**

7 119. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury of
8 any and all issues in this action so triable of right.

9 Dated: August 9, 2010

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12 By: 

13
14 Robert L. Starr (State Bar No. 183052)
15 e-mail: starresq@hotmail.com
16 **THE LAW OFFICE OF ROBERT L. STARR**
23277 Ventura Boulevard
17 Woodland Hills, California, 91364-1002
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18 Facsimile: (818) 225-9042

19 Payam Shahian (State Bar No. 228406)
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26 Telephone: (415) 595-9208
Facsimile: (310) 693-9083

27 Attorneys for Plaintiff
28

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

| | |
|---|---|
| I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) TIGRAN CHOLAKYAN, individually and on behalf of a class of similarly situated individuals | DEFENDANTS MERCEDES-BENZ USA, LCC <div style="text-align: right; font-size: 2em;">✓</div> |
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| | |
|---|----------------------|
| (b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Payam Shahian, Esq. STRATEGIC LEGAL PRACTICES, APC 11601 Wilshire Boulevard, Suite 500 Los Angeles, California 90025 Telephone: (310) 575-1875 | Attorneys (If Known) |
|---|----------------------|

| II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) | III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </tbody> </table> | | PTF | DEF | | PTF | DEF | Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
|--|---|----------------------------|---|----------------------------|---------------------------------------|-----|-----|-----------------------|---------------------------------------|----------------------------|---|----------------------------|----------------------------|--------------------------|----------------------------|----------------------------|---|----------------------------|---------------------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF | | | | | | | | | | | | | | | | | | | | |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | | | | | | | | | | | | | | | | | | | | |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 | | | | | | | | | | | | | | | | | | | | |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | | | | | | | | | | | | | | | | | | | | |

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ in excess of \$5,000,000.00

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 28 USC section 1132(d)(CAFA): state law class action for violations of California Consumer Protection Statutes and Statute.

VII. NATURE OF SUIT (Place an X in one box only.)

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| OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes | CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 |
|--|--|--|---|---|---|

CV 10 5944

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

| | |
|---------------------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| TIGRAN CHOLAKYAN - Los Angeles County | |

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

| | |
|-------------------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| MERCEDES-BENZ USA, LLC - New Jersey | |

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

| | |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| Los Angeles County | |

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date August 9, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action |
|---------------------|--------------|--|
| 861 | HIA | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862 | BL | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923) |
| 863 | DIWC | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g)) |
| 863 | DIWW | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g)) |
| 864 | SSID | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended. |
| 865 | RSI | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g)) |