

MANDATORY CHAMBERS COPY

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

CHARLIE A. JACQUO-STEVENSON
AND COREY R. STEVENSON, On
Behalf Of Themselves And All Others
Similarly Situated,

Plaintiffs,

vs.

MERCEDES-BENZ USA, LLC,

Defendant.

CASE NO.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 **NATURE OF THE ACTION**

2 1. Plaintiffs Charlie A. Jacquo-Stevenson and Corey R. Stevenson
3 (collectively “Plaintiffs”), both residents of California, bring this action on behalf of
4 themselves and all other similarly situated owners and lessees in California of Mercedes-
5 Benz automobiles equipped with the 722.9 7G-Tronic automatic transmission. As
6 detailed, herein, the subject transmission is defective, having a defect in the
7 transmission’s valve body and conductor plate that causes the transmission to fail
8 prematurely and need replacement well before the useful life of the transmission or the
9 vehicle in which it is housed. Defendant Mercedes-Benz USA, LLC (“MBUSA” or
10 “Defendant”) has known about this defect for years, circulating internal Technical
11 Service Bulletins to its factory-authorized dealerships that detail the nature of the
12 transmission problem. Indeed, the defective 722.9 transmission has failed to such a
13 widespread extent that, at one point, MBUSA was unable to supply sufficient
14 replacement transmission components to have the defective transmissions repaired and,
15 as a result, for a long time, MBUSA prevented independent service stations from
16 purchasing such replacement parts. Worse yet, when the transmission valve body or
17 conductor plate fails in the Mercedes-Benz 722.9 transmission, a real safety hazard
18 ensues. As a result of the defect, the transmission will have a difficult time shifting from
19 first to second gear, and will not shift to higher gears, causing the vehicle to be unable to
20 be driven at any speed. The fault will then generally cause the transmission to enter
21 what is referred to as “Limp Mode,” leaving the car to “limp” along the roadway in a
22 very restricted and limited fashion. Despite this and despite the clear defect and
23 Defendant’s knowledge of it, MBUSA has failed to take any action. Because the
24 defective transmission typically manifests itself outside the 4 year/50,000 mile durational
25 limit of MBUSA’s New Vehicle Limited Warranty, MBUSA washes its hands of any
26 liability, fails to disclose this defect, and leave consumers of the affected vehicles, like
27 Plaintiffs, to pay for the costly repair of the transmission to the tune of several thousands
28 of dollars. Plaintiffs, who own a 2007 Mercedes-Benz S-550 originally equipped with

1 the defective 722.9 7G-Tronic transmission suffered this fate, had their vehicle's
2 transmission fail repeatedly on the roadway when the car had just 57,000 miles or so,
3 and were denied any redress by MBUSA. Given MBUSA's failure to stand behind its
4 product, Plaintiffs were forced to and did pay over \$2,000 to have the transmission valve
5 body replaced. Needless to say, transmissions in cars having only 57,000 miles should
6 not fail—much less should they fail by the thousands in Mercedes-Benz cars across the
7 country and the world. Plaintiffs file this lawsuit to seek redress for MBUSA's
8 violations of the California Consumer Legal Remedies Act ("CLRA") and California's
9 Unfair Competition Law ("UCL").

10 11 **JURISDICTION AND VENUE**

12 2. This Court has subject matter over this action pursuant to the Class Action
13 Fairness Act, 28 U.S.C. § 1332 (as amended 2005) because the Class Action Complaint
14 pleads a class action involving more than \$5 million in controversy (excluding pre-
15 judgment interest and costs), and involves a putative plaintiffs class of diverse
16 citizenship (i.e., California) than Defendant's citizenship (i.e., Georgia).

17 3. This Court has personal jurisdiction over Defendant Mercedes-Benz USA,
18 LLC because Defendant markets and distributes Mercedes automobiles, including the
19 ones forming the subject of this Class Action Complaint, within this judicial district.

