UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DAVID CHAPPELL, RICHARD BALDWIN, MICHELLE COCKERHAM, UPENDER REDDY GONE, and NIDAL BARAKAT, individually, and on behalf of a class of similarly situated individuals,

Plaintiff,

v.

MERCEDES-BENZ USA, LLC, a New Jersey corporation, and MERCEDES-BENZ GROUP AG, a German corporation,

Defendant.

Civil Action No.: 1:24-cv-01989-TWT

FIRST AMENDED CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1. Plaintiffs David Chappell, Richard Baldwin, Michelle Cockerham, Upender Reddy Gone, and Nidal Barakat ("Plaintiffs") brings this action individually and on behalf of all persons in Nevada, California, Florida, and the United States who purchased or leased any model year 2021-present Mercedes-Benz vehicles equipped with 21" AMG V-multispoke wheel configuration ("Class Vehicles") marketed, distributed, sold, warranted, and/or serviced by Mercedes-Benz USA, LLC ("MBUSA") and designed and manufactured by Mercedes-Group AG ("MBAG") (collectively, "Mercedes" or "Defendant") ("Class Vehicles"). Plaintiffs allege as follows:

INTRODUCTION

2. This is a consumer class action concerning a failure to disclose material facts and a safety concern to consumers.

3. Mercedes designed, manufactured, marketed, distributed, and/or sold the Class Vehicles without disclosing that the Class Vehicles' wheels were defective.

4. The Class Vehicles are defective in that they are equipped with wheels and tires ("Wheel Configuration") that cause sudden and repeated tire blowouts, tire punctures, sidewall bubbling, tire deflation, and cracked rims that necessitate costly repairs and replacements (the "Wheel Configuration Defect"). The 21" Wheel Configuration in use on the Class Vehicles is insufficient to withstand the weight of such vehicles, which results in the failure of its structural integrity, which inexorably leads to the tire and wheel degradation described above.

5. The Wheel Configuration Defect is inherent in each Class Vehicle and was present at the time of sale.

6. Mercedes knew of the Wheel Configuration Defect through pre-production testing, pre-production design failure mode analysis, design failure mode analysis, calls to its customer service hotline, and customer complaints made to dealers, aggregate warranty data compiled from those dealers, repair order and parts data received from the dealers, consumer complaints to dealers and on online forums, and testing performed in response to consumer complaints. However, this knowledge and information was exclusively in the possession of Mercedes and its network of dealers and, therefore, unavailable to consumers.

7. Despite access to aggregate internal data, Mercedes has actively concealed the existence of the defect, telling customers, as cited below, that the wheels and/or tires are not defective and that the blowouts are caused by potholes or other driver error, without any such evidence to support external causes.

8. Mercedes sells the Class Vehicles with a 4-year, 50,000-mile New

Vehicle Limited Warranty, and the tires supplied on the Class Vehicles are covered by a 1-year, 12,000-mile warranty.[1] However, when class members bring their vehicles to Mercedes's authorized dealerships requesting coverage for the Wheel Configuration Defect, Mercedes is systematically denying coverage. As a result, Class Members are paying thousands of dollars out-of-pocket to repair, and if they purchase the replacements from Mercedes, to replace the wheels and/or tires with equally defective wheels and/or tires. Additionally, class members rely on the warranty and, in compliance with such warranty, must request tire warranty claims at an Authorized Mercedes-Benz Dealership or risk voiding the warranty for submitting any claims or repairs anywhere else contrary to the requirements of the warranty.[2]

9. Precursor models to the Class Vehicles in years prior to the 2021 model year, such as in Mercedes-Maybach S Class models, were equipped with Wheel Configurations that were appropriate for the vehicle and were sufficient to prevent damage from potholes and/or other road surface flaws. Therefore, Mercedes was aware that a different Wheel Configuration was needed to protect against the Wheel Configuration Defect.

10. The Wheel Configuration Defect is material because it poses a serious safety concern. As attested by Class Members in complaints on the National Highway Traffic Safety Administration ("NHTSA")'s website, online forums, and to Mercedes authorized dealers, the Wheel Configuration Defect can impair any driver's ability to control his or her vehicle and greatly increase the risk of collision,

[1] Mercedes-Benz, *Service and Warranty Information 2023*, https://www.mbusa.com/content/dam/mb-nafta/us/owners/manuals/2023/2023-warranty-booklet.pdf (last viewed April 24, 2024).

[2] Mercedes-Benz, *supra* footnote 1 at 13 ("To make a warranty claim you must present your vehicle to an Authorized Mercedes-Benz Dealership…")

including causing tire blowouts.

11. The Wheel Configuration Defect is also material because consumers will incur significant and unexpected repair costs that could reach upwards of $3,000.00 to replace damaged wheels and tires. Mercedes's failure to disclose, at the time of purchase or lease, the Wheel Configuration Defect is material because no reasonable consumer expects to spend thousands of dollars to repair or replace wheels and tires.

12. Had Mercedes disclosed the Wheel Configuration Defect, Plaintiffs and Class Members would not have purchased or leased the Class Vehicles on the same terms or would have paid less for them. As a result of Defendant's omissions concerning the defective nature of the Class Vehicles, Plaintiffs and the other Class Members paid more for their vehicles than they otherwise would have, and therefore suffered a loss of money and/or loss in value of their Class Vehicles.

THE PARTIES

Plaintiff David Chappell

13. Plaintiff Chappell is a Nevada resident who resides in Las Vegas, Nevada.

14. On or around July 25, 2023, Plaintiff Chappell purchased a new 2023 Mercedes-Benz S580 4MATIC from Fletcher Jones Imports, an authorized Mercedes dealer in Las Vegas, Nevada.

15. Plaintiff Chappell purchased his vehicle primarily for personal, family, or household use.

16. Passenger safety and reliability were important factors in Plaintiff Chappell's decision to purchase his vehicle. Before making his purchase, Plaintiff Chappell researched the Mercedes-Benz S580 4MATIC with 21" wheels online,

including on the Mercedes website and on the dealership website. At the dealership, Plaintiff also reviewed the vehicle's Monroney Sticker or "window sticker" which listed official information about the vehicle, and test drove the vehicle with a salesperson. One dealership employee, Sales Consultant Thomas Bucca, confirmed that the Mercedes-Benz S580 4MATIC with 21" wheels would be great for traveling long distances, as Plaintiff and his wife were planning a cross-country trip and told this to the employee. None of these sources made reference to the Wheel Configuration Defect. Plaintiff believed that the vehicle would be a safe and reliable vehicle.

17. Mercedes's omissions were material to Plaintiff. Had Mercedes disclosed its knowledge of the Wheel Configuration Defect before he purchased his vehicle, Plaintiff would have seen and been aware of the disclosures. Furthermore, had he known of the Wheel Configuration Defect, Plaintiff would not have purchased his vehicle, or would have paid less for it.

18. Within seven months of purchasing his vehicle, on or around January 17, 2024, with approximately 7,313 miles on the odometer, the front driver's side tire of Plaintiff's vehicle blew out while he was driving through New Mexico, during a road trip from Las Vegas, Nevada to Florida.

19. Plaintiff and his wife called Mercedes-Benz Roadside Assistance, who could not pick them up until the next day. They were forced to stay at a hotel overnight, and on the next day, on or around January 18, 2024, they were driven approximately three (3) hours by tow truck to the nearest Mercedes dealership, Mercedes-Benz of Lubbock located in Lubbock, Texas.

20. The dealership personnel at Mercedes-Benz of Lubbock found that the "[t]ire has a hole in the side wall 0.50" and they "[r]emoved wheel. Removed and

replaced tire. Adjusted ALL tire pressures. Reset tire pressure light." Plaintiff paid a total of approximately $499.30, including parts and labor, for this repair, as the Mercedes dealer refused to cover it under warranty.

21. On or around January 22, 2024, Plaintiff experienced a second tire blowout on the front driver's side. A tow truck dropped Plaintiff off at Mercedes-Benz of Nashville in Franklin, Tennessee, where they dropped off the vehicle and spent the night in a hotel with his wife. The next morning, a Mercedes Service Advisor told Plaintiff that Mercedes was running low on the tires needed for Plaintiff's vehicle due to the number of blowouts, and recommended that he buy an extra one. The Service Advisor also looked for a tire with a larger sidewall, but such a tire was unavailable. The Service Advisor further told Plaintiff that the Mercedes-authorized dealer salesperson should never have sold Plaintiff the vehicle with 21" rims knowing that he was going across the country. The dealership charged Plaintiff a total of $1,031.70 for the tire replacement and extra tire.

22. Neither one of Plaintiff's tire repairs/replacements were covered under warranty, despite the fact that the vehicle was less than seven months old.

23. Despite bringing his vehicle to the Mercedes dealerships—Mercedes's authorized agent for repairs—Plaintiff has not received a repair under warranty, and his vehicle continues to exhibit the Wheel Configuration Defect because the vehicle is not equipped with appropriate tires to prevent the Wheel Configuration Defect from again resulting in tire blowouts.

Indeed, Plaintiff has now garaged his Class Vehicle in light of the unrepaired defect and associated safety concerns.

24. At all times, Plaintiff, like all Class Members, has attempted to drive his vehicle in a manner both foreseeable and in which it was intended to be used.

Plaintiff Richard Baldwin

25. Plaintiff Baldwin is a California resident who resides in Poway, California

26. On or around December 2021, Plaintiff Baldwin leased a new 2022 Mercedes-Benz S580 from Fields Motorcars, an authorized Mercedes dealer in Lakeland, Florida.

