

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

RONAN MCCABE,)	
RANDA HERRING,)	
JON DUSTIN STONE,)	CIVIL ACTION NO.
ADAM DEUEL,)	
MINH VO, and)	1:12-cv-02494-TCB
SUDHIR K. CHAUDHARY,)	
Individually, and on behalf of)	
all others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
DAIMLER AG and)	
MERCEDES-BENZ USA, LLC,)	JURY TRIAL DEMANDED
)	
Defendants.)	

SECOND AMENDED CLASS ACTION COMPLAINT

Pursuant to this Court’s July 29, 2013 Order, and Rule 15 of the Federal Rules of Civil Procedure, Plaintiffs RONAN MCCABE, RANDA HERRING, JON DUSTIN STONE, ADAM DEUEL, MINH VO, and SUDHIR K. CHAUDHARY, individually, and on behalf of other similarly situated persons, file this Second Amended Class Action Complaint against DAIMLER AG and MERCEDES-BENZ USA, LLC (“MBUSA”), and in support thereof state:

A. INTRODUCTION

1. Plaintiffs bring this class action to remedy Defendants' unlawful actions in connection with the design, manufacture, marketing, distribution, and sale of 2003-2009 model year W211 E-Class Mercedes-Benz vehicles. These vehicles were designed, manufactured, marketed, distributed, and sold by Defendants.

2. The W211 E-Class generation of Mercedes-Benz brand vehicles were produced by Daimler AG from 2003 to 2009. In 2006, Mercedes had a mid-generation "refresh" of the W211 line; however, the entire generation from 2003-2009 share a common design and manufacturing process with regard to the fuel tank, fuel sending unit, evaporation tubes, and associated fuel system components on these vehicles.

3. Due to undisclosed defects in the fuel tank, fuel sending unit, and evaporation tubes, the vehicles in question experience problems that result in gasoline vapor leaks into the vehicle cabin, liquid gasoline leaks outside of the vehicle, and liquid gasoline absorption into the interior seats.

4. To date, there have been well over one hundred (100) complaints to the National Highway Traffic Safety Administration (NHTSA) regarding the smell

of gasoline in the cabin and/or liquid gasoline leaks outside of this type of Mercedes.

5. As discussed below, Plaintiffs assert claims, on behalf of themselves and the defined Classes, for violations of the Virginia Consumer Protection Act, violations of the California Business & Professions Code, and/or fraudulent concealment.

B. PARTIES

6. Plaintiff Ronan McCabe is, and at all times relevant to this action was, a citizen of the United States and domiciled in Tucker, Gwinnett County, Georgia, which is located within the geographic boundaries of this District and this Division of this District. He brings this action in an individual capacity, and in the capacity of the class representative of others similarly situated, and by bringing this lawsuit in this venue, avails himself of the jurisdiction of this Court.

7. Plaintiff Randa Herring is, and at all times relevant to this action was, a citizen of the United States domiciled in Newnan, Georgia, which is located within the geographic boundaries of this District. She brings this action in an individual capacity, and in the capacity of the class representative of others similarly situated, and by bringing this lawsuit in this venue, avails herself of the jurisdiction of this Court.

8. Plaintiff Jon Dustin Stone is, and at all times relevant to this action was, a citizen of the United States and domiciled in Dallas, Texas. He brings this action in an individual capacity, and in the capacity of the class representative of others similarly situated, and by bringing this lawsuit in this venue, avails himself of the jurisdiction of this Court.

9. Plaintiff Adam Deuel is, and at all times relevant to this action was, a citizen of the United States and domiciled in Houston, Texas. He brings this action in an individual capacity, and in the capacity of the class representative of others similarly situated, and by bringing this lawsuit in this venue, avails himself of the jurisdiction of this Court.

10. Plaintiff Minh Vo is, and at all times relevant to this action was, a citizen of the United States and domiciled in Sterling, Virginia. He brings this action in an individual capacity, and in the capacity of the class representative of others similarly situated, and by bringing this lawsuit in this venue, avails himself of the jurisdiction of this Court.

11. Plaintiff Sudhir K. Chaudhary is, and at all times relevant to this action was, a citizen of the United States domiciled in Napa, California. He brings this action in an individual capacity, and in the capacity of the class representative

of others similarly situated, and by bringing this lawsuit in this venue, avails herself of the jurisdiction of this Court.

12. Defendant DAIMLER AG, is an alien corporation duly registered in the Federal Republic of Germany with its main corporate offices located in the Mercedesstr. 137, 70327 Stuttgart, Germany, with additional facilities at 70546, Stuttgart, Germany. DAIMLER, AG, is the parent corporation of Mercedes-Benz USA, LLC. Defendant DAIMLER AG may be served by delivering a copy of the Summons and Complaint, pursuant to Federal Rules of Civil Procedure 4(h)(2) and 4(f)(2)(c)(ii), Article 10(a) of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (referred to as “The Hague Service Convention”), and other applicable laws, to DAIMLER AG, Mercedesstr. 137, 70327, Stuttgart, Germany.

13. Defendant Mercedes-Benz USA, LLC, is a duly certified corporation of the State of New Jersey with its principal corporate offices located at One Mercedes Drive, Montvale, Bergen County, New Jersey. Defendant Mercedes-Benz USA, LLC may be served by delivering a copy of the Summons and Complaint to its registered agent for service of process, CT Corporation System, 1201 Peachtree Street, N.E., Atlanta, Fulton County, Georgia 30361, which is located within this Division and this District.

C. JURISDICTION AND VENUE

14. This court has jurisdiction over this action under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). The aggregate claims of the individual class members exceed the sum value of \$5,000,000 exclusive of interest and costs, there are believed to be in excess of 100 class members, and this is a class in which more than two-thirds of the proposed Plaintiff classes on the one hand, and Defendants on the other hand, are citizens of different states.

15. Venue and personal jurisdiction is proper in this district because both Defendants transact business and derive substantial revenues from business activity in this District, and further because Plaintiffs McCabe and Herring are residents of this District. *See* LR 3.1(B)(2), NDGa. Defendants' contacts with the district are sufficient to subject Defendants to personal jurisdiction in this Court. Further, aliens, such as Daimler AG, may be sued in any district. 28 U.S.C. § 1391(d).

D. FACTUAL BACKGROUND

16. The vehicles at issue were designed, manufactured, marketed, and sold or leased by Defendants. The Mercedes-Benz vehicles in question were accompanied by MBUSA's New Vehicle Warranty, which expressly promised to "warrant to the original and each subsequent owner of a new Mercedes-Benz vehicle 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.** See “**Exhibit A**” to Orig. Compl. (Mercedes-Benz Service and Warranty Information 2009, at p. 11 (emphasis added)).¹ Other warranties for other year models contain similar provisions.

17. Mercedes-Benz USA, LLC, which is a subsidiary of Daimler AG, operates as the United States sales division responsible for importing the vehicles to the United States, selling the vehicles to authorized dealers, and servicing the vehicle warranties.