20 4. Venue is proper in this district because Plaintiffs are residents of this
21 judicial district, their vehicle was purchased and malfunctioned within this judicial
22 district, the vehicle was repaired and the damages were incurred within this judicial
23 district, and the events giving rise to Plaintiffs' claims took place within this judicial
24 district. Venue in this district is therefore proper pursuant to 28 U.S.C. § 1391.

25 **THE PARTIES AND THEIR EXPERIENCES**

26 5. Plaintiffs Corey R. Stevenson and Charlie A. Jacquo-Stevenson are husband
27 and wife who reside in California and are the owners of a 2007 Mercedes S550 vehicle,
28

1 which they purchased in October 2011. Starting on or about January 2014, Plaintiffs
2 began experiencing very rough jolting type of shifting, which at the time most
3 commonly occurred after the car had been parked at an incline or decline. The same
4 jolting and erratic shifting also occurred when driving up or down an incline or on the
5 freeway or after using the car's cruise control. The car's transmission would shift in
6 such jolting fashion from first to second gear and occasionally to third gear but would
7 not shift into any of the other of the remaining higher gears of the transmission. Instead,
8 the vehicle would enter its so-called "Limp Mode," leaving the car to limp along at low
9 speeds (even if one were traveling on the freeway or roadways with fast moving traffic).
10 The car would remain in this "Limp Mode" state, and the only way to cause it to exit that
11 state would be to turn it off completely, wait for some period of time and then restart the
12 vehicle in order to apparently reset the transmission components. This would then cause
13 the "Check Engine Light" in the vehicle's instrumentation cluster to illuminate but no
14 more specific reason for the "Check Engine Light's" illumination was provided.

15 6. The danger posed by this erratic transmission was so acute that Mr.
16 Stevenson would not have his wife drive the car unless he was also in the car with her. It
17 takes no particular insight to discern that a car that erratically fails to shift and is forced
18 to limp along at relatively slow speeds on a freeway or busy roadway poses a serious
19 safety risk to its driver, occupants, and other drivers and occupants on the roadways.

20 7. Plaintiffs repeatedly turned to Defendant and its dealerships to get them to
21 repair this obviously defective transmission, but at each turn Defendant refused to
22 provide any coverage for the repair and insisted that Plaintiffs bear the full and sole
23 responsibility for any and all costs associated with repairing the faulty transmission.
24 Having no choice, on October 2014, Plaintiffs eventually located an independent
25 transmission repair garage that advised them that ultimately the whole transmission unit
26 in Plaintiffs' car would have to be replaced, but that they could "band-aid" it by
27 replacing only the transmission valve body and obtain a 1-year or 12,000 mile warranty
28 covering the defective part and labor at a cost of over two thousand dollars. Plaintiffs

1 were advised that replacement of the entire transmission unit—the true “fix” for the
2 problem plaguing their transmission— would have cost approximately \$7,500 at a
3 minimum. Plaintiffs paid for the “band-aid” repair approach and had the transmission
4 valve body replaced at a cost of over \$2,000.

5 8. Defendant Mercedes-Benz USA, LLC is a limited liability corporation
6 having its principal place of business at 303 Perimeter Center North in Atlanta, Georgia
7 30346. Defendant is a subsidiary of Daimler, Inc., the manufacturer of Mercedes-Benz-
8 branded vehicles. Founded in 1965, Mercedes-Benz USA, LLC is responsible for the
9 distribution and marketing of Mercedes and Maybach automobiles within the United
10 States. Defendant was the entity responsible for injecting the Mercedes-Benz vehicle
11 currently owned by Plaintiffs into the United States stream of commerce.