27. Plaintiff Baldwin leased his vehicle primarily for personal, family, or household use.

28. Passenger safety and reliability were important factors in Plaintiff Baldwin's decision to lease his vehicle. Before making his purchase, Plaintiff Baldwin researched the Mercedes-Benz S580 with 21" wheels online, including on the Mercedes website and on the dealership website. None of these sources made reference to the Wheel Configuration Defect. Plaintiff Baldwin believed that the vehicle would be a safe and reliable vehicle.

29. Mercedes's omissions were material to Plaintiff Baldwin. Had Mercedes disclosed its knowledge of the Wheel Configuration Defect before he purchased his vehicle, Plaintiff Baldwin would have seen and been aware of the disclosures. Furthermore, had he known of the Wheel Configuration Defect, Plaintiff Baldwin would not have leased his vehicle, or would have paid less for it.

30. Within two months of leasing his vehicle, four of Plaintiff Baldwin's vehicles tires had blown out requiring replacement.

31. Plaintiff Baldwin brought his vehicle to Mercedes-Benz of Carlsbad for repairs. Plaintiff Baldwin was unable to use his vehicle for one month while waiting for repairs.

32. Since then, Plaintiff Baldwin has experienced five separate incidents

of tire blowouts and/or bubbling.

33. After each incident, Plaintiff Baldwin brought his vehicle to Mercedes-Benz of Carlsbad for repair.

34. Despite Plaintiff Baldwin's purchase of an additional $3,000 tire and wheel warranty, this warranty did not cover costs beyond the fourth tire repair. As a result, the Mercedes dealership refused to cover each subsequent repair under warranty.

35. In total, Plaintiff Baldwin has experienced five blowouts and has replaced 8 tires due to cuts or sidewall bubbles as well and repairing eight wheels.

36. Each repair has deprived Plaintiff Baldwin of the use of his vehicle for between one to three weeks or more.

37. Despite bringing his vehicle to the Mercedes dealerships—Mercedes's authorized agent for repairs—Plaintiff Baldwin has not received a repair under the standard warranty, and his vehicle continues to exhibit the Wheel Configuration Defect because the vehicle is not equipped with appropriate tires to prevent the Wheel Configuration Defect from again resulting in tire blowouts.

38. As a result of the Wheel Configuration Defect, Plaintiff Baldwin has spent over $2,500 out of pocket to replace his damaged tires.

39. Indeed, Plaintiff Baldwin now rarely uses his Class Vehicle in light of the unrepaired defect and associated safety concerns due to fear of being stuck as the result of a tire blowout or being involved in an accident as a result.

40. At all times, Plaintiff Baldwin, like all Class Members, has attempted to drive his vehicle in a manner both foreseeable and in which it was intended to be used.

Plaintiff Nidal Barakat

41. Plaintiff Barakat is a California resident who resides in Van Nuys, California

42. On or around March, 2022, Plaintiff purchased a new 2022 Mercedes-Benz S580 from Mercedes-Benz of Valencia, an authorized Mercedes dealer in Valencia, California.

43. Plaintiff Barakat purchased his vehicle primarily for personal, family, or household use.

44. Passenger safety and reliability were important factors in Plaintiff Barakat's decision to purchase his vehicle. Before making his purchase, Plaintiff Barakat researched the Mercedes-Benz S580 with 21" wheels online, including on the Mercedes website and on the dealership website. None of these sources made reference to the Wheel Configuration Defect. Plaintiff Barakat believed that the vehicle would be a safe and reliable vehicle.

45. Mercedes's omissions were material to Plaintiff Barakat. Had Mercedes disclosed its knowledge of the Wheel Configuration Defect before he purchased his vehicle, Plaintiff Barakat would have seen and been aware of the disclosures. Furthermore, had he known of the Wheel Configuration Defect, Plaintiff Barakat would not have purchased his vehicle, or would have paid less for it.

46. Since purchasing his vehicle, Plaintiff Barakat has experienced bubbling and blistering on two tires and two tire blowouts.

47. As a result of each of the blowouts, Plaintiff Barakat had his car towed to the nearest authorized Mercedes dealership, Keyes European, in Van Nuys, California.

48. Plaintiff Barakat has paid approximately $580, including parts and labor, for each of the four repairs, as the Mercedes dealer refused to cover it under warranty.

49. None one of Plaintiff Barakat's tire repairs/replacements were covered under Mercedes standard warranty.

50. Despite bringing his vehicle to the Mercedes dealerships—Mercedes's authorized agent for repairs—Plaintiff Barakat has not received a repair under warranty, and his vehicle continues to exhibit the Wheel Configuration Defect because the vehicle is not equipped with appropriate tires to prevent the Wheel Configuration Defect from again resulting in tire blowouts.

51. Indeed, Plaintiff Barakat has now limited the use of his Class Vehicle in light of the unrepaired defect and associated safety concerns.

52. At all times, Plaintiff Barakat, like all Class Members, has attempted to drive his vehicle in a manner both foreseeable and in which it was intended to be used.

Plaintiff Upender Reddy Gone

53. Plaintiff Gone is a California resident who resides in Dublin, California.

54. On or around November 13, 2022, Plaintiff Gone leased a 2023 Mercedes-Benz S500 from Mercedes-Benz of San Francisco, an authorized Mercedes dealer in San Francisco, California.

55. Plaintiff Gone leased his vehicle primarily for personal, family, or household use.

56. Passenger safety and reliability were important factors in Plaintiff Gone's decision to lease his vehicle. Before making his purchase, Plaintiff Gone

researched the Mercedes-Benz S500 with 21" wheels online, including on the Mercedes website and on the dealership website. None of these sources made reference to the Wheel Configuration Defect. Plaintiff Gone believed that the vehicle would be a safe and reliable vehicle.

57. Mercedes's omissions were material to Plaintiff Gone. Had Mercedes disclosed its knowledge of the Wheel Configuration Defect before he leased his vehicle, Plaintiff Gone would have seen and been aware of the disclosures. Furthermore, had he known of the Wheel Configuration Defect, Plaintiff Gone would not have leased his vehicle, or would have paid less for it.

58. Soon after leasing his vehicle, while driving in San Francisco at approximately 11pm, Plaintiff Gone's tire blew out.

59. Plaintiff Gone called Mercedes-Benz Roadside Assistance, who could not pick them up until the next day. He was forced to sleep in his vehicle overnight, and on the next morning, he was driven approximately 50 miles by tow truck to the nearest Mercedes dealership.

60. The dealership removed and replaced tire. Plaintiff Gone paid a total of approximately $500, including parts and labor, for this repair, as the Mercedes dealer refused to cover it under warranty.

61. Despite bringing his vehicle to the Mercedes dealerships—Mercedes's authorized agent for repairs—Plaintiff Gone has not received a repair under warranty, and his vehicle continues to exhibit the Wheel Configuration Defect because the vehicle is not equipped with appropriate tires to prevent the Wheel Configuration Defect from again resulting in tire blowouts.

62. Indeed, Plaintiff Gone has now limited the use and enjoyment of his Class Vehicle in light of the unrepaired defect and associated safety concerns.

63. At all times, Plaintiff, like all Class Members, has attempted to drive his vehicle in a manner both foreseeable and in which it was intended to be used.

Plaintiff Michelle Cockerham

64. Plaintiff Cockerham is a California resident who resides in Antioch, California.

65. On or around March, 2023, Plaintiff Cockerham leased a new 2023 Mercedes-Benz S580 from Autobahn Motors, an authorized Mercedes dealer in Belmont, California.

66. Plaintiff Cockerham leased her vehicle primarily for personal, family, or household use.

67. Passenger safety and reliability were important factors in Plaintiff Cockerham's decision to lease her vehicle. Before making her purchase, Plaintiff Cockerham researched the Mercedes-Benz S580 with 21" wheels online, including on the Mercedes website and on the dealership website. None of these sources made reference to the Wheel Configuration Defect. Plaintiff Cockerham believed that the vehicle would be a safe and reliable vehicle.

68. Mercedes's omissions were material to Plaintiff Cockerham. Had Mercedes disclosed its knowledge of the Wheel Configuration Defect before she leased her vehicle, Plaintiff Cockerham would have seen and been aware of the disclosures. Furthermore, had she known of the Wheel Configuration Defect, Plaintiff Cockerham would not have leased her vehicle, or would have paid less for it.

69. Since leasing her vehicle, Plaintiff Cockerham has had to replace the tires on her vehicle at least 10 times, each time incurring out of pocket expenses.

70. On June 6, 2023, due to bubbling on all four tires, Plaintiff Cockerham

brought her vehicle to Mercedes-Benz of Walnut Creek located in Walnut Creek, California.

71. The dealership personnel at Mercedes-Benz of Walnut Creek advised her that they would need to replace all four tires. Plaintiff Cockerham paid a total of approximately $2,677.27, including parts and labor, for this repair, as the Mercedes dealer refused to cover it under warranty.

72. On or around July 19, 2023, Plaintiff Cockerham experienced a blowout in her front left tire. Plaintiff Cockerham brought her vehicle to Mercedes-Benz of Walnut Creek. The dealership personnel at Mercedes-Benz of Walnut Creek advised her that they would need to replace her tire again.

73. On or around August 16, 2023, Plaintiff Cockerham experienced a blowout in her front right tire. Plaintiff Cockerham had her vehicle towed to Mercedes-Benz of Walnut Creek. The dealership personnel at Mercedes-Benz of Walnut Creek advised her that they would need to replace her tire. Plaintiff Cockerham paid a total of approximately $444.75, including parts and labor, for this repair, as the Mercedes dealer refused to cover it under warranty.

74. On or around September 21, 2023, Plaintiff Cockerham experienced a blowout in her front left tire. Plaintiff Cockerham brought her vehicle to Mercedes-Benz of Walnut Creek. The dealership personnel at Mercedes-Benz of Walnut Creek advised her that they would need to replace her tire. Plaintiff Cockerham paid a total of approximately $88.58, including parts and labor, for this repair, as the Mercedes dealer refused to cover it under warranty.