18. Daimler designed and manufactured over 300,000 W211 E-Class vehicles for model years 2003-2009, which were shipped to the United States and sold by MBUSA. The models include the E320, E350, E500, E550, E55 AMG, and E63 AMG.

19. Due to defects in the design and/or manufacturing, the vehicles at issue are prone to emit gasoline fumes into the cabin and leak liquid gasoline from the gas tank outside of the vehicle. The defect is contained in or around the evaporation tubes located in the gasoline tank, which causes either the gasoline

¹ Plaintiffs attached as “**Exhibit A**” to Orig. Compl. only the warranty booklet for the 2009 model year vehicles; however, the express warranties that accompanied all defective vehicles are substantially similar.

fumes to emanate from the tank into the cabin, or the liquid gasoline to leak out of the tank, or both. The gasoline leaks from the evaporation tubes and pools on top of the fuel sending units. Vehicle owners have also experienced gasoline pooling underneath their vehicles. Others have had interior rear seats ruined by absorbing leaking gasoline. Owners have also experienced strong odors of gasoline in the closed confines of the vehicle cabins. All of these conditions result from a defect in the fuel tank, fuel sending unit, evaporation tubes, and associated fuel system components that are common to all W211 E-Class vehicles.

20. Owners of the affected vehicles have a reasonable expectation that normal and routine use of their vehicles will not result in exposure to gasoline vapors or the potential of such exposure from defective parts or components during the vehicle life. Exposure to gasoline vapor is dangerous for cabin occupants, which can lead to sickness and other health related issues. Many states have published information concerning health and safety risks of uncontained gasoline. For example, The Illinois Department of Public Health published the dangers of breathing gasoline on its website:²

Many adverse health effects of gasoline are due to individual chemicals in gasoline, mainly BTEX, that are present in small amounts. Breathing small amounts of gasoline vapors can lead to nose and throat

² <http://www.idph.state.il.us/envhealth/factsheets/gasoline.htm>

irritation, headaches, dizziness, nausea, vomiting, confusion and breathing difficulties. Symptoms from swallowing small amounts of gasoline include mouth, throat and stomach irritation, nausea, vomiting, dizziness and headaches. Some effects of skin contact with gasoline include rashes, redness and swelling. Being exposed to large amounts of gasoline can lead to coma or death.

21. The Texas Department of Insurance published, “Gasoline Safety A 5-Minute Safety Training Aid,” which also discusses not only the health effects of exposure, but also the explosive dangers.

The number one hazard of gasoline is fire or explosion. Liquid gasoline does not burn, but gasoline vapors do. Since the vapors are heavier than air, they move along close to the ground and can collect in low areas. Any ignition source (cigarette, match, hot exhaust pipe or any spark) can ignite gasoline vapors. When gasoline vapors ignite, one gallon of gasoline can explode with the same force as 14 sticks of dynamite.

Gasoline can also cause adverse health effects. Contact with the skin causes the skin to dry and crack. Prolonged breathing of gasoline vapors can cause dizziness, nausea, or vomiting.... Gasoline contains a toxic chemical called Benzene. Benzene is a known carcinogen, therefore you should avoid breathing gasoline vapors or taking gasoline into your mouth.

See “**Exhibit B**” to Orig. Compl. (Gasoline Safety).³

22. ChevronTexaco published a Material Safety Data Sheet also warning of the safety hazards of gasoline.

³ “An explosion is possible if the vapors are lit by a spark or flame . . .” Wisconsin Department of Health Services,
<http://www.dhs.wisconsin.gov/eh/chemfs/fs/gasoline.htm>

Inhalation: The vapor or fumes from this material may cause respiratory irritation. Symptoms of respiratory irritation may include coughing and difficulty breathing. Breathing this material at concentrations above the recommended exposure limits may cause central nervous system effects. Central nervous system effects may include headache, dizziness, nausea, vomiting, weakness, loss of coordination, blurred vision, drowsiness, confusion, or disorientation. At extreme exposures, central nervous system effects may include respiratory depression, tremors or convulsions, loss of consciousness, coma or death.

Cancer: Prolonged or repeated exposure to this material may cause cancer. Gasoline has been classified as a Group 2B carcinogen (possibly carcinogenic to humans) by the International Agency for Research on Cancer (IARC). Contains benzene, which has been classified as a carcinogen by the National Toxicology Program (NTP) and a Group 1 carcinogen (carcinogenic to humans) by the International Agency for Research on Cancer (IARC). Contains ethyl benzene which has been classified as a Group 2B carcinogen (possibly carcinogenic to humans) by the International Agency for Research on Cancer (IARC). Contains naphthalene, which has been classified as a Group 2B carcinogen (possibly carcinogenic to humans) by the International Agency for Research on Cancer (IARC).

Whole gasoline exhaust has been classified as a Group 2B carcinogen (possibly carcinogenic to humans) by the International Agency for Research on Cancer (IARC).

See “**Exhibit C**” to Orig. Compl. (Material Safety Data Sheet).

23. Without taking into consideration the foreseeability of cigarette smoking in or around the affected vehicles⁴ and the possibility of ignition sources

⁴ The Centers for Disease Control and Prevention (CDC) estimates 45.3 million people in the United States smoke cigarettes.

if same are located in proximity to a leaking fuel container, Daimler designed and manufactured the affected vehicles with ashtrays and cigarette lighters in both the front seating and rear seating areas of the cabin. The cigarette lighter and ashtray in the rear of the vehicles are located in close proximity to where the gasoline leaks out of the tank. Daimler reasonably expects vehicle occupants may light and smoke cigarettes in the affected vehicles. Thus, Daimler has a duty to occupants to keep them safe from harmful gasoline vapors that may cause sickness or explosion.

24. On January 23, 2012, NHTSA opened an investigation into the gasoline leaks on 2003-2006 Mercedes-Benz E55 vehicles. *See* “**Exhibit D**” to Orig. Compl. (NHTSA Campaign Summary PE12001).

25. NHTSA states that complaints allege leakage of raw fuel pooling and/or spraying on vehicle components.

26. The report also cites recall campaign #2008-020001, which was initiated by MBUSA to remedy an issue of leaking gasoline. *See* “**Exhibit E**” to Orig. Compl. (Voluntary Emissions Recall Campaign #2008-020001 Notice Letter).

http://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm

27. The recall campaign only applied to certain 2003-2006 E-Class vehicles. It did not remedy the issue concerning gas leakage, with further leakage resulting from E-Class vehicles having the recall campaign performed. Many of the vehicles receiving the “recall” are still experiencing unsafe fuel containment issues, simply because Defendants either misdiagnosed the source of the gasoline and vapor leaks, or chose to conceal the actual source of the leaks, which would have been a greater cost to Defendants to remedy through recall. With gasoline tanks still leaking, Defendants refuse to acknowledge owner complaints, because the vehicles already had “recalls” performed. Moreover, in regard to the other affected 2003-2009 E-Class vehicles with substantially similar designs, neither Daimler nor MBUSA have issued any pertinent recall to address this problem.