12 **THE PERVASIVE NATURE OF THE PROBLEM**

13
14 9. Regrettably, Plaintiffs’ experiences with their defective 722.9 7G-Tronic
15 transmission are hardly anomalous. Owners of Mercedes-Benz vehicles worldwide
16 have experienced the same or similar fate. The internet is replete with postings about
17 such consumer experiences not merely in California, or even across the United States
18 but across the globe. By way of example, one posting on the webpage:

19 <http://www.thetruthaboutmercedes.com/transmission-failure.html> states the following:

20 With the introduction of the most defective transmission (722.69 7-gtronic)
21 it became obvious that the sensor failure had become an everyday
22 occurrence. To date it is hard to keep track of how many replacement part
23 numbers have been introduced and the instructions have also changed so
24 often that it raises the obvious question of doing R & D on customer’s cars
25 behind their backs at the risk of their death.

26 Please take the time to Google the terms 722.9, defective, sensors, ESP etc.
27 to get a favour [sic] of the depth of customers anguish worldwide to this
28 abomination of a transmission.

As a result Daimler Engineers seem to have deactivated the previous limp-
home system, putting the car in third gear without a serious warning to the
customer such that when the car is restarted a self check restores the car to
normal functioning (gear change available) until the next occurrence of
sensor failure. In this way most customers would not even notice the defect
but in rare case if the defect occurs while the customer is overtaking, without

1 warning he may be unable to accelerate and may die as a result.

2 Even after that while examining the car, it may easily be said 'THAT
3 THERE WAS NO WARNING ON THE DASHBOARD AND
4 THREERFORE THERE WAS NO FAILURE'. Only the company engineers
5 would be able to go into the stored faults and see the KM reading of Fault
6 occurrence whereby the evidence is totally within their control!! Aftermarket
7 scanners are not allowed to display THIS information.

8 Understanding the risks Daimler AG has turned off the warning system and
9 they use this as a trick to replace affected parts without admitting the failure.
10 This is a case of increasing the customer's exposure to death just to avoid a
11 recall campaign.

12

13 After two car's belonging to our companies have been found and proved to
14 have these failures along with a large number of our customer's cars, we
15 have been refused even a response to our questions!!!

16 Customers have even been asked to bring back their cars when 'alleged'
17 defect appears which further deceives them to believe that the fault is not
18 serious. The same defects are known worldwide and there is evidence of
19 total disgust at this cover-up.

20

21 Information of valve body change is never admitted but evidence including
22 constant new part numbers raise the question of ongoing R&D at the cost of
23 customers lives.

24 Additionally the ENDLESS reprogramming of the Transmission Control
25 Unit goes on to this day as can be seen from this list of repeat measures for
26 newer experimental control unit software.

27 We have ourselves been locked in gear, unable to down/up shift in a moving
28 car while overtaking and so have our customers. As can be seen from
our Youtube videos every permutation of the sensor failures admitted in the
documents has been caught live by us and after importing a scanner from
Autologic UK we were able to see the internal/turbine/output speed sensors
in total failure while the warning systems remained deactivated.

Ex. 1 hereto (underlining and capitalization in original).

10. Similarly, in another posting, an independent service garage in the business
of repairing Mercedes-Benz vehicles, details the defect and pervasive nature of the
problems plaguing the 722.9 7G-Tronic transmission. That posting, attached hereto as
Exhibit 2 documents how Mercedes-Benz embargoed all replacement parts needed to
repair the 722.9 transmission from being distributed to non-Mercedes-Benz dealerships

1 because the number of such parts needed by dealerships to repair defective transmissions
2 being presented to them was so high:

3 **A note of caution regarding the electronic plate and TCM:**

4 These units are failing so often that many dealers restricted selling them
5 even in their own shop. To order a part the dealer must submit a request with
6 computer scans and control unit log reports of the suspected failed vehicles
7 electronics. The factory then sends the parts they deem necessary for the
8 repair (conductor plate assembly or complete valve body)

9 It's rumoured that Siemens VDO the manufacturer of the electrical control
10 units is in a battle with Mercedes over the validity of failing units. Why
11 should an Internal problem with Mercedes and its suppliers affect our ability
12 to acquire parts and repair our customer's vehicle? Mercedes is requiring the
13 vehicles be brought into one of their dealers for any valve body or conductor
14 plate repair even if the vehicle is not covered under warranty and the
15 customer is paying for it.