75. On or around December 1, 2023, Plaintiff Cockerham experienced a blowout in her front right tire. Plaintiff Cockerham brought her vehicle to Mercedes-Benz of Walnut Creek. The dealership personnel at Mercedes-Benz of

Walnut Creek advised her that they would need to replace her tire. Plaintiff Cockerham paid a total of approximately $88.58, including parts and labor, for this repair, as the Mercedes dealer refused to cover it under warranty.

76. On or around February 10, 2024, Plaintiff Cockerham experienced bubbling in her front left tire. Plaintiff Cockerham brought her vehicle to Mercedes-Benz of Walnut Creek. The dealership personnel at Mercedes-Benz of Walnut Creek advised her that they would need to replace her tire. Plaintiff Cockerham paid a total of approximately $90.83, including parts and labor, for this repair, as the Mercedes dealer refused to cover it under warranty.

77. On or around March 27, 2024, Plaintiff Cockerham experienced bubbling in her front right tire. Plaintiff Cockerham brought her vehicle to Mercedes-Benz of Walnut Creek. The dealership personnel at Mercedes-Benz of Walnut Creek advised her that they would need to replace her tire.

78. On or around May 29, 2024, Plaintiff Cockerham experienced bubbling in her front right tire. Plaintiff Cockerham brought her vehicle to Mercedes-Benz of Walnut Creek. The dealership personnel at Mercedes-Benz of Walnut Creek advised her that they would need to replace her tire.

79. On or around June 4, 2024, Plaintiff Cockerham experienced a blowout in her front left tire. Plaintiff Cockerham brought her vehicle to Mercedes-Benz of Walnut Creek. The dealership personnel at Mercedes-Benz of Walnut Creek advised her that they would need to replace her tire.

80. On or around July 29, 2024, Plaintiff Cockerham experienced a blowout in her rear left tire. Plaintiff Cockerham brought her vehicle to Mercedes-Benz of Walnut Creek. The dealership personnel at Mercedes-Benz of Walnut Creek advised her that they would need to replace her tire.

81. None of Plaintiff Cockerham's tire repairs/replacements were covered under Mercedes standard warranty.

82. Despite bringing his vehicle to the Mercedes dealerships—Mercedes's authorized agent for repairs—Plaintiff Cockerham has not received a repair under Mercedes standard warranty, and her vehicle continues to exhibit the Wheel Configuration Defect because the vehicle is not equipped with appropriate tires to prevent the Wheel Configuration Defect from again resulting in tire blowouts.

83. Indeed, Plaintiff Cockerham has now limited the use and enjoyment of her Class Vehicle in light of the unrepaired defect and associated safety concerns.

84. At all times, Plaintiff Cockerham, like all Class Members, has attempted to drive her vehicle in a manner both foreseeable and in which it was intended to be used.

Defendants

85. Defendant MBUSA is a corporation organized and in existence under the laws of the State of New Jersey, headquartered in the State of Georgia, and registered to do business in the States of Nevada, California, and Florida. Founded in 1965, MBUSA is a North American subsidiary of MBAG. Discovery will show that at all relevant times herein, MBUSA was engaged in the business of marketing, distributing, servicing, and selling Mercedes branded automobiles and other motor vehicles and motor vehicle components in Nevada, California, Florida, and throughout the United States of America. MBUSA also distributes all technical materials drafted by MBAG intended to be used by authorized dealerships in the service and repair of Mercedes branded vehicles. MBUSA also oversees certain automobile product design and market research functions into its regional

operations. MBUSA drafts and is responsible for providing the Monroney stickers on Mercedes vehicles, but does so with information provided by MBAG. MBAG has designated MBUSA as its representative to interact with the National Highway Traffic Safety Administration and to fulfill its duties as a manufacturer under federal law.

86. Defendant MBAG (formerly known as Daimler AG) is a German multinational automotive corporation founded under the laws of Germany and headquartered in Stuttgart, Baden-Württemberg, Germany. MB AG designs, manufacturers, and distributes automobiles, as well as parts for Mercedes and Maybach branded vehicles, and is the parent company of MBUSA and all other Mercedes-branded corporations. Discovery will show that the design and manufacture of Class Vehicles, including their component systems and any repairs or service necessary, is the primary focus of MBAG. MBAG also drafts all technical materials to be distributed by MBUSA for the service and repair of Mercedes vehicles. Discovery will show that the agreements which govern the relationship between MBAG and MBUSA give MBAG substantial control over the business operations of MBUSA, particularly with regards to the communications MBUSA distributes on MBAG's behalf.

87. At all relevant times, MBAG and MBUSA were and are engaged in the business of designing, manufacturing, constructing, assembling, marketing, distributing, and/or selling automobiles and motor vehicle components in Nevada, California, Florida, Georgia, and throughout the United States of America.

JURISDICTION

88. This is a class action.

89. Members of the proposed Class are citizens of states different from

the home state of Defendant.

90. The aggregate claims of individual Class Members exceed $5,000,000.00 in value, exclusive of interest and costs.

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

VENUE

92. MBUSA and MBAG, through their business of distributing, selling, and leasing the Class Vehicles, have established sufficient contacts in this district such that personal jurisdiction is appropriate. MBUSA and MBAG are deemed to reside in this district pursuant to 28 U.S.C. § 1391(a). Plaintiffs' counsel's Declaration of Venue, to the extent required under California Civil Code section 1780(d), is attached hereto as **Exhibit 1**.

93. Further, MBUSA maintains its U.S. corporate headquarters in Atlanta, Georgia such that personal jurisdiction is appropriate under 28 U.S.C. § 1391, and is deemed to reside in this district pursuant to 28 U.S.C. § 1391 (d) because its corporate headquarters are in this district.

FACTUAL ALLEGATIONS

94. Since the summer of 2021, if not earlier, Mercedes has designed, manufactured, distributed, sold, and/or leased the Class Vehicles. Mercedes has sold, directly or indirectly, through dealers and other retail outlets, thousands of Class Vehicles in Nevada, California, Florida, and nationwide. Mercedes warrants and services the Class Vehicles through its nationwide network of authorized dealers and service providers.

95. Unbeknownst to purchasers, the Class Vehicles are defective in that they are equipped with wheels and tires that cause sudden and repeated tire blowouts, tire punctures, sidewall bubbling, tire deflation, and cracked rims that

necessitate costly repairs and replacements. The 21" Wheel Configuration in use on the Class Vehicles is insufficient to withstand the weight of such vehicles, which results in the failure of its structural integrity, which inexorably leads to the tire and wheel degradation described above. The Wheel Configuration Defect is inherent in each Class Vehicle and was present at the time of sale.

Fig. 1: S580 AMG with 21-inch AMG V-multispoke wheel configuration

96. Mercedes knew of the Wheel Configuration Defect through pre-production testing, pre-production design failure mode analysis, design failure mode analysis, calls to its customer service hotline, and customer complaints made

to dealers, aggregate warranty data compiled from those dealers, repair order and parts data received from the dealers, consumer complaints to dealers and in online forums, and testing performed in response to consumer complaints. However, this knowledge and information was exclusively in the possession of Mercedes and its network of dealers and, therefore, unavailable to consumers.

97. The Wheel Configuration Defect is material because it poses a serious safety concern. As attested by Class Members in complaints in online forums and to Mercedes authorized dealers, the Wheel Configuration Defect can impair any driver's ability to control his or her vehicle and greatly increase the risk of collision, including causing tire blowouts.

98. The Wheel Configuration Defect is dangerous, causing tire blowouts, tire punctures, sidewall bubbling, tire deflation, and cracked rims that can lead to a sudden loss of control at speed and a potential collision.

99. Plaintiff Chappell has had the unnerving experience of trying to regain control of his vehicle when his tires blew out twice, once while exiting the freeway and once while driving on the freeway. Plaintiff Gone's tire blew out while he was driving as well. Other Plaintiffs have had similar experiences and fears of tire blowouts while driving.

Mercedes Had Superior and Exclusive Knowledge of the Wheel Configuration Defect

100. Since 2021, if not earlier, Mercedes has designed, manufactured, distributed, sold, and/or leased the Class Vehicles. However, prior to 2021, Mercedes distributed, sold, and/or leased the precursors to the Class Vehicles, which unlike the Class Vehicles, were equipped with wheel configurations that were appropriate for the vehicle and were sufficient to prevent damage from

potholes and/or other road surface flaws.

Complaints Lodged with NHTSA

101. Mercedes also monitors customers' complaints made to NHTSA. Federal law requires automakers like Mercedes to be in close contact with NHTSA regarding potential auto defects, including imposing a legal requirement (backed by criminal penalties) compelling the confidential disclosure of defects and related data by automakers to NHTSA, including field reports, customer complaints, and warranty data. See Transportation Recall Enhancement Accountability and Documentation "TREAD" Act, Pub. L. No. 106-414, 114 Stat.1800 (2000).

102. Automakers have a legal obligation to identify and report emerging safety-related defects to NHTSA under the Early Warning Report requirements. Id. Similarly, automakers monitor NHTSA databases for consumer complaints regarding their automobiles as part of their ongoing obligation to identify potential defects in their vehicles, including safety-related defects. Id. Thus, Mercedes knew or should have known of the many complaints about the Wheel Configuration Defect logged by NHTSA's Office of Defects Investigation ("ODI"), and the content, consistency, and large number of those complaints alerted, or should have alerted, Mercedes to the Wheel Configuration Defect.