28. Daimler has received ample notice of the problems affecting all vehicles with these substantially similar designs, as there are well over one hundred complaints regarding unsafe fuel containment issues across all E-Class vehicles. These Complaints can be found using the search function at the NHTSA website <http://www.odi.nhtsa.dot.gov/complaints>.

29. The following are excerpts of some complaints to NHTSA concerning the safety issues associated with the defect complained of herein:

Date of Failure – December 5, 2011. *See* “**Exhibit F**” to Orig. Compl. (Complaint 12/5/11)

Both fuel sending units leaking from the top of the fuel tank. Fuel was puddling under the rear seats and was dripping on the ground. My 6 year old son got in the car this morning and complained that it smelled like gas. This is a major safety issue as well as an environmental issue. What would happen if the leaking fuel came in contact with a hot exhaust pipe? A recall was issued for the same problem in 2008. However, the recall did not resolve the problem. It only delays it until you are out of warranty and are forced to pay out of pocket for a costly repair.

Date of Failure – December 1, 2009. *See* “**Exhibit G**” to Orig. Compl. (Complaint 12/1/09)

The contact owns a 2005 Mercedes Benz E55. The contact stated that there was a strong fuel odor inside of the vehicle while parked. The vehicle was taken to an authorized dealer on several occasions where the fuel pump was replaced but the failure persisted. The vehicle was towed back to the dealer and the contact was informed that the fuel sending unit was leaking. The manufacturer was made aware of the failure. The failure mileage was unavailable.

Date of Failure – June 4, 2011. *See* “**Exhibit H**” to Orig. Compl. (Complaint 6/4/11)

Fuel system leaks at sending unit/pump after fueling up vehicle. Fuel sits on top of sending unit/pump until fuel tank reaches approx $\frac{3}{4}$ of a tank. Vehicle had campaign (recall) for fuel sender conducted in 2008 according to dealer and MBUSA. Have contacted both about the issue and neither say they've heard of a problem. Dealer said they would look into it but would charge a diagnostic fee. Have pictures of fuel on of sending unit/pump also. After fueling vehicle the vehicle cannot be stored in my garage due to the vapor fumes filling my garage also my house. After fueling a strong smell of garage can be smelt (sic) outside of the vehicle and in the summer months smelt inside the vehicle at times.

Date of Failure – August 8, 2011. *See* “**Exhibit I**” to Orig. Compl. (Complaint 8/8/11)

Fuel smell in cabin of vehicle and fuel soaked charcoal canister. Mercedes Benz is not able to correct problem. Pressured (sic) checked tank and replaced charcoal soaked canister, problem still not resolved.

Date of Failure – August 1, 2011. *See* “**Exhibit J**” to Orig. Compl. (Complaint 8/1/11)

2005 Mercedes E55. Vehicle has a strong gas smell. Found gaskets at fuel senders leaking again. There was a recall to repair this issue in 2008 seems like it didn't fit the issue.

Date of Failure – July 14, 2011. *See* “**Exhibit K**” to Orig. Compl. (Complaint 7/14/11)

Fuel tank leak. Garage is filled with gas smell. After reading on line, it seems that thousands of other MB E-Class (Model Year 03-06) are having the same exact issue. This is a clear safety hazard and in the hot and humid Virginia weather, the car is a mobile bomb waiting to go off. Please forward this to the engineer that is working/looking at the existing complaints for the same issue.

Date of Failure – April 7, 2011. *See* “**Exhibit L**” to Orig. Compl. (Complaint 4/7/11)

Fuel sending units cracked on driver's side causing gas to pool on top of senders...literally six inches from where my three year old sits in the car. Fuel is pooling on the top of the sender units and then draining down the gas tank and outside of the vehicle. In addition, the entire cabin of vehicle inside and out smells of fuel.

Date of Failure – January 1, 2012. *See* “**Exhibit M**” to Orig. Compl. (Complaint 1/1/12)

The interior cabin of my 2006 Mercedes Benz E500 has a strong odor of gasoline. Especially after refueling. Recently, I get headaches and dizzy

when driving. So I have to roll down the windows to get rid of the smell. I have addressed this problem to multiple Mercedes Benz service centers and they said that there is no danger but if I wanted the smell to go away, it would cost me appx \$2000. I feel that this is a danger while driving because the fumes can cause the driver to pass out, or a spark in the car possibly from a short circuit or cigarette lighter could ignite in the car and cause an accident. After doing research regarding this matter, it seems it is the exact complaint of: Reference NHTSA Action Number: PE12001. I feel that this engineering/manufacturing defect should be addressed by Mercedes Benz and repaired due to its potential hazards it may cause on the highway.

Date of Failure – January 27, 2010. *See* “**Exhibit N**” to Orig. Compl. (Complaint 1/27/10)

The contact owns a 2006 Mercedes Benz E350. The contact stated that the fuel pump which is located under the drivers seat was leaking. The seats and the carpet were saturated with fuel due to the leak. The dealer repaired the fuel pump that was leaking. The manufacturer was not notified after the vehicle was taken to the service center. The failure mileage was 94,000.

Date of Failure – November 11, 2010. *See* “**Exhibit O**” to Orig. Compl. (Complaint 11/11/10)

I am a single 1 owner of a 2003 Mercedes Benz E55 AMG and it is leaking fuel into the back seat above the tank. The recall that was issued in 2008 were performed and it is now leaking again, has wrecked the insulation above the tank. MB refused to help.

Date of Failure – October 23, 2010. *See* “**Exhibit P**” to Orig. Compl. (Complaint 10/23/10)

I came out to my car the morning after filling up the tank fully and smelled a strong odor of gasoline inside the car. I drove it to the dealer and it turns out the fuel filter/fuel sending units had cracked and were leaking fuel. There is a sending unit on either side of the fuel tank under the rear passenger seats, and the fuel was leaking out the tops of these sending units into the cabin of the vehicle. Because I caught it early, the gasoline had only

pooled on the top of the fuel sending unit and not spilled into the seats and footwells. The dealer diagnosed the issue as cracked sending units and said both needed to be replaced. I did some research online and found that there had been a voluntary recall on my car in 2008 by Mercedes-Benz for this exact issue. The recall had been performed but clearly had not fixed the issue, as these parts failed again less than 2 years later....

Date of Failure – December 26, 2010. *See* “**Exhibit Q**” to Orig. Compl. (Complaint 12/26/10)

My 2003 Mercedes E55 AMG sedan has a strong smell of fuel coming from the vehicle. I contacted my local dealer and they said the problem was fixed back in 2008. Apparently the problem has not been solved and I fear an explosion from my garage filling up with fumes and 2 sources of fire. My furnace and my water heater.