16 **How DATSC can help:**

17 We can repair and even virginise TCM and electronic plates so that they can
18 be reused when rebuilding a transmission. Drop us a line if you have a 722.9
19 fault.

20 Ex. 2 hereto.

21 11. Another independent Mercedes-Benz garage based in Oakland Park, Florida
22 detailed the same experience in its online posting:

23 6/2011

24 Mercedes now will not sell 722.9 valve bodies or conductor plate control
25 units, even with the TRP paperwork completed. The newer Mercedes 7-
26 speed transmissions (also called G-tronic) have the electronic control unit
27 mounted inside the transmission. These control units are failing frequently
28 with speed sensor codes. (The usual codes are related to speed sensor faults.)
The speed sensors are not replaceable as they are part of the electrical
conductor plate that bolts to the valve body inside the bottom of the
transmission. The transmission does not need to be removed to replace the

1 valve body or the conductor plate. A valve body comes complete with the
2 conductor plate / control unit. Early valve bodies must be replaced as a
3 complete unit, but later second or third generation units can be repaired by
4 just replacing the conductor plate / control unit assembly. We have replaced
5 many of these and have the capability of performing the SCN coding to
6 complete the installation of this repair.

7 These units are failing so often that the dealer has restricted selling them
8 even in their own shop. To order a part the dealer must submit a request with
9 computer scans and control unit log reports of the suspected failed vehicles
10 electronics. The factory then sends the parts they deem necessary for the
11 repair (conductor plate assembly or complete valvebody).

12 It's rumored that Siemens VDO (the manufacturer of the electrical control
13 units) is in a battle with Mercedes over the validity of failing units. Why
14 should an internal problem with Mercedes and its suppliers affect our ability
15 to acquire parts and repair our customers' vehicles? Mercedes is requiring
16 the vehicles be brought into one of their dealers for any valve body or
17 conductor plate repair even if the vehicle is not covered under warranty and
18 the customer is paying for it. In our customers' view this would be perceived
19 as an inability for us to repair their vehicles and give the dealers an unfair
20 advantage at gaining the customers' business. One customer lost for life
21 could be worth hundreds of thousands of dollars.

22 Ex. 3 hereto, at p.2

23 12. Comments posted by individual consumers and owners of other Mercedes-
24 Benz repair garages detail the nature and extent of customers' experiences in dealing
25 with this defective transmission. By way of illustration, one online post by user Lino
26 Dukic states that:

27 We are an independent shop specializing in the repair and maintenance of
28 the mercedes- benz vehicle. We are really upset with this whole situation
and it definitely monopolizes the industry which I understood was illegal.
We have cars towed in needing valve bodies and we have accomodated
our customers by paying for the tow into the dealers after towing it to our
facility. We are losing money big time and this has got to stop but don't
know what to do to stop it. Very frustrating to say the least!

1 *Id.*, at p.4.

2 Another posting by a customer with the username Danny states:

3
4 My 2007 Mercedes ML350 has been trapped at Knopf Mercedes for over a
5 month. The valve body has to be replaced. The dealership has no idea when
6 the part will be available. There are four other cars at the dealership with the
7 same problem. I've contacted the Attorney General in PA and Mercedes
Corporate. They haven't offered a loaner and I no longer see the luxury in
driving a Mercedes.

8 *Id.*

9
10 Yet another posting by a customer with the username June Shawman details that:

11 Mercedes claims the Valve Body is part of the security system and won't
12 sell the part because it could aid auto theft. That argument is BS because
13 they will sell a complete transmission to independent shops. So their theft
14 excuse is nothing more than just that, excuses. My wife's 2006 CLK500 will
15 suddenly go into neutral while driving on the Freeway. If that's not a safety
16 problem I don't know what is. Dealers claim they never heard of the
17 problems which is a flat out lie. They hope they can stall long enough that
18 they don't have to replace all of these transmissions. If you think the new
19 2011 & 2012 models are any better, wait until they have 60000 miles on
them. Mercedes has already issued over 20 service bulletins on the newest
transmissions. I've owned a Mercedes-Benz for over 40 years, and this is the
last. They are dishonest and unethical. They put their customers safety at
great risk and then lie about it.

20
21 Yet another online poster, Chris Lees, detailed a similar experience:

22 I just began having issues with my 2004 S500 with only 35k miles on it!.
23 (Just bought it 4 mos ago). The error code said P0718 Turbine/Input Shaft
24 Speed Sensor Circuit Intermittent. From reading several posts on MB
25 forums, I gather my 722.9 transmission needs a valve body, and my
26 independent repair shop (who I trust immensely) said only the stealership
27 can perform that repair...for \$2,000! I hate feeling obligated to go to the
28 dealer and accept their monopolistic service. I love the car, but in the short
period of time I've owned it, I've replaced the Airmatic pump and relay

1 (\$500) and now this....all within 4 mos and 2,900 miles. I should have
2 bought the warranty.

3 *Id.*, at p. 7.

4 A driver in Australia of a Mercedes-Benz vehicle equipped with the same
5 transmission relayed that same concerns:
6

7 I just bought a used 06 CLK 500 with only 25k km on the clock.
8 Transmission was revving high on fwy so took it in to the dealer in Sydney
9 and was told it needed a new valve body – quoted A\$6300!!! They initially
10 said it not their problem as car is out of wty. Eventually they agreed to do it
11 for \$4800. Given the very low mileage and that this really smells like a
12 recall/safety issue this seems inadequate. I’ve had three Audis and never
seen anything like this. Will make me think carefully about buying another
MB.

13 *Id.*, at p.9.

14
15 13. The 722.9 7G-Tronic transmission was first launched by Mercedes-Benz in
16 the year 2000 in Mercedes’ overseas (i.e., outside the United States) C-class vehicles.
17 The 722.9 7G-Tronic transmission was first introduced in the United States in the 2005
18 production year, and powers a variety of Mercedes-Benz vehicle model lines from the C-
19 class all the way to the more expensive S-class.

20 14. Given that 5-year timeline between when the 722.9 7G-Tronic transmission
21 was first introduced and when it was made available in the United States, by the time
22 Plaintiffs’ and the class members’ vehicles were first sold in the United States,
23 Mercedes-Benz and Defendant already knew and had notice of the defects plaguing that
24 transmission. Indeed, the manifestation of these defects to the transmission routinely
25 occurs within five years or less of the vehicle’s first sale.

26 15. Despite this knowledge, Defendant never disclosed this defect to Plaintiffs,
27 the class members, or the public at large. This material omission of the defect was
28 therefore visited upon the entire class.

1 16. As the manufacturer-distributor of the Class vehicles and their 722.9 7G-
2 Tronic transmissions, Defendant had exclusive knowledge about the existence of this
3 defect. The defect also poses a definite safety risk, as alleged herein. For at least both
4 of these reasons, Defendant had a duty to disclose the existence of this defect to the
5 transmission, but it did not do so.

6
7 **CLASS ACTION ALLEGATIONS**

8 17. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs bring this action
9 as a class action on behalf of all owners and lessees within California of Mercedes
10 vehicles equipped with the 722.9 7G-Tronic transmission, subject to the qualifications
11 listed herein. Collectively, the foregoing vehicles are referred herein as the “Class
12 vehicles.” Plaintiffs are owners of a Class vehicle. Specifically excluded from the class
13 are all judicial officers assigned to this case, as well as all federal and state employees,
14 and the employees of Defendant or its corporate affiliates. Also excluded from the class
15 definition are any individuals who allegedly have suffered personal injuries as a result of
16 the alleged defects. Plaintiffs reserve the right to amend or supplement this class
17 definition as discovery or other case development warrant.

18 18. Although the exact number of class members is presently unknown,
19 Plaintiffs are informed and believe, based upon the number of Mercedes-Benz vehicles
20 manufactured for sale in the U.S. that were originally equipped with the 722.9 7G-Tronic
21 transmission, and thereon allege that the class will number in the thousands of
22 consumers, thereby making joinder impracticable.

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

- 26 a. Whether Defendant is responsible for injecting allegedly defective
27 vehicles in to the United States’ stream of commerce;

- 1 b. Whether the subject vehicles are defective, and, if so, the nature of the
- 2 defect;
- 3 c. Defendant's knowledge and Defendant's concealment of the defect;
- 4 d. Whether Defendant violated (i) California's UCL, (iii) the California
- 5 CLRA;
- 6 e. Whether class members are entitled to the relief sought, and if so, the
- 7 proper scope of such relief.

8 20. Plaintiffs' claims are typical of the claims of the absent class members in
9 that Plaintiffs, like all the absent class members, claim that they are owners of a
10 Mercedes vehicle that was factory-equipped with the 722.9 7G-Tronic transmission that
11 is defective. Plaintiffs are members of the class they seek to represent, and the claims
12 they advance on their own behalf are identical to the claims asserted on behalf of the
13 class.

14 21. Plaintiffs are adequate class representatives in that, as members of the class
15 and as current owners of an allegedly defective Mercedes vehicle equipped with the
16 722.9 7G-Tronic transmission, Plaintiffs' interests are entirely aligned with those of the
17 class. There are no individual conflicts that prevent Plaintiffs from adequately
18 representing the class. Plaintiffs have also retained competent counsel experienced in
19 class action litigation.

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

27 23. A class action presents a superior form of adjudication over individual
28 litigation. The costs of litigating this action against a large and sophisticated defendant

1 like Defendant in comparison to the recovery or relief sought would make individual
2 litigation impracticable. In addition, forcing individual litigation would risk the result of
3 inconsistent rulings with respect to Defendant's duties owed to the various vehicle
4 owners and lessees.

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

8 **COUNT I**

9 **(VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT FOR**
10 **DECLARATORY, EQUITABLE, AND INJUNCTIVE RELIEF ONLY)**

11 25. Plaintiffs hereby incorporate by reference each of the preceding allegations
12 as though fully set forth herein.

13 26. Defendant has violated the following provisions of Cal. Civ. Code §1750 et.
14 seq.:

15 (a) Cal. Civ. Code §1770(a)(5): by representing that its goods or services have
16 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which
17 they do not have;

18 (b) Cal. Civ. Code §1770(a)(7): by representing that its goods or services are of
19 a particular standard, quality, or grade, if they are of another;

20 (c) Cal. Civ. Code §1770(a)(9): by advertising goods and services with the
21 intent not to sell them as advertised;

22 (d) Cal. Civ. Code §1770(a)(14): by representing that its subscription service
23 confers or involves rights, remedies, or obligations which it does not have or involve;

24 (e) Cal. Civ. Code §1770(a)(16): by representing that the subject of a
25 transaction has been supplied in accordance with a previous representation when it has
26 not.

27 27. Defendant undertook the above and acts or practices in transactions
28 intended to result, or which did result, in the sale of its vehicles to customers for

1 personal, family, or household use.

2 28. Defendant has therefore violated the Consumers Legal Remedies Act, and
3 Plaintiffs pray for declaratory, equitable and injunctive relief authorized by that Act.

4 29. Pursuant to Cal. Civ. Code §1782, Plaintiffs will serve Defendant with a
5 written demand seeking that Defendant provide full redress for the CLRA violations
6 complained of. If within the demand period provided for by the statute Defendant fails
7 to provide such full redress, then Plaintiffs will amend this Class Action Complaint to
8 seek, *inter alia*, money damages as redress for Defendant’s CLRA violations.

9
10 **COUNT II**

11 **(VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW, CAL. BUS.
12 AND PROFESSIONS CODE, § 17200 ET. SEQ.).**

13 30. Plaintiffs hereby incorporate by reference each and every allegation
14 of this Class Action Complaint with the same force and effect as if it these allegations
15 had been fully restated herein.

16 31. California’s Unfair Competition Law (“UCL”) prohibits and makes
17 actionable any unlawful, unfair, or deceptive business practice. Mercedes’ actions, as
18 alleged herein, in connection with the sale and marketing of the subject vehicles with a
19 latent defect to their transmission amounts to, at least, an unlawful and deceptive
20 business practice and, hence, a violation of the UCL.

21 32. For at least the reasons alleged in Count I of this Class Action Complaint,
22 Mercedes’ actions are an unlawful business practice in that Mercedes’ violation of the
23 California Consumer Legal Remedies Act is independently unlawful and violates that
24 separate statute.

25 33. MBUSA’s marketing and sale of the subject vehicles without disclosing
26 the existence of the latent defect plaguing the cars’ 722.9 &G-Tronic transmission when
27 Defendant knew of the defect also amounts to a deceptive business practice within the
28 meaning of the UCL. The conduct was deceptive because it was intended to and did

1 mislead and deceive Plaintiffs and the class members. Had Mercedes disclosed to
2 Plaintiffs that the subject vehicles contained a latent defect that would result in their
3 vehicle's transmission failing well before its useful or reasonably expected lifetime (i.e.,
4 in Plaintiffs' case , when the car and transmission had logged only 57,000 miles)
5 Plaintiffs would not have purchased this vehicle. Mercedes knew that if it were to make
6 such a disclosure as to the existence of this latent defect, consumers at large would feel
7 and react similarly and forego their purchases of these vehicles or pay less for the cars
8 than they paid without having such a disclosure. As a result, Mercedes intentionally
9 elected to conceal its knowledge of this existing latent defect.

10 34. As a direct, proximate, and foreseeable result of Mercedes' unlawful and/or
11 deceptive business practice, Plaintiffs and the putative class members have sustained an
12 ascertainable loss, in that: they are left with, or have paid, an expense of thousands of
13 dollars to have their vehicles repaired to remedy the defective transmission; their
14 vehicles have sustained a loss or diminution of value as a result of this undisclosed
15 defect; and, have or will incur incidental expenses attributable to the loss of use of the
16 vehicle during the time that the vehicles are being repaired.

17 35. Moreover, because of Mercedes' unlawful and/or deceptive business
18 practices, class members conveyed moneys and benefits to Mercedes in the form of
19 either the purchase price or lease payments for their vehicles and/or the repair and parts
20 costs for their vehicles to repair the damage caused by the defect at issue.

21 36. Plaintiffs and the class members are entitled to and do seek an order of
22 restitution forcing Mercedes to restore to them the benefits and monies they conveyed to
23 Mercedes in connection with their purchase of the subject vehicles or any repair or
24 replacement of the defective transmission of these vehicles.

PRAYER FOR RELIEF

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

- a) That the Court determine that this action may be litigated as a class action, and that Plaintiffs and their counsel be appointed class representative and class counsel, respectively;
- b) That the Court enter judgment against Defendant and in favor of Plaintiffs and the class on all counts;
- c) That the Court enter a declaratory judgment, declaring as a matter of law that Defendants’ practices alleged in this Class Action Complaint amount to violations of the California Consumer Legal Remedies Act and the California Unfair Competition Law;
- d) That Defendant be enjoined from continuing to either market such vehicles without making disclosure as to the defective nature of the vehicles’ transmissions;
- e) That restitution or disgorgement be awarded to each Plaintiff and class member according to proof;
- f) That Plaintiffs and the class members be awarded all such other relief as this Court deems just and proper.

Plaintiffs request a jury trial on all counts so triable.

1 Dated this 2nd day of February, 2016.

2
3 Respectfully submitted,

4
5 /s/ Roy A. Katriel

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