103. For years, owners of S580 Sedan vehicles equipped with the 21" AMG wheel configuration have publicly complained to the United States government about the Wheel Configuration Defect in Class Vehicles. The ODI is an office within NHTSA. ODI conducts defect investigations and administers safety recalls supporting the NHTSA's mission to improve safety on the Nation's highways. All automobile manufacturers routinely monitor and analyze NHTSA complaints because this information is used in determining if a recall should be issued. Indeed,

automobile manufacturers are required by law to report any potential safety defects to the United States government.

104. The following complaints regarding the Class Vehicles made to NHTSA demonstrate that the defect is widespread and dangerous and that it manifests without warning. The complaints also indicate Mercedes's awareness of the problems with the tires, wheels, and Wheel Configuration Defect, including how dangerous they are for drivers. These safety complaints relate to the Wheel Configuration Defect:

> DATE OF INCIDENT: October 14, 2021
> DATE COMPLAINT FILED: July 28, 2022
> NHTSA ID NUMBER: 11476303
> SUMMARY: THE CONTACT OWNS A 2021 MERCEDES-BENZ S580 EQUIPPED WITH PIRELLI TIRES, TIRE LINE: P ZERO MO-S, TIRE SIZE: P255/35/R21 (FRONT TIRES) AND P285/30/R21 (REAR TIRES), DOT NUMBER: (UNAVAILABLE). THE CONTACT STATED WHILE DRIVING 30 MPH, THE DROVE OVER A POTHOLE AND THE DRIVER'S SIDE FRONT TIRE EXPERIENCED A BLOWOUT. THE VEHICLE WAS TOWED TO THE DEALER, AND THE CONTACT WAS INFORMED THAT THERE WAS A BUBBLE ON THE SIDE SHOULDER OF THE TIRE, AND THE TIRE NEEDED TO BE REPLACED. THE TIRE WAS REPLACED. THE CONTACT STATED THAT A SIMILAR FAILURE REOCCURRED WITH THE FRONT PASSENGER'S SIDE TIRE AND THE REAR DRIVER'S SIDE TIRE. THE VEHICLE WAS TAKEN TO THE DEALER BOTH TIMES AND THE CONTACT WAS INFORMED THAT THE SIDEWALLS ON THE TIRES WERE THIN CAUSING THE BLOWOUTS. THE FAILURE MILEAGE WAS 3,000.

> DATE OF INCIDENT: June 9, 2023
> DATE COMPLAINT FILED: June 12, 2023
> NHTSA ID NUMBER: 11526539
> SUMMARY: I HAVE HAD ONE TIRE BLOW OUT AFTER TRAVELING OVER A MODERATE POT HOLE, AND 3 OTHER TIRES THAT HAVE BEEN DAMAGED WITH "BUBBLES" DUE TO EXCESSIVE STRESS

FROM NORMAL DRIVING. IN ADDITION TO THE DAMAGED TIRES, I HAVE HAD 3 BENT WHEELS ALL DUE TO NORMAL DRIVING BECAUSE THE 21 INCH WHEELS/TIRES ON THIS VEHICLE CANNOT TOLERATE THE LOADS DURING NORMAL DRIVING. THIS IS A WELL-KNOWN DEFECT BY MERCEDES AND I BELIEVE IT IS A DESIGN DEFECT AND THAT IT IS DANGEROUS.

DATE OF INCIDENT: January 4, 2022
DATE COMPLAINT FILED: July 6, 2022
NHTSA ID NUMBER: 11475880
SUMMARY: I HAVE HAD 3 TIRE FAILURES(BLOWOUTS)WHEN I HAVE HIT POTHOLES WITH MY 21" WHEELS AND PIRELLI P ZERO TIRES. I READ ON A MBZ FORUM FOR MY SPECIFIC MAKE OF CAR - 2021/2022 MBZ S580 - THAT MANY OTHERS HAVE EXPERIENCED THE SAME FAILURES WITH THESE PIRELLI TIRES. THOSE THAT HAVE MICHELIN HAVE HAD NONE. WITH SUCH A SMALL AREA BETWEEN THE ROAD AND THE RIM AFFORDED BY SUPER LOW PROFILE 21" SETUPS, A TIRE LIKE PIRELLI WITH A WEAK SIDEWALL WILL FAIL WHEN THE CAR STRIKES A POTHOLE OR OBSTRUCTION. ANOTHER OWNER ON THE FORUM SAID WHEN HE CONTACTED MERCEDES, THEY SAID IT WAS NOT THEIR PROBLEM, BUT PIRELLI'S. MEANWHILE, THERE ARE THOUSANDS OF OWNERS WITH THIS COMBINATION, MANY OF WHICH HAVE ALREADY EXPERIENCED FAILURES. SOMETHING NEEDS TO BE DONE BEFORE THERE ARE INJURIES, OR WORSE.

DATE OF INCIDENT: September 2, 2023
DATE COMPLAINT FILED: September 7, 2023
NHTSA ID NUMBER: 11543197
SUMMARY: 1. THE TIRES//RIMS ON THIS VEHICLE ARE CAUSING EXTREMELY EXCESSIVE TIRE BLOWOUTS. I HAVE HAD AT LEAST 5 TIRE BLOWOUTS IN THE LAST 6 MONTHS ALONE ALONG WITH 8-10 TIRE CHANGES DUE TO BUBBLE FORMING ON SIDEWALL. THIS IS A WIDESPREAD ISSUE ON THIS VEHICLE IN WHICH I HAVE READ THAT MANY OTHERS ARE ALSO EXPERIENCING THE SAME. THE VEHICLE IS AVAILABLE FOR INSPECTION. 2. A TIRE BLOWOUT WHILE DRIVING CAN BE EXTREMELY HAZARDOUS ESPECIALLY ON THE FREEWAY. 3. THE PROBLEM WITH THIS

VEHICLE HAS BEEN CONFIRMED WITH THE DEALER. HOWEVER, THEY ARE UNABLE TO PINPOINT WHAT IS EXACTLY CAUSING THESE EXCESSIVE TIRE BLOWOUTS. 4. NO, THE VEHICLE HAS NOT BEEN INSPECTED. 5. NO WARNINGS PRIOR TO INCIDENTS.

DATE OF INCIDENT: July 9, 2022
DATE COMPLAINT FILED: July 27, 2022
NHTSA ID NUMBER: 11476102
SUMMARY: I AM AN OWNER OF A 2022 MERCEDES BENZ. THE CAR IS EQUIPPED WITH OPTIONAL 21" AMG WHEELS PAIRED WITH PIRELLI P ZERO MO-S (MERCEDES ORIGINAL EQUIPMENT) TIRES. P255/35R21 FRONT AND P285/30R21 REAR. WITH ONLY 490 MILES ON THE ODOMETER I EXPERIENCED A CATASTROPHIC FAILURE OF THE FRONT PASSENGER-SIDE TIRE AFTER GOING OVER WHAT SEEMED TO BE AN INSIGNIFICANT POTHOLE. WHILE AT THE SERVICING DEALER I NOTICED SAME CAR AS MINE WITH 21" WHEELS WITH A BLOWN FRONT DRIVER-SIDE TIRE AND DESTROYED RIM, I EVEN TOOK A PICTURE OF IT. MY SERVICE ADVISOR CONFIRMED THAT THIS IS A VERY COMMON ISSUE THAT THEY SEE AT LEAST ONCE OR TWICE A MONTH. THAT'S IN A CITY WITH MAYBE A 100 OF THESE CARS IN TOTAL. "THIS SHOULD BE A CLASS ACTION LAWSUIT" WERE HIS EXACT WORDS. I HAD TO WAIT OVER A WEEK TO GET THE CAR BACK AS THERE IS A NATIONWIDE SHORTAGE OF THIS PARTICULAR TIRE. MY SERVICE ADVISOR AGREED THAT THIS ALSO POINTS TO A HIGHER THAN NORMAL RATE OF FAILURES THAT CREATES THIS SHORTAGE. I AM AN ACTIVE MEMBER OF THE MBWORLD.ORG FORUMS WHERE MERCEDES OWNERS COME TO DISCUSS THEIR VEHICLES. THERE ARE MULTIPLE THREADS ABOUT THIS VERY TIRE AND A NUMBER OF OWNERS THAT EXPERIENCED MULTIPLE FAILURES, SOME AS MANY AS THREE TIMES. IT IS COMMON TO HAVE BOTH THE FRONT AND THE REAR TIRE FAIL AFTER GOING OVER THE SAME POTHOLE, OR IN SOME INSTANCES THE FRONT TIRE FAILED WHILE THE REAR DEVELOPED A BUBBLE AND NEEDED TO BE REPLACED AS WELL. THE ONLY SOLUTION THAT PEOPLE FOUND WAS TO REPLACE PIRELLI TIRES WITH MICHELIN PILOT 4S TIRES IN THE SAME SIZE. I ESCALATED THIS CASE TO MERCEDES-BENZ CUSTOMER ADVOCACY AND AFTER SEVERAL

DAYS WAS INFORMED THAT MERCEDES IS NOT ACCEPTING RESPONSIBILITY FOR THIS FAULTY EQUIPMENT AND ADVISED TO SEEK RESOLUTION WITH PIRELLI. THIS IS CLEARLY UNACCEPTABLE AND IS NOT A MATTER OF EXPENSES OR INCONVENIENCE. THIS IS A HUGE SAFETY RISK AS THESE TIRES SEEM TO BE EITHER DEFECTIVE OR UNSUITABLE FOR SUCH A HEAVY VEHICLE. AT HIGH SPEEDS THIS COULD LEAD TO FATAL ACCIDENTS.

DATE OF INCIDENT: December 19, 2021
DATE COMPLAINT FILED: February 4, 2022
NHTSA ID NUMBER: 11450397
SUMMARY: THE CONTACT OWNS A 2022 MERCEDES-BENZ S500. THE CONTACT RECEIVED A NOTIFICATION FOR NHTSA CAMPAIGN NUMBER: 21V00J000 (ELECTRICAL SYSTEM, COMMUNICATION) HOWEVER, THE PARTS FOR THE REPAIR WERE UNAVAILABLE. THE DEALER HAD BEEN NOTIFIED ABOUT THE RECALL AND CONFIRMED THAT PARTS WERE NOT YET AVAILABLE. THE MANUFACTURER HAD BEEN NOTIFIED OF THE RECALL. THE CONTACT STATED THAT THE MANUFACTURER HAD EXCEEDED A REASONABLE AMOUNT OF TIME FOR THE REPAIR. THE CONTACT ALSO MENTIONED THAT HE EXPERIENCED A BLOWOUT FAILURE WITH THE PASSENGER'S SIDE FRONT PIRELLI PZERO TIRE, TIRE SIZE: 255/35/R21, DOT NUMBER: 1UN13874K. THE CONTACT STATED THAT HE REPLACED THE TIRE WITH THE SPARE; HOWEVER, THE VEHICLE WAS NOT TAKEN TO AN INDEPENDENT MECHANIC OR DEALER. THE CONTACT STATED THAT APPROXIMATELY A WEEK LATER, THE DRIVER'S SIDE TIRE EXPERIENCED THE SAME BLOWOUT FAILURE AND WAS TAKEN TO AN INDEPENDENT MECHANIC. THE CONTACT STATED THAT THE DRIVER'S TIRE HAD THE SAME TIRE INFORMATION AS THE FRONT PASSENGER'S SIDE TIRE. THE MECHANIC INFORMED HIM THAT THERE WERE BUBBLES FORMED ON THE REAR PASSENGER'S SIDE TIRE; TIRE SIZE: 255/30/R21, DOT NUMBER: IXTY8464L. THE MECHANIC SUGGESTED THAT ALL THE TIRES BE REPLACED. THE TIRE AND VEHICLE MANUFACTURER WAS NOT NOTIFIED OF THE FAILURE. THE TIRE FAILURE MILEAGE WAS APPROXIMATELY 2,000. VIN

TOOL CONFIRMS PARTS NOT AVAILABLE.

DATE OF INCIDENT: May 14, 2023
DATE COMPLAINT FILED: June 16, 2023
NHTSA ID NUMBER: 11527388
SUMMARY: 2ND ISSUE WITH OBJECTS IN TIRE AND LOSING AIR. THERE ARE KNOWN ISSUES WITH THIS NEW MODEL AND THE COMBINATION OF THE 21"RIM, NEW MODEL SERIES, AND PIRELLI TIRE. ADDITIONAL CONSUMER ISSUES CAN BE FOUND AT: HTTPS://MBWORLD.ORG/FORUMS/S-CLASS-W223/845213-THOSE-EXPERIENCED-TIRE-BLOWOUTS-21N-PIRELLIS.HTML

Customer Complaints on Third-Party Websites

105. Complaints posted by consumers in internet forums demonstrate that the defect is widespread and dangerous and that it can manifest without warning and/or suitable repair. The complaints also indicate Mercedes's awareness of the problems with the 21" wheel configuration and how potentially dangerous the defect is for consumers. The following are a sample of consumer complaints (spelling and grammar mistakes remain as found in the original):

a. **July 10, 2022:** Seems like the two things consistent in these "pothole: failures are Pirelli tires and 21" wheels. As I've written before, I've had 3 failures with my Pirellis on my S580 - at $500 a pop- and from what I read, almost all failures are with the Pirelli P-Zeros. In my opinion, and others I've read in this Forum, these tires have a weaker sidewall than others. (note. As I previously mentioned, I spent 31 years in the tire business) A weak sidewall coupled with the reduced distance between tire and road because of the 21" super low profile setup is a recipe for disaster when you hit a pothole. my recommendation: stay away from the 21" option and, for sure, opt for some tire OTHER than Pirelli. (*Available at* https://mbworld.org/forums/s-class-w223/845081-stranded-blown-

tire.html)

b. **July 11, 2022** (from the same user as the above post)**:** UPDATE: Got contacted by a service advisor from the dealership where the car was dropped off as soon as the dealership opened this morning. The ETA on new tire is next Monday, 07/18, which is actually much better than what I was expecting based on previous reports from the forum members. Asked him to check out the rear tire for any bubbles, since it went over the same pothole. Also gave him my small laundry list of issues I've been experiencing. They will flash the latest software updates to see if they resolve the "glitches" with ECM and malfunctioning driver assistance programs as well as rough transmission shifts and auto engine shut-off restarts. He did say that this is far from the first Pirelli blowout that he's seeing, said I was smart for getting the rim/tire hazard insurance and said Mercedes isn't doing or planning to do anything about these POS Pirellis. My appointment was originally booked for service on Thursday with a loaner reservation but he's trying to find me one sooner. Also talked to the guy that sold me the car (dealer in California). He actually drives an identical S580 (but MY'21) and ordered mine to match his spec for the dealer inventory. He was the one that insisted I get rim/tire insurance, so I thanked him for it. He just told me that he went through 9 tires in 3 months until he started asking his dealership to replace them with Michelins and eventually got all 4 replaced. Hasn't had any blowouts since then. So basically, he confirmed what we all already know. Michelins = great, Pirellis = suck. His '21 was also experiencing a lot of software malfunctions that eventually went away with software updates.

(*Id.*)

c. **July 11, 2022:** So it seems like Pirelli has had an unacceptable failure rate on S580's with 21" wheels. (I've had 3) Is there any way,or anybody, that can be contacted at Mercedes Corporate to let them know that Pirelli is not an acceptable tire for this car. Or at least find out if they are aware of and acknowledge the problem. I don't think they hear about these through their dealer network. I'm not expecting reimbursement for the $1500 I've paid to replace my three, but MBZ needs to be aware of that they are equipping their luxury brand with a substandard product. Heck, if I knew who to write, or call, I'll do it myself. (*Id.*)

d. **January 14, 2023**: I just had a sidewall blow on my 21" Pirelli tire. I have not had a tire failure in 30+ years. I am not happy as it damaged my wheel too. Mercedes needs to change tire suppliers. (*Available at* https://mbworld.org/forums/s-class-w223/845213-those-experienced-tire-blowouts-21n-pirellis.html).

e. **July 15, 2023**: After last night and it being my 9th tire change this is a clear issue of low profile tires, heavy car, and bad quality tires. I barely even hit a pothole and the run flat does not work. If anyone can reach out to me that would be great. Ive been lucky enough to get the tire and wheel insurance policy but god forbid if I did not I would have blown through a LOT of money. (*Id.*)

f. **July 29, 2022:** I bought this car about 2 months ago and driven for less then 3000 miles I had tire blown up twice on two occasions I am wondering if it is a coincidence or others had the same problem (*Available at* https://www.benzforum.com/threads/2022-s580-with-21-

inches-wheels.37733/)

g. **March 16, 2023** (in the same thread as the above post): not a coincidence at all. All of us with S580 with 21 inch wheels have serious recurring problems. (*Id.*)

h. **June 11, 2023:** I have a 2021 S580 with the 21 inch wheels. I have had 3 bent rims and 5 blown tires. I may be pursuing a Lemon Law action at this point. (*Id.*)

i. **September 2, 2023:** I have had at least 10-15 tire changes in the last 8 months alone. (2022 S580). Complete nightmare. (*Id.*)

j. **September 4, 2023:** I contacted MBUSA about three months regarding a buyback but they denied my request. I explained to them that I believe the rims//tires are not correctly engineered for this vehicle and are most likely the reason for the extremely excessive number of tire blowouts. I'm not sure what to do at this point—the car has been in the shop longer than I've actually driven it. To make matters worst; I'm left without a car since the dealership rarely has a loaner available and they never have the tires in stock. Stuck having to use Uber all day while I'm paying $2k a month of this car. (*Id.*)

k. **September 21, 2023:** well known problem. I believe the only other vehicle with these tires are the Maserati. They have same issue. I've had 3 tires go in 1 month. It's insane that these are not run-flats at least. Very dangerous. (*Id.*)

l. **November 24, 2023:** Has any one else had luck with a buyback? I am scared to even drive this $130,000 piece of junk because the tires have left me stranded several times. Thanksgiving night last night in a

dangerous part of New Orleans. 4 blowouts in 6 months. Absurd. And these idiots did not put run flats on the 21 AMG wheels. (*Id.*)

m. **December 28, 2023:** Hello, having the same problems. 5 replacement tires, 1 rims replacement 1 rim repair (2022 S580 10K miles). Had the car for about 15 months. Car still not driving like it original did. road noise on the front passenger side. they think I have a ball barrier issue on the front from my last blowout. Its getting so ridiculous I have to go thru so much for a 140K car. I'm scared to take the car on a road trip, I may get stranded for days. I should have stayed with Toyota. [emojis] I'm going to talk to customer care and see what happens. SO DISAPPOINTED IN THIS LUXURY CAR. (*Id.*)

n. **January 3, 2024:** I have s580 year 2023 with 10000 miles, replaced 11 tires just because I drove over a little pot hole; I contacted Mercedes they stated that nothing wrong with suspension or rims it is all about the low performance tires and it is normal for 21 inches rims as they have a narrow side wall and the only way to recommend is to talk to the dealer to replace / switch to different tires size on my expense. (*Id.*)

o. **March 18, 2024:** bought a New S580 July 2022. Had a blow out on interstate 100 miles from home. Guess what no spare or Jack. Only choice was to have it towed to dealership and have someone pick us up. New tire new front in alignment 1800 later. Two weeks later in another city same thing. Car is towed and here I go again. This is crazy (*Id.*)

106. Mercedes had superior and exclusive knowledge of the Wheel Configuration Defect and knew or should have known that the defect was not known or reasonably discoverable by Plaintiffs and Class Members before they

purchased or leased the Class Vehicles.

107. Plaintiffs are informed and believe, and based thereon alleges, that before Plaintiffs purchased their Class Vehicles, and since 2021, Mercedes knew about the Wheel Configuration Defect through sources not available to consumers, including pre-release testing data, early consumer complaints to Mercedes and its dealers, testing conducted in response to those consumer complaints, high failure rates, and other aggregate data from Mercedes dealers about the problem. Additionally, through its authorized dealerships, Mercedes interacted with Class Members directly and responded to complaints regarding the Wheel Configuration Defect.

108. Mercedes is experienced in the design and manufacture of consumer vehicles. As an experienced manufacturer, Mercedes conducts tests, including pre-sale durability testing, on incoming components, including the bumper covers and air inlets, radiators and engines, to verify the parts are free from defect and align with Mercedes's specifications.[3] Thus, Mercedes knew or should have known the bumper covers and air inlets were defective and prone to put drivers in a dangerous position due to the inherent risk of the Wheel Configuration Defect.

109. Additionally, Defendant should have learned of this widespread defect from the sheer number of reports received from dealerships. Mercedes's customer relations department, which interacts with individual dealerships to identify potential common defects, has received numerous reports regarding the Wheel Configuration Defect, which, on information and belief, led Mercedes to direct

[3] Akweli Parker, *How Car Testing Works*, HOWSTUFFWORKS.COM, http://auto.howstuffworks.com/car-driving-safety/safety-regulatory-devices/car-testing.htm ("The idea behind car testing is that it allows manufactures to work out all the kinks and potential problems of a model before it goes into full production.") (last viewed April 24, 2024).

repair tips and suggestions to its technicians. Consumers' online posts, a sample of which are set forth above, indicate that these do not remedy the defect. Mercedes's customer relations department also collects and analyzes field data including, but not limited to, repair requests made at dealerships, technical reports prepared by engineers who have reviewed vehicles for which warranty coverage is being requested, parts sales reports, and warranty claims data.

110. Further, Defendant should have learned of this widespread defect from the sheer number and cost of tire and wheel replacements for the Class Vehicles.

111. Defendant's warranty department similarly analyzes and collects data submitted by its dealerships to identify warranty trends in its vehicles. It is Defendant's policy that when a repair is requested under warranty the dealership must provide Mercedes with detailed documentation of the problem and a complete disclosure of the repairs required to correct it. Dealerships have an incentive to provide detailed information to Defendant, because they will not be reimbursed for any repairs unless the justification for reimbursement is sufficiently detailed.

112. The existence of the Wheel Configuration Defect is a material fact that a reasonable consumer would consider when deciding whether to purchase or lease a Class Vehicle. Had Plaintiffs and other Class Members known of the Wheel Configuration Defect, they would have paid less for the Class Vehicles or would not have purchased or leased them.

113. Reasonable consumers, like Plaintiffs, expect that a vehicle's wheels and tires are safe, will function in a manner that will not pose a safety risk, and are free from defects. Plaintiffs and Class Members further reasonably expect that Mercedes will not sell or lease vehicles with known safety defects, such as the

Wheel Configuration Defect, and will disclose any such defects to its consumers when it learns of them. They did not expect Mercedes to conceal and fail to disclose the Wheel Configuration Defect to them, and to then continually deny its existence.

Mercedes Has Actively Concealed the Wheel Configuration Defect

114. Despite its knowledge of the Wheel Configuration Defect in the Class Vehicles, Mercedes actively concealed the existence and nature of the defect from Plaintiffs and Class Members. Defendant has acted or refused to act on grounds that apply generally to the Class or Subclasses. Specifically, Mercedes failed to disclose or actively concealed at and after the time of purchase, lease, or repair:

(a) any and all known material defects or material nonconformity of the Class Vehicles, including the Wheel Configuration Defect;

(b) that the Class Vehicles, including the wheels and tires, were not in good working order, were defective, and were not fit for their intended purposes; and

(c) that the Class Vehicles and their wheels and tires were defective, despite the fact that Mercedes learned of such defects as early as 2021.

115. When consumers present their Class Vehicles to an authorized Mercedes dealer for repairs, rather than repair the problem under warranty, Mercedes dealers either inform consumers that the failure is the consumers' fault, was caused by outside influence, directs them to consumers' insurance company, or conduct repairs that merely mask the Wheel Configuration Defect.

Mercedes Has Unjustly Retained A Substantial Benefit

116. Defendant unlawfully failed to disclose the alleged defect to induce Plaintiffs and other putative Class Members to purchase or lease the Class Vehicles.

117. Plaintiffs further allege that Defendant thus engaged in deceptive acts or practices pertaining to all transactions involving the Class Vehicles, including Plaintiff's purchase of his vehicle.

118. Defendant unlawfully induced Plaintiffs to purchase their Class Vehicle by concealing a material fact (the Wheel Configuration Defect). Plaintiffs would have paid less for the Class Vehicle, or not purchased it at all, had he known of the defect.

119. Accordingly, Defendant's ill-gotten gains, benefits accrued in the form of increased sales and profits resulting from the material omissions that did —and likely will continue to—deceive consumers, should be disgorged.

The Agency Relationship regarding the Vehicle Warranties Between Defendant and its Authorized Dealers

120. In order to sell vehicles to the general public, Defendant enters into agreements with its networks of authorized dealerships to engage in retail sales with consumers such as Plaintiffs while also advertising the warranties provided by Mercedes directly to consumers when they purchase a Mercedes-branded vehicle from the authorized dealership. These agreements specifically authorize the dealerships to act in Mercedes's stead to provide repairs under the warranties Mercedes provides directly to consumers. Accordingly, discovery will show, particularly the dealership agreements between MBUSA and third-party dealerships, that Defendant has authorized these dealerships to be its agents for the purposes of warranty repairs, including diagnosis of whether warranty repairs are

required, and as such, the consumers are third-party beneficiaries of these dealership agreements because they benefit from being able to purchase and receive warranty repairs locally. Discovery will show that because Plaintiffs and members of the Class are third-party beneficiaries of the dealership agreement which create an implied warranty of merchantability of the goods being sold by these authorized dealerships, they may avail themselves of the implied warranty against Defendant. This is true because third-party beneficiaries to contracts between other parties that create an implied warranty of merchantability may avail themselves of the implied warranty. *See In re Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, & Prod. Liab. Litig.*, 754 F. Supp. 2d 1145, 1185 (C.D. Cal. 2010).

121. Further, Plaintiffs and each of the members of the Class are the intended beneficiaries of the express and implied warranties which accompany each Class Vehicle. The dealers were not intended to be the ultimate consumers of the Class Vehicles, and they have no rights under the warranty agreements provided by Mercedes. These warranties were designed for and intended to benefit the consumers only. The consumers are the true intended beneficiaries of the express and implied warranties, and the consumers may therefore avail themselves of those warranties.

122. Mercedes issued the express warranty to Plaintiffs and the Class members. Mercedes also developed and disseminated the owner's manuals and warranty booklets which direct consumers to take their vehicles to authorized dealerships for diagnosis and repair. Mercedes also developed and disseminated the advertisements such as vehicle brochures and television commercials, and other promotional materials relating to the Class Vehicles and promoting the terms of the warranties that they issue with the sale of each Class Vehicle. Mercedes is also

responsible for the content of the Monroney Stickers on its vehicles. Because Mercedes issues the express warranties directly to the consumers, the consumers are in direct privity with Mercedes with respect to the warranties.

123. In promoting, selling, and repairing their defective vehicles, Defendant acts through numerous authorized dealers who act as, and represent themselves to the public as exclusive Mercedes representatives and agents, particularly for the purpose of providing repairs that are the responsibility of Mercedes to provide under its warranties. That the dealers act as Defendant's agents for this purpose is demonstrated by the following facts:

(a) The authorized dealerships complete all service and repair according to instructions disseminated directly to them by Mercedes, including service manuals, technical service bulletins ("TSBs"), technical tips ("TT"), and other documents drafted by Mercedes;

(b) Technicians at Defendant's dealerships are required to go to at least yearly Mercedes-given trainings in order to remain certified to work on Mercedes-branded vehicles, at which they receive training on proprietary systems, which provides guided, step-by-step instructions on diagnosing and repairing Mercedes-branded vehicles;

(c) Consumers are able to receive services under Mercedes's issued New Vehicle Limited Warranties only at authorized dealerships, and they are able to receive these services because of the agreements between Mercedes and the authorized dealers. These agreements provide Mercedes with a significant

amount of control over the actions of the authorized dealerships;

(d) The warranties provided by Mercedes for the defective vehicles direct consumers to take their vehicles to authorized dealerships for repairs or services;

(e) Mercedes controls the way in which its authorized dealers can respond to complaints and inquiries concerning defective vehicles, and the dealerships are able to perform repairs under warranty only with Mercedes's authorization;

(f) Mercedes has entered into agreements and understandings with their authorized dealers pursuant to which they authorize and exercise substantial control over the operations of their dealers and the dealers' interaction with the public, particularly the advertising of the Class Vehicles, specifically the terms and conditions of the express warranties, as well as how consumers may avail themselves of the remedies under those express warranties; and

124. Indeed, Mercedes' warranty booklet makes it abundantly clear that only its authorized dealerships are its agents for warranty service. The booklets, which are plainly written for the consumers, not the dealerships, tell consumers that to obtain warranty service, the Mercedes vehicle must be taken to a Mercedes dealership for a warranted repair during the warranty period.

125. Accordingly, as the above paragraphs demonstrate, the authorized dealerships are agents of Defendant for the purposes of the warranties, which are direct contracts between Mercedes and the purchasers of their branded vehicles. Plaintiffs and each of the members of the Class have had sufficient direct dealings

with either Mercedes or their agent dealerships to establish privity of contract between Mercedes, on one hand, and Plaintiffs and each of the members of the Class, on the other hand. This establishes privity with respect to the express and implied warranty between Plaintiffs and Defendant. It also establishes that Plaintiffs were dealing with Defendant through their authorized agent dealerships when they were given the New Vehicle Limited Warranty associated with their vehicles, without any ability to negotiate the terms of that Warranty.

Defendant's Warranties were Unconscionable

126. Plaintiffs signed contracts for sale with Defendant's authorized dealers, and with that sale, were presented with a separate Warranty as drafted by Mercedes. While Plaintiffs and class members have some ability to negotiate price of the vehicle, they have no ability to negotiate the terms of the Warranty. Plaintiffs had no bargaining power with respect to the Warranty, was presented with it as a *fait accompli*, and had to accept it in the exact form in which it was presented to him, which occurred after the vehicle purchase transaction was completed. Plaintiffs had no meaningful choice regarding any aspect of the Warranty or its terms, including durational limitations of time and mileage. The terms of the warranty unreasonably favored Mercedes over Plaintiffs and the members of the Class; a gross disparity in bargaining power existed as between Mercedes and Class members; and Mercedes knew or should have known that the Wheel Configuration Defect would manifest in the Class Vehicles both before and after the Warranty, thereby rendering the time and mileage limitations insufficient, inadequate, and unconscionable.

127. Mercedes drafted the terms of the Warranty in part by using its exclusive, superior knowledge of the existence and likely manifestation of the

Wheel Configuration Defect. Plaintiffs and Class Members were entirely ignorant of the Defect when purchasing their Vehicles and when presented with the Warranty. Plaintiffs' acceptance of the Warranty and its terms, including any disclaimers or durational limits, was neither knowing nor voluntary. Mercedes knew or should have known at the time of sale that the Class Vehicles were defective and would fail prematurely solely because of a defect in design, materials, and workmanship, to wit, the Wheel Configuration Defect. Plaintiffs and Class Members, on the other hand, had no notice of or ability to detect the Wheel Configuration Defect prior to purchasing the Class Vehicles. For this reason, the terms of the Warranty unreasonably favored Mercedes over Plaintiffs and Class Members, and Plaintiffs' and Class Members' acceptance of the Warranty's durational limitations, to the extent they are found to apply so as to exclude instances where the Wheel Configuration Defect manifested outside of them, was neither knowing nor voluntary, thereby rendering such limitation unconscionable and ineffective.

128. Defendant's exclusive superior knowledge of the existence of the Wheel Configuration and when it would manifest influenced its analysis of the Wheel Configuration Defect and whether it should pay for a recall (*i.e.,* if a defect is more likely to manifest within the durational limits, a recall is only fractionally more expensive than warranty repairs; if it is more likely to manifest outside those limits, a recall is exponentially more expensive than warranty repairs.)

129. Plaintiffs were also not aware and could not have been aware that Mercedes would willfully not inform him of the Wheel Configuration Defect which affects the safety of their vehicles and that the Wheel Configuration Defect could manifest outside of the durational limit of the Warranty, despite Defendant's

knowledge of this. *See Carlson v. Gen. Motors Corp*., 883 F.2d 287 (4th Cir. 1989), cert. denied, 495 U.S. 904 (1990) (""proof that GM knew of and failed to disclose major, inherent product defects would obviously suggest that its imposition of the challenged 'durational limitations' on implied warranties constituted 'overreaching,' and that the disclaimers themselves were therefore 'unconscionable.'")

TOLLING OF THE STATUTES OF LIMITATIONS

130. Any applicable statute of limitations has been tolled by Defendant's knowing and active concealment of the Wheel Configuration Defect and misrepresentations and omissions alleged herein. Through no fault or lack of diligence, Plaintiffs and members of the Class were deceived regarding the Class Vehicles and could not reasonably discover the Wheel Configuration Defect or Defendant's deception with respect to the Wheel Configuration Defect. Defendant and its agents continue to deny the existence and extent of the Wheel Configuration Defect, even when questioned by Plaintiffs and members of the Class.

131. Plaintiffs and members of the Class did not discover and did not know of any facts that would have caused a reasonable person to suspect that Defendant was concealing a defect and/or the Class Vehicles contained the Wheel Configuration Defect and the corresponding safety risk. As alleged herein, the existence of the Wheel Configuration Defect was material to Plaintiffs and members of the Class at all relevant times. Within the time period of any applicable statutes of limitations, Plaintiffs and members of the Class could not have discovered through the exercise of reasonable diligence the existence of the Wheel Configuration Defect or that the Defendant was concealing the Wheel Configuration Defect.

132. At all times, Defendant is and was under a continuous duty to disclose to Plaintiffs and members of the Class the true standard, quality, and grade of the Class Vehicles and to disclose the Wheel Configuration Defect and corresponding safety risk due to their exclusive and superior knowledge of the existence and extent of the Wheel Configuration Defect in Class Vehicles.

133. Defendant knowingly, actively, and affirmatively concealed the facts alleged herein. Plaintiffs and members of the Class reasonably relied on Defendant's knowing, active, and affirmative concealment.

134. For these reasons, all applicable statutes of limitation have been tolled based on the discovery rule and Defendant's fraudulent concealment, and Defendant is estopped from relying on any statutes of limitations in defense of this action.

CLASS ACTION ALLEGATIONS

135. Plaintiffs bring this lawsuit as a class action on behalf of themselves individually and all others similarly situated as members of the proposed Class pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), 23(b)(3) and 23(c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

136. The Class and Sub-Classes are defined as:

> **Class**: All individuals in the United States who purchased or leased any Class Vehicle.
>
> **Nevada Sub-Class**: All members of the Class who reside in the State of Nevada
>
> **California Sub-Class**: All members of the Class who reside in the State of California
>
> **CLRA Sub-Class**: All members of the California Sub-Class who are "consumers" within the meaning of California Civil Code § 1761(d).

Florida Sub-Class: All members of the Class who reside in the State of Florida.

137. Excluded from the Class and Sub-Classes are: (1) Defendant, any entity or division in which Defendant has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the Judge to whom this case is assigned and the Judge's staff; (3) any Judge sitting in the presiding state and/or federal court system who may hear an appeal of any judgment entered; and (4) those persons who have suffered personal injuries as a result of the facts alleged herein. Plaintiffs reserve the right to amend the Class and each Sub-Class definitions if discovery and further investigation reveal that the Class and such Sub-Class should be expanded or otherwise modified.

138. Numerosity: Although the exact number of Class Members is uncertain, and can only be ascertained through appropriate discovery, the number is significant enough such that joinder is impracticable. The disposition of the claims of these Class Members in a single action will provide substantial benefits to all parties and to the Court. The Class Members are readily identifiable from information and records in Defendant's possession, custody, or control, as well as from records kept by the Department of Motor Vehicles.

139. Typicality: Plaintiffs' claims are typical of the claims of the Class in that Plaintiffs, like all Class Members, purchased or leased Class Vehicles designed, manufactured, and/or distributed by Mercedes. The representative Plaintiffs, like all Class Members, has been damaged by Defendant's misconduct in that he has incurred or will incur the cost of repairing or replacing the tires, wheels, and/or their components as a result of the Wheel Configuration Defect. Furthermore, the factual bases of Mercedes's misconduct are common to all Class Members and represent a common thread resulting in injury to the Class.

140. Commonality: There are numerous questions of law and fact common to Plaintiffs and the Class that are susceptible to common answers and that predominate over any question affecting Class Members individually. These common legal and factual issues include the following:

(a) Whether Class Vehicles suffer from the Wheel Configuration Defect;

(b) Whether the Wheel Configuration Defect constitutes an unreasonable safety risk;

(c) Whether Defendant knew about the Wheel Configuration Defect and, if so, how long Defendant has known of the defect;

(d) Whether the Wheel Configuration Defect constitutes a material fact;

(e) Whether Defendant has had an ongoing duty to disclose the Wheel Configuration Defect to Plaintiffs and Class Members;

(f) Whether Plaintiffs and the other Class Members are entitled to equitable relief, including a preliminary and/or a permanent injunction;

(g) Whether Defendant knew or reasonably should have known of the Wheel Configuration Defect before it sold and leased Class Vehicles to Class Members;

(h) Whether Defendant should be declared financially responsible for notifying the Class Members of Wheel Configuration Defect and for the costs and expenses of repairing the Wheel Configuration Defect;

(i) Whether Defendant is obligated to inform Class Members of

their right to seek reimbursement for having paid to diagnose, repair, or replace components as a result of the Wheel Configuration Defect;

(j) Whether Defendant breached the implied warranty of merchantability pursuant to the Magnuson-Moss Warranty Act;

(k) Whether Defendant breached written or implied warranties pursuant to the Magnuson-Moss Warranty Act; and

(l) Whether Defendant has acted or refused to act on grounds that apply generally to the Class or Sub-classes.

141. Adequate Representation: Plaintiffs will fairly and adequately protect the interests of the Class Members. Plaintiffs have retained attorneys experienced in the prosecution of class actions, including consumer and product defect class actions, and Plaintiffs intend to vigorously prosecute this action.

142. Predominance and Superiority: Plaintiffs and Class Members have all suffered, and will continue to suffer, harm and damages as a result of Defendant's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy. Because of the relatively small size of the individual Class Members' claims, it is likely that only a few Class Members could afford to seek legal redress for Defendant's misconduct. Absent a class action, Class Members will continue to incur damages, and Defendant's misconduct will continue unabated without remedy or relief. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that it will conserve

the resources of the courts and the litigants and promote consistency and efficiency of adjudication.

Claims on Behalf of the Nevada Sub-Class

FIRST CAUSE OF ACTION

(Breach of Express Warranty)

143. Plaintiff Chappell ("Nevada Plaintiff") incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

144. Nevada Plaintiff brings this cause of action on behalf of himself and the Nevada Sub-Class.

145. Each Class Vehicle sold by Mercedes included an express warranty that covered the wheels and tires and warranted that Mercedes would repair or replace any defects in materials and workmanship in the class vehicles.

146. Mercedes provided all purchasers and lessees of the Class Vehicles with a written warranty "for 48 months or 50,000 miles, whichever occurs first" that "starts on the date the vehicle is delivered to the first retail purchaser or put in service as an Authorized Mercedes-Benz Dealership demonstrator … but no later than 18 months from the vehicle production date." Additionally, the tires supplied with the Class Vehicles "are covered against defects in material or workmanship for the period of 12 months and/or 12,000 miles from date of delivery or when the vehicle was put in service."

147. As a result of Mercedes's breach of the applicable express warranties, owners and/or lessees of the Class Vehicles suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, as a result of the Wheel Configuration Defect, Nevada Plaintiff and Nevada Sub-Class Members

were harmed and suffered actual damages in that the Class Vehicles' wheels and/or tires are substantially certain to fail before their expected useful life has run.

148. Mercedes provided all purchasers and lessees of the Class Vehicles with the express warranty described herein, which became a material part of the bargain. Accordingly, Mercedes's express warranty is an express warranty.

149. Mercedes manufactured and/or installed the wheels, tires, and its component parts in the Class Vehicles, and the wheels, tires, and their component parts are covered by the express warranty.

150. Mercedes provided all purchasers and lessees of the Class Vehicles with a New Vehicle Limited Warranty for 48 months or 50,000 miles, and a warranty applicable to tires for 12 months or 12,000 miles.

151. On information and belief, Mercedes breached the express warranty by purporting to repair the wheels and/or tires and its component parts by replacing the defective or damaged components with the same defective components and/or instituting temporary fixes, on information and belief, to ensure that the Wheel Configuration Defect manifests outside of the Class Vehicles' express warranty period.

152. Nevada Plaintiff and Nevada Sub-Class Members gave Mercedes notice of its breach by presenting their vehicles to Mercedes dealerships for repairs that were not made and/or by providing formal written notice to Mercedes.

153. However, Nevada Plaintiff was not required to notify Mercedes of the breach and/or was not required to do so because affording Mercedes a reasonable opportunity to cure its breach of written warranty would have been futile. Mercedes was also on notice of the defect from the complaints and service requests it received from Class Members, from repairs and/or replacements of the wheels, tires, or

components thereof, and through other internal sources. Nevertheless, Nevada Plaintiff notified Mercedes of his breach of warranty claims via letter, dated September 9, 2024.

154. As a direct and proximate cause of Mercedes's breach, Nevada Plaintiff and Nevada Sub-Class Members suffered, and continue to suffer, damages, including economic damages at the point of sale or lease. Additionally, Nevada Plaintiff and Nevada Sub-Class Members either have incurred or will incur economic damages at the point of repair in the form of the cost of repair.

155. Additionally, Mercedes breached the express warranty by performing illusory repairs. Rather than repairing the vehicles pursuant to the express warranty, Mercedes falsely informed class members that there was no problem with their vehicle, or replaced defective components with equally defective components, without actually repairing the vehicles.

156. Nevada Plaintiff and Nevada Sub-Class Members are entitled to legal and equitable relief against Mercedes, including actual damages, consequential damages, specific performance, attorneys' fees, costs of suit, and other relief as appropriate.

SECOND CAUSE OF ACTION

(Violation of the Nevada Deceptive Trade Practices Act

Nev. Rev. Stat. § 598.0903, *et seq.*)

157. Nevada Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

158. Nevada Plaintiff brings this cause of action on behalf of himself and the Nevada Sub-Class.

159. The Nevada Deceptive Trade Practices Act ("Nevada DTPA"), Nev.

Rev. Stat. § 598.0903, *et seq*. prohibits deceptive trade practices. Nev. Rev. Stat. § 598.0915 provides that a person engages in a "deceptive trade practice" if, in the course of business or occupation, the person: "5. Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations or quantities of goods or services for sale or lease or a false representation as to the sponsorship, approval, status, affiliation or connection of a person therewith"; "7. Represents that goods or services for sale or lease are of a particular standard, quality or grade, or that such goods are of a particular style or model, if he or she knows or should know that they are of another standard, quality, grade, style or model"; "9. Advertises goods or services with intent not to sell or lease them as advertised"; or "15. Knowingly makes any other false representation in a transaction."

160. Defendant's actions as set forth below occurred in the conduct of trade or commerce.

161. By failing to disclose and concealing the defective nature of the Class Vehicles' wheels and/or tires from Nevada Plaintiff and Nevada Sub-Class Members, Defendant violated the Nevada DTPA, as it represented that the Class Vehicles and their wheels and tires had characteristics and benefits that they do not have and represented that the Class Vehicles and their wheels and tires were of a particular standard, quality, or grade when they were of another.

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

163. Defendant knew and continues to know that the Class Vehicles and their wheels and/or tires suffered from an inherent defect, were defectively

designed, and were not suitable for their intended use.

164. Defendant was under a duty to Nevada Plaintiff and Nevada Sub-Class Members to disclose the defective nature of the wheels and/or tires, and/or the associated repair costs because:

a. Defendant was in a superior position to know the true state of facts about the safety defect in the Class Vehicles' wheels and/or tires;

b. Nevada Plaintiff and Nevada Sub-Class Members could not reasonably have been expected to learn or discover that their wheels and/or tires had a dangerous safety defect until it manifested; and

c. Defendant knew that Nevada Plaintiff and Nevada Sub-Class Members could not reasonably have been expected to learn of or discover the safety defect.

165. In failing to disclose the defective nature of the wheels and/or tires, Defendant knowingly and intentionally concealed and continues to conceal material facts and breached its duty not to do so.

166. The facts Defendant concealed from or failed to disclose to Nevada Plaintiff and Nevada Sub-Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Class Vehicles or pay less. Had they known that the Class Vehicles' wheels and/or tires were defective, Nevada Plaintiff and Nevada Sub-Class Members would not have purchased or leased the Class Vehicles or would have paid less for them.

167. Nevada Plaintiff and Nevada Sub-Class Members are reasonable consumers who do not expect the wheels and/or tires installed on their vehicles to

exhibit problems such as tire blowouts.

168. This is the reasonable and objective consumer expectation relating to vehicle wheels and/or tires.

169. Nevada Plaintiff and Nevada Sub-Class Members are entitled to equitable relief.

170. Nevada Plaintiff notified Mercedes of his Nevada DTPA claims via letter, dated September 9, 2024.

THIRD CAUSE OF ACTION

(Breach of Common Law Implied Warranty of Merchantability and Breach of Implied Warranty Pursuant to Nev. Rev. Stat. §§ 104.2314 and 104A.2212)

171. Nevada Plaintiff incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

172. Nevada Plaintiff brings this cause of action against Defendant individually and on behalf of the Nevada Sub-Class.

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

174. Defendant provided Nevada Plaintiff and Nevada Sub-Class Members with an implied warranty that the Class Vehicles and their components and parts are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, *inter alia*, the Class Vehicles and their wheels and/or tires suffered from an inherent defect at the time of sale and thereafter and are not fit for their particular purpose of providing safe and

reliable transportation.

175. Defendant impliedly warranted that the Class Vehicles were of merchantable quality and fit for such use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles and their wheels and/or tires that were manufactured, supplied, distributed, and/or sold by Mercedes were safe and reliable for providing transportation; and (ii) a warranty that the Class Vehicles and their wheels and/or tires would be fit for their intended use while the Class Vehicles were being operated.

176. Contrary to the applicable implied warranties, the Class Vehicles and their wheels and/or tires at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Nevada Plaintiff and Nevada Sub-Class Members with reliable, durable, and safe transportation. Instead, the Class Vehicles are defective, including but not limited to, the defective design of their wheels and/or tires.

177. The alleged Wheel Configuration Defect is inherent in each Class Vehicle and was present in each Class Vehicle at the time of sale.

178. As a result of Defendant's breach of the applicable implied warranties, Nevada Plaintiff and Nevada Sub-Class Members suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, as a result of the Wheel Configuration Defect, Nevada Plaintiff and Nevada Sub-Class Members were harmed and suffered actual damages in that the Class Vehicles' wheel and tire components are substantially certain to fail before their expected useful life has run.

179. Defendant's actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use

in violation of Nevada Common Law Implied Warranties, Nevada Revised Statutes §§ 104.2314 and 104A.2212.

180. Nevada Plaintiff notified Mercedes of his breach of warranty claims via letter, dated September 9, 2024.

Claims on Behalf of the California and CLRA Sub-Classes

FOURTH CAUSE OF ACTION

(Violation Of The Song-Beverly Consumer Warranty Act For Breach Of Express Warranties ("SBCWA")

(Cal. Civ. Code §§ 1791.2 & 1793.2)

181. Plaintiffs Cockerham, Gone, and Barakat ("California Plaintiffs") incorporate by reference and re-allege the preceding paragraphs as if fully set forth herein.

182. California Plaintiffs bring this cause of action individually and on behalf of the California Sub-Class.

183. California Plaintiffs and Sub-Class Members are "buyers" within the meaning of the SBCWA. Cal. Civ. Code § 1791(b).

184. The Class Vehicles are "consumer goods" within the meaning of