Date of Failure – February 7, 2011. *See* “**Exhibit R**” to Orig. Compl. (Complaint 2/7/11)

I smell strong gas odor at rear driver side, when I get the full tank of gas. I went to a shop and lift the car that I can see the gas leak around the tank. I just want to say this kind of leaking very dangerous, because under the tank is exhaust pipe. That would be fired when too much gas leaking and no MIL light come on. Also no any recall for the problem when I call to ask the MB dealer.

Date of Failure – January 10, 2011. *See* “**Exhibit S**” to Orig. Compl. (Complaint 1/10/11)

Both fuel sending units leaking from the top of the fuel tank. Fuel was puddling under the rear seats and was dripping on to the ground. Both sending units were replaced at our expense. Other owners of the same vehicle are having the same issues and Mercedes is not cooperating with starting a recall process. This issue is a safety concern as well as an environmental issue.

Date of Failure – August 23, 2010. *See* “**Exhibit T**” to Orig. Compl. (Complaint 8/23/10)

Whenever I fill the gas tank strong smell of gas in the cabin of the car. I removed the rear seat to find the insulation barrier soaked in gas and inside the maintenance panel where the fuel filter assy. on the LH side of the car, just beneath the LH passenger seat cushion, had a puddle of gas present.

Date of Failure – June 1, 2010. See “**Exhibit U**” to Orig. Compl. (Complaint 6/1/2010)

2005 Mercedes Benz E55 fuel sending unit was spraying gas into the compartment which is underneath the driver side back passenger seat. There was a recall on the car already and it was replaced and failed in just 18 months. Brought the car to Mercedes of Freehold and they said “Been changed under recall” and they can’t do anything for me now that the new part has failed. Ended up buying the part out of pocket and replacing it because it was not under warranty any more. Gas being sprayed under the back passenger seat is not safe at all! Not to mention my cabin was filled with gas fumes.

Date of Failure – August 14, 2010. See **Exhibit V**” to Orig. Compl. (Complaint 8/14/10)

The contact owns a 2003 Mercedes E55. The contact was driving 35 MPH when he noticed an overpowering gasoline fuel odor from the vehicle interior. The dealer made repairs to the fuel tank seals. Later while refueling the vehicle, the contact noticed a large puddle of gasoline under the vehicle. He further inspected the failure and found a large puddle of gasoline fuel atop the fuel tank. The contact stated the vehicle was previously repaired under an unknown manufacturer’s recall for the fuel assembly in 2008. The vehicle was not further repaired. The failure mileage was 55,000 and the current mileage was 64,000.

30. NHTSA mandates that manufacturers issue recalls for safety related defects. If a manufacturer identifies a safety defect, the manufacturer notifies NHTSA, as well as vehicle or equipment owners, dealers, and distributors. A

safety defect is one which poses an unreasonable risk to safety and is common to a group of vehicles of the same manufacture or design. The manufacturer must then fix the problem at no charge to the consumer. This requirement has no limitation on vehicle mileage and applies to all vehicles within 25 years of manufacture. *See* 49 USC §30101 *et seq.*

31. Despite being aware of the defect as early as 2008, and perhaps sooner, Defendants failed to notify NHTSA and issue a recall to correct the defect. Leaking fuel tanks pose an unreasonable risk of safety to vehicle owners for risk of fire/explosion and health related problems. Defendants failed to repair or replace defective fuel tanks under vehicle warranties and/or pursuant to 49 USC §30101 *et seq.* Instead, Defendants chose to ignore and conceal the defect, instructing Mercedes-Benz technicians only to replace fuel sending units under warranty after repeated owner complaints.

32. Defendants also instructed Mercedes-Benz technicians not to issue replacement parts to the vehicles included in recall campaign #2008-020001 after replacement parts also failed. These replacement parts issued under recall campaign #2008-020001 did not correct the defect, because the defect was either misidentified by Defendants or concealed to defer costs to owners for complete replacement of gasoline tanks that will once again exhibit the same gasoline leaks.

33. These vehicles still suffer from leaking fuel tanks and the affected E-Class owners covered under campaign #2008-020001 are not being given proper replacement parts after the failure of recalled parts under campaign #2008-020001.

34. Defendants were apparently hoping these customers would be assuaged or that the fuel tanks and fuel sending units would be out of warranty by the time customers came back for the necessary repair and/or replacement. By engaging in this behavior, Defendants sought to profit by not incurring the cost of replacing parts under warranty and by further realizing revenue on part sales for replacements. Defendants still have not redesigned and manufactured the fuel tanks free of all defects. Owners who have been forced by Defendants to purchase and replace defective gasoline tanks out-of-pocket only received new defective gasoline tanks. Defendants have not remanufactured these defective gasoline tanks to be free from the safety defect at issue.

35. With full knowledge that the gasoline tanks in E-Class models were defectively designed and/or manufactured, Defendants failed to reengineer the parts at issue and continued to sell vehicles with safety defects through the 2009 model year. Defendants never disclosed the defects or the potential risks of those defects to consumers, nor did they revise warranties for an extension on the defective parts already included in earlier models. Rather, Defendants did nothing

to remedy safety defects concerning proper storage of explosive and flammable gasoline.

36. Due to the common defects contained in the fuel tank, fuel sending unit, evaporation tubes, and associated fuel system components, which are substantially similar across the E-Class vehicle lines and model years identified herein, all fuel tanks have to be replaced. Some owners have paid thousands of dollars to replace the gas tank, fuel sending units, and evaporation tubes, which is passed on to owners following warranty expiration, because Defendants did not issue a recall for the defective parts, even though they knew the defects to exist in E-Class vehicles. Failure to adequately contain gasoline and gasoline fumes render the vehicles unsafe to drive and unsafe to store in garages due to the potential for explosions and sickness.

37. After obtaining the vehicles in question, each of the named Plaintiffs experienced problems with raw fuel and gasoline fumes leaking from their E-Class vehicle gas tanks. These vehicles exhibit common safety defects across all lines and model years of E-Class vehicles identified herein, and created by Defendants, for which Defendants have the responsibility to correct.

E. NAMED PLAINTIFFS' EXPERIENCES

I. MCCABE

38. Plaintiff Ronan McCabe is, and at all times relevant to this action was, a resident of Tucker, Georgia. On or about January 24, 2012, McCabe purchased a 2006 Mercedes-Benz E55 AMG.

39. McCabe expected to receive a vehicle that was designed and manufactured to conform to the standard automotive quality for fuel containment. McCabe did not receive a vehicle that conformed to the standard he expected to receive.

40. At the time of the purchase, Defendants failed to disclose to McCabe or to the public the fact that there were underlying safety defects with the gasoline tanks contained in Mercedes-Benz E55 AMG vehicles, like the one purchased by McCabe. This defect was material in that he never would have purchased the vehicle had he known this defect existed. The defect also substantially affected the value of McCabe's vehicle. As a result of the defect, McCabe received a vehicle that has a diminished value for what he believed he had paid for and purchased. The vehicle additionally has a diminished value due to a negative market effect simply because it contains a safety defect.

41. McCabe used his vehicle as intended and foreseen by the Defendants.

42. On January 25, 2012, McCabe noticed a strong gasoline odor emanating from the right side rear of his E55 AMG vehicle. McCabe contacted MBUSA concerning the issue, and was informed his E55 AMG, which was or should have been a recalled vehicle under campaign #2008-020001, was not eligible for repairs under the recall campaign. McCabe was instructed to take his vehicle to a Mercedes-Benz service center to be diagnosed.

43. On January 26, 2012, McCabe presented his E55 AMG vehicle at Atlanta Classic Cars, an authorized Mercedes-Benz service center, for diagnosis. Service technicians diagnosed the fuel leak as coming from the fuel-sending unit on the left side of the gasoline tank. Service technicians replaced McCabe's fuel sending unit at a cost of \$302.87 to McCabe.

44. On February 3, 2012, McCabe noticed the gasoline odor and liquid fuel leak was once again present in his E55 AMG vehicle. On or about February 6, 2012, McCabe again presented his E55 AMG vehicle at Atlantic Classic Cars, and explained he was still experiencing a strong odor of gasoline in the vehicle cabin after the gasoline tank was filled. Mercedes-Benz service technicians diagnosed the issue as the gasoline tank leaking from the feed tube. Service technicians replaced the gasoline tank, fuel sending units, fuel pump, and rings and seals at an additional cost of \$1,632.25 to McCabe. Despite the gasoline tank and fuel-

sending unit being replaced, defects still exist in McCabe's vehicle, which can cause strong fuel odor to become present in the vehicle cabin if the gas tank is completely filled.

II. HERRING

45. Plaintiff Herring is, and at all times relevant to this action was, a resident of Newnan, Georgia. On or about April 9, 2009, Herring purchased a used 2006 Mercedes-Benz E500 from an authorized Mercedes-Benz dealership, Mercedes-Benz of South Atlanta. The vehicle was covered by a factory warranty at the time of purchase.

46. Herring expected to receive a vehicle that was designed and manufactured to conform to the standard automotive quality for fuel containment. Herring did not receive a vehicle that conformed to the standard she expected to receive.

47. At the time of the purchase, Defendants failed to disclose to Herring or to the public the fact that there were underlying safety defects with the gasoline tanks contained in Mercedes-Benz E500 vehicles, like the one purchased by Herring. This defect was material in that she never would have purchased the vehicle had she known this defect existed. The defect also substantially affected

the value of Herring's vehicle. As a result of the defect, Herring received a vehicle that has a diminished value from what she believed she had paid for and purchased.

48. Throughout her ownership of the vehicle, she used the E500 vehicle as it was intended and foreseen by the Defendants.

49. On or about July 29, 2012, Herring noticed a strong gasoline odor inside her E500 vehicle.

50. On or about July 30, 2012, Herring presented her E500 vehicle to Mercedes-Benz of South Atlanta, an authorized Mercedes-Benz service center, for diagnosis. Service technicians immediately identified the strong fuel smell and diagnosed the fuel leak as coming from the gas tank or its related components.

51. Mercedes-Benz of South Atlanta quoted Herring \$2,896.64 to replace both fuel level senders, seals, and covers, and to replace the fuel tank in her vehicle. Alternatively, Mercedes-Benz of South Atlanta offered to allow Herring to trade-in her defective vehicle towards the purchase of a different vehicle, but with a reduction in price paid for her trade-in to reflect the problem with the fuel smell in her vehicle.

52. Herring elected to trade-in the defective E500 vehicle. During the trade-in process, Mercedes-Benz of South Atlanta deducted \$3,937 from the trade-

in value of her vehicle, as their valuation of the diminished value of the vehicle due to the fuel smell and fuel-related defects.

III. STONE

53. Plaintiff Jon Dustin Stone is, and at all times relevant to this action was, a resident of Dallas, Texas. On or about July 7, 2011, Stone purchased a 2007 Mercedes-Benz E63 AMG.

54. Stone expected to receive a vehicle that was designed and manufactured to conform to the standard automotive quality for fuel containment. Stone did not receive a vehicle that conformed to the standard he expected to receive.

55. At the time of the purchase, Defendants failed to disclose to Stone, or the public, the fact that there were underlying safety defects with the gasoline tanks contained in Mercedes-Benz E63 AMG vehicles, like the one purchased by Stone. This defect was material in that he never would have purchased the vehicle had he known this defect existed. The defect also substantially affected the value of Stone's vehicle. As a result of the defect, Stone received a vehicle that has a diminished value for what he believed he had paid for and purchased. The vehicle additionally has a diminished value due to a negative market effect simply because it contains a safety defect.

56. Stone used his vehicle as intended and foreseen by the Defendants.

57. On or about January 18, 2012, Stone presented his E63 AMG at Mercedes-Benz of Plano complaining of a fuel odor and liquid fuel leak. Mercedes-Benz service technicians replaced the left side fuel-sending unit and installed a new seal on the right side fuel-sending unit.

58. On or about January 20, 2012, Stone again presented his E63 AMG to Mercedes-Benz of Plano complaining of bad fuel odor in the cabin still emanating from the gasoline tank. Service technicians found a “material defect” in the *new* left side fuel-sending unit that was installed two days earlier. They once again replaced the fuel-sending unit on the left side.

59. On or about February 3, 2012, Stone presented his E63 AMG at Mercedes-Benz of Plano after seeing a liquid fuel leak pool underneath his vehicle while parked in his garage. Mercedes-Benz service technicians then replaced the entire gasoline tank. Despite the gasoline tank and fuel sending unit being replaced, a defect still exists in the parts, which can cause strong fuel odor to become present in the vehicle cabin if the gas tank is completely filled.

IV. DEUEL

60. Plaintiff Adam Deuel is, and at all times relevant to this action was, a resident of Houston, Texas. On or about June 11, 2011, Deuel purchased a 2004 Mercedes-Benz E500 from Expo Motorcars in Houston, Texas.

61. Deuel expected to receive a vehicle that was designed and manufactured to conform to the standard automotive quality for fuel containment. Deuel did not receive a vehicle that conformed to the standard he expected to receive.

62. At the time of the purchase, Defendants failed to disclose to Deuel or to the public the fact that there were underlying safety defects with the gasoline tanks contained in Mercedes-Benz E500 vehicles, like the one purchased by Deuel. This defect was material in that he never would have purchased the vehicle had he known this defect existed. The defect also substantially affected the value of Deuel's vehicle. As a result of the defect, Deuel received a vehicle that has a diminished value for what he believed he had paid for and purchased. The vehicle additionally has a diminished value due to a negative market effect simply because it contains a safety defect.

63. Deuel used his vehicle as intended and foreseen by the Defendants.

64. On or about August 10, 2012, Deuel noticed a strong gasoline odor inside his E500 vehicle. On August 13, 2012, Deuel presented his vehicle at Mercedes-Benz of Houston North, notifying the Mercedes-Benz technicians of a fuel leak in his vehicle.

65. Service technicians diagnosed the fuel leak as coming from the fuel-sending unit on the left side of the gasoline tank, telling Deuel “Anytime you’re leaking fuel, that’s a safety issue.” Service technicians replaced Deuel’s fuel sending unit at a cost of \$1,042.12 to Deuel.

66. The fuel leak in Deuel’s vehicle was so potent, the fuel escaped the tank through the top and soaked into the rear seat upholstery. It created a large brown stain in the leather, which could not be cleaned. Deuel was forced to replace the rear seat on August 16, 2012 at a cost of \$289.00. Despite the fuel-sending unit being replaced, defects still exist in the parts, which can cause strong fuel odor to become present in the vehicle cabin if the gas tank is completely filled.

V. VO

67. Plaintiff Minh Vo is, and at all times relevant to this action was, a resident of Sterling, Virginia. On or about December 15, 2008, Vo purchased a certified pre-owned 2006 Mercedes-Benz E500 from an authorized Mercedes-Benz

dealership, Mercedes-Benz of Arlington, Virginia. The vehicle was covered by a factory certified pre-owned (“CPO”) warranty at the time of purchase.

68. On or about December 23, 2010, Vo also purchased a pre-owned 2005 Mercedes-Benz E55 AMG from Infiniti of Tyson’s Corner in Vienna, Virginia. The vehicle was not covered by a factory warranty at the time of purchase.

69. When Vo purchased each of these vehicles, he expected to receive vehicles that were designed and manufactured to conform to the standard automotive quality for fuel containment. Vo did not receive vehicles that conformed to the standard he expected to receive.

70. At the time of the purchase, Defendants failed to disclose to Vo or to the public the fact that there were underlying safety defects with the gasoline tanks contained in Mercedes-Benz E55 AMG and E500 vehicles, like the ones purchased by Vo. This defect was material in that he never would have purchased the vehicles had he known this defect existed. The defect also substantially affected the value of Vo’s vehicles. As a result of the defect, Vo received vehicles that have a diminished value for what he believed he had paid for and purchased. The vehicles additionally have a diminished value due to a negative market effect simply because they contain a safety defect.

71. Vo used his vehicles as intended and foreseen by the Defendants.

72. On or about March 14, 2011, Vo presented his E55 AMG at Mercedes-Benz of Arlington complaining of gasoline odor both inside and outside of the vehicle. Although his vehicle was part of the recall campaign #2008-020001, Defendants refused to replace the defective parts under the recall, because the recall was already performed prior to Vo's ownership. Service technicians replaced one fuel sending unit and two seal rings at a cost to Vo of \$945.28. Despite the fuel-sending unit being replaced, the defect still exists in the gasoline tank causing strong fuel odor to become present in the vehicle cabin when the gas tank is completely filled.

73. Vo is also experiencing the same gasoline odor in his E500, which has not had any parts replaced yet. Vo cannot park his E-Class vehicles in his garage for fear of fire or explosion. Vo is also concerned for the health of his child and is forced to drive with the windows open for additional ventilation.

VI. SUDHIR K. CHAUDHARY

74. Plaintiff Sudhir K. Chaudhary is, and at all times relevant to this action was, a resident of Napa, California. Mr. Chaudhary purchased a 2003 Mercedes-Benz E500 pre-owned from a dealership with a factory warranty.

75. Mr. Chaudhary expected to receive a vehicle that was designed and manufactured to conform to the standard automotive quality for fuel containment.

Chaudhary did not receive a vehicle that conformed to the standard she expected to receive.

76. At the time of the purchase, Defendants failed to disclose to Chaudhary or to the public the fact that there were underlying safety defects with the gasoline tanks contained in Mercedes-Benz E500 vehicles, like the one purchased Chaudhary. This defect was material in that he never would have purchased the vehicle had he known this defect existed. The defect also substantially affected the value of Chaudhary's vehicle. As a result of the defect, Chaudhary received a vehicle that has a diminished value from what he believed he had paid for and purchased.

77. Throughout his ownership of the vehicle, Chaudhary used it as intended and foreseen by the Defendants.

78. At some point during her ownership, Chaudhary noticed a strong fuel odor inside the vehicle after refueling.

79. Chaudhary presented his vehicle to an authorized Mercedes-Benz dealership, notifying the Mercedes-Benz technicians of a fuel leak in her vehicle.

80. The authorized Mercedes-Benz dealership refused to perform repairs on his vehicle pursuant to the vehicle's warranty plan.

81. This repair, however, did not resolve the fuel smell in Chaudhary's E500.

82. Chaudhary paid \$4045 for repairs to the vehicle in attempt to fix the fuel smell problem.

F. CLASS ACTION ALLEGATIONS

83. Plaintiffs McCabe and Herring bring this action as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of themselves and the following Class:

All current and former owners and lessees of 2003-2009 Mercedes-Benz E320, E350, E500, E550, E55 AMG, and E63 AMG that reside in Georgia ("Georgia Class").

Georgia Subclass:

All members of the Georgia Class who incurred out of pocket expenses for parts and labor to replace gasoline tanks, fuel sending units, rings, and any other parts located within or part of the gasoline tank assembly.

Excluded from the Georgia Class are Defendants, as well as Defendants' employees, affiliates, officers, and directors, including franchised dealers, any individuals who experienced physical injuries as a result of the defects at issue in

this litigation and the Honorable Timothy C. Batten, Sr. Plaintiffs reserve the right to amend the definition of the Class if discovery and/or further investigation reveal that the Georgia Class should be expanded or otherwise modified.

84. Plaintiffs Stone and Deuel bring this action as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of themselves and the following Class:

All current and former owners and lessees of 2003-2009 Mercedes-Benz E320, E350, E500, E550, E55 AMG, and E63 AMG that reside in Texas (“Texas Class”).

Texas Subclass:

All members of the Texas Class who incurred out of pocket expenses for parts and labor to replace gasoline tanks, fuel sending units, rings, and any other parts located within or part of the gasoline tank assembly.

Excluded from the Texas Class are Defendants, as well as Defendants’ employees, affiliates, officers, and directors, including franchised dealers, any individuals who experienced physical injuries as a result of the defects at issue in this litigation and the Honorable Timothy C. Batten, Sr. Plaintiffs reserve the right to amend the

definition of the Class if discovery and/or further investigation reveal that the Texas Class should be expanded or otherwise modified.

85. Plaintiff Vo brings this action as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of himself and the following Class:

All current and former owners and lessees of 2003-2009 Mercedes-Benz E320, E350, E500, E550, E55 AMG, and E63 AMG that reside in Virginia (“Virginia Class”).

Virginia Subclass:

All members of the Virginia Class who incurred out of pocket expenses for parts and labor to replace gasoline tanks, fuel sending units, rings, and any other parts located within or part of the gasoline tank assembly.

Excluded from the Virginia Class are Defendants, as well as Defendants’ employees, affiliates, officers, and directors, including franchised dealers, any individuals who experienced physical injuries as a result of the defects at issue in this litigation and the Honorable Timothy C. Batten, Sr. Plaintiff reserves the right to amend the definition of the Class if discovery and/or further investigation reveal that the Virginia Class should be expanded or otherwise modified.

86. Plaintiff Chaudhary brings this action as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of herself and the following Class:

All current and former owners and lessees of 2003-2009 Mercedes-Benz E320, E350, E500, E550, E55 AMG, and E63 AMG that reside in California (“California Class”).

Excluded from the California Class are Defendants, as well as Defendants’ employees, affiliates, officers, and directors, including franchised dealers, any individuals who experienced physical injuries as a result of the defects at issue in this litigation and The Honorable Timothy C. Batten, Sr. Plaintiff reserves the right to amend the definition of the Class if discovery and/or further investigation reveal that the California Class should be expanded or otherwise modified.

87. The Texas Class, Georgia Class, Virginia Class, and California Class are hereinafter referred to collectively as “Classes.”

88. Numerosity / Luminosity / Impracticality of Joinder: The members of the Classes are so numerous that joinder of all members would be impractical. Plaintiffs reasonably estimate that there are thousands of Class members who purchased the relevant vehicles. The members of the Classes are easily and readily identifiable from information and records in Defendants’ possession, control, or custody.

89. Commonality and Predominance: There is a well-defined community of interest and common questions of law and fact that predominate over any questions affecting the individual members of the Classes. These common legal and factual questions, which exist without regard to the individual circumstances of any Class member, include, but are not limited to, the following:

- a. Whether the gasoline tanks, fuel sending units, and evaporator tubes in the subject vehicles are defective;
- b. Whether Defendants omitted, misrepresented, concealed, or manipulated material facts from Plaintiffs and the Classes regarding the defects, the actions taken to address the defects, and the end result of said actions;
- c. Whether Defendants engaged in fraudulent business practices with respect to the sale of the Mercedes-Benz E-Class vehicles;
- d. Whether Defendants had a duty to disclose the defects to the Plaintiffs and Classes;
- e. Whether Defendants had a duty to issue a recall for the defective parts at issue;
- f. Whether Defendants violated the Virginia Consumer Protection Act;

- g. Whether Defendants violated the California Unfair Business Practices;
- h. Whether Defendants engaged in fraud;
- i. Whether Plaintiffs and the Classes are entitled to damages; and,
- j. Whether Plaintiffs and the Classes are entitled to equitable relief or other relief, and the nature of such relief.

90. Typicality: The Plaintiffs' claims are typical of Classes in that Plaintiffs and the Classes all have purchased vehicles that contain defective parts that cause Plaintiffs to suffer from improper fuel containment in affected vehicles and sustain damages as a direct proximate result of the same wrongful practices that the Defendants engaged in. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the members of the Classes' claims. Plaintiffs' claims are based upon the same legal theories as the members of the Classes' claims. The only difference between the Plaintiffs' and members of the Classes' claims would lie in the exact amount of damages sustained, which could be determined readily and does not bar class certification.

91. Adequacy: Plaintiffs will fully and adequately protect the interests of the members of the Classes and have retained class counsel who are experienced and qualified in prosecuting class actions, including consumer class actions and

other forms of complex litigation. Neither the Plaintiffs nor their counsel have interests which are contrary to, or conflicting with, those interests of the Classes.

92. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because, *inter alia*: it is economically impracticable for members of the Classes to prosecute individual actions; prosecution as a class action will eliminate the possibility of repetitious and redundant litigation; and, a class action will enable claims to be handled in an orderly, expeditious manner.

G. COUNT 1 – VIOLATION OF THE VIRGINIA CONSUMER PROTECTION ACT (“VCPA”)

93. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

94. Plaintiff Vo and members of the Virginia Class are consumers engaged in “consumer transactions” in purchasing or leasing a 2003-2009 Mercedes-Benz E-Class Vehicle as defined in § 59.1-198.

95. The 2003-2009 Mercedes-Benz E-Class vehicles are “goods” as defined in § 59.1-107. Defendants are “persons” as defined in § 59.1-198.

96. Defendants are “suppliers” as defined in § 59.1-198.

97. Defendants engaged in fraudulent acts or practices committed as suppliers in connection with a consumer transaction involving misrepresenting

2003-2009 Mercedes-Benz E-Class vehicles as equipped with gasoline tanks that contain the gasoline placed inside. *See* 59.1-200(A)(1).

98. Defendants engaged in fraudulent acts or practices committed as suppliers in connection with a consumer transaction involving misrepresenting 2003-2009 Mercedes-Benz E-Class vehicles as having warranties that required Defendants to correct defects. *See* 59.1-200(A)(1).

99. Defendants engaged in fraudulent acts or practices committed as suppliers in connection with a consumer transaction involving misrepresenting 2003-2009 Mercedes-Benz E-Class vehicles as having characteristics, uses, and benefits that they did not have in fuel containment. *See* 59.1-200(A)(5).

100. Defendants engaged in fraudulent acts or practices committed as suppliers in connection with a consumer transaction involving misrepresenting 2003-2009 Mercedes-Benz E-Class vehicles as having characteristics, uses, and benefits that they did not have in having warranties that required Defendants to correct defects. *See* 59.1-200(A)(5).

101. Defendants engaged in fraudulent acts or practices committed as suppliers in connection with a consumer transaction involving misrepresenting that 2003-2009 Mercedes-Benz E-Class vehicles were of a particular standard or quality of containing gasoline, which they were not. *See* 59.1-200(A)(6).

102. Defendants engaged in fraudulent acts or practices committed as suppliers in connection with a consumer transaction involving misrepresenting that 2003-2009 Mercedes-Benz E-Class vehicle repairs and service were performed as part of a recall to correct defects in the gasoline tank, which caused fuel leaks. *See* 59.1-200(A)(10).

103. Defendants engaged in fraudulent acts or practices committed as suppliers in connection with a consumer transaction in manufacturing and selling gasoline tanks as replacement parts for 2003-2009 Mercedes-Benz E-Class vehicles which they knew to be defective. *See* 59.1-200(A)(14).

104. Plaintiff Vo presented his vehicle and claim to an authorized Mercedes-Benz service center on March 14, 2011, giving Defendants a reasonable opportunity to correct the defect. Defendants failed to do so.

**H. COUNT 2 – VIOLATION OF UNFAIR BUSINESS PRACTICES
UNDER CALIFORNIA BUSINESS & PROFESSIONS CODE
§ 17200, *et seq.***

105. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

106. At all times mentioned herein, Plaintiffs allege that Defendants knew that the design of the fuel tank, fuel sending units, and evaporation tubes were

defective and posed an unreasonable safety risk to the public, due to the vehicles' inability to contain fuel properly.

107. With full knowledge of the facts identified herein, Defendants knowingly sold and continued to sell vehicles equipped with defective fuel tanks, fuel sending units, and evaporation tubes to California residents, while concealing and suppressing the nature and scope of the defects. Such concealment and suppression was done to maximize their profits and their market share, and to avoid a costly recall and/or the cost of replacing the fuel tank, fuel sending units, and evaporation tubes on each of the affected vehicles.

108. The business acts and practices of Defendants are unfair, unlawful, and deceptive within the meaning of Business & Professions Code § 17200, *et seq.*, in that such acts and practices are deceptive and substantially damaging to consumers and contrary to public policy. Consumers, including Plaintiff Chaudhary, who relied on the representations and warranties made, are injured when Defendants fail to honor the warranty as prescribed herein, and due to the safety concerns that exist in the subject vehicles.

109. Moreover, Defendants' unlawful and unfair business practices present a continuing and ongoing threat to the public in that Defendants will continue to mislead and deceive the public regarding the quality and nature of the affected

vehicles, in that Defendants will continue to fail to honor and/or refuse to honor the terms of the express warranties provided to the consuming public.

110. Under Business and Professions Code § 17203, Plaintiff Chaudhary and the California Class seek an order enjoining Defendants from engaging in the unfair and unlawful practices and acts identified herein. Said Code section also provides for equitable monetary relief so as to preclude the retention of all monies improperly obtained by Defendants as a result of such practices and acts.

111. The acts and conduct alleged herein were willful, reckless, and done with malice such that an award of exemplary damages is warranted.

I. COUNT 3 – FRAUDULENT CONCEALMENT

112. Plaintiffs repeat and reallege the allegations of the preceding paragraphs as if fully set forth herein.

113. Defendants concealed facts from all Plaintiffs and the public that Defendants knew 2003-2009 Mercedes-Benz E-Class vehicles were manufactured with a fuel tank defect.

114. Defendants had a duty to disclose the facts to Plaintiffs and the public, but failed to do so.

115. The facts that were not disclosed were and are material.

116. Defendants knew the Plaintiffs were ignorant of the facts and that Plaintiffs did not have an equal opportunity to discover the facts.

117. By failing to disclose the facts, Defendants intended on inducing Plaintiffs to purchase the vehicles wherein they would have to pay out-of-pocket costs to replace defective parts.

118. Plaintiffs reasonably relied on Defendants' nondisclosure.

119. Plaintiffs were injured as a result.

120. It was omitted to Plaintiffs and classes that 2003-2009 Mercedes-Benz E-Class vehicles were designed and manufactured with a fuel tank defect. Plaintiffs and classes would have never purchased their 2003-2009 Mercedes-Benz E-Class vehicles had they known of the safety defect contained within the gasoline tank. 2003-2009 Mercedes-Benz E-Class vehicles contain material safety defects that Defendants knew at the time of distribution or should have known and recklessly manufactured and distributed vehicles to consumers in the United States without knowledge of the defect. Defendants had a duty to disclose such defects to Plaintiffs and Class Members that the 2003-2009 Mercedes-Benz E-Class vehicles would conform to safety standards as designed and manufactured, but failed to do so. As a result of the defect, Plaintiffs and classes have suffered injury.

121. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and classes have suffered or will suffer damages, which include, without limitation, the diminution in value of Plaintiffs' and class vehicles and reimbursement of the costs and expenses already expended by Plaintiffs and classes as a result of the defects in an amount to be determined at trial.

122. As a direct and proximate result of Defendants' conduct, (in addition to the other relief sought by Plaintiff Stone and the Texas class, and in addition to the relief sought by the other named plaintiffs and the other classes for fraud) Plaintiff Stone and the Texas class are entitled to treble damages and attorneys' fees.

J. JURY DEMAND

The Plaintiffs reserve the right to amend this complaint and demands a trial by jury for all of their claims at law.

K. DAMAGES AND PRAYER

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them jointly and severally, as follows:

1. An order certifying this action as a class action, appointing Plaintiffs as class representatives and appointing Plaintiffs' counsel as lead Class counsel;

2. All compensatory damages on all applicable claims in an amount to be proven at trial, and, as allowed by law, for such damages to be trebled or multiplied upon proof of claims under laws allowing for trebling or multiplying of compensatory damages based upon Defendants' violations of law;

3. An order directing disgorgement and restitution of all improperly retained monies by Defendants;

4. An order permanently enjoining Defendants from engaging in the unlawful practices, as alleged herein;

5. For an injunction to prohibit Defendants from engaging in the unconscionable commercial practices complained of herein, and for an injunction requiring to give notice to persons to whom restitution is owing of the means by which to file for restitution;

6. For punitive damages against Mercedes-Benz USA in an amount to be determined at trial;

7. An award of attorneys' fees, costs, and expenses;

8. There are no claims from a split-recovery statute being made against Daimler AG; and,

9. All other and further relief, including equitable and injunctive relief, that the Court deems appropriate and just under the circumstances.

This 28th day of August, 2013.

Respectfully submitted,

CONLEY GRIGGS PARTIN LLP

/s/ Ranse M. Partin

Cale Conley

Georgia Bar No. 181080

Ranse M. Partin

Georgia Bar No. 556260

The Hardin Building
1380 West Paces Ferry Road, N.W.
Suite 2100
Atlanta, Georgia 30327
Telephone: 404-467-1155
Facsimile: 404-467-1166
cale@conleygriggs.com
ranse@conleygriggs.com

**WIGINGTON RUMLEY DUNN &
RITCH, L.L.P.**

Joseph M. Dunn

Texas Bar No. 06245650

601 Howard Street
San Antonio, Texas 78212
Telephone: (210) 487-7500
Telecopier: (210) 487-7501
jdunn@wigrum.com

WERNER & ASSOCIATES, P.C.

Matthew Q. Wetherington

Georgia Bar No. 339639

2142 Vista Dale Court
Atlanta, Georgia 30084
Telephone: 404-315-8840
Facsimile: 770-414-8098
matt@wernerlaw.com

COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that I have filed the foregoing **Second Amended Class Action Complaint**, by electronically filing said pleading with the Clerk of the Court, using the CM/ECF electronic filing system, which will automatically send notice of said filing via electronic mail to the following attorneys of record:

Stephen B. Devereaux, Esq.
King & Spalding, LLP
1180 Peachtree Street, N.E.
Suite 1700
Atlanta, Georgia 30309-3521
sdevereaux@kslaw.com
Counsel for Defendants

This 28th day of August, 2013.

CONLEY GRIGGS PARTIN LLP

/s/ Ranse M. Partin

Ranse M. Partin
Georgia Bar No. 556260

The Hardin Building
1380 West Paces Ferry Road, N.W.
Suite 2100
Atlanta, Georgia 30327
Telephone: 404-467-1155
Facsimile: 404-467-1166
cale@conleygriggs.com
ranse@conleygriggs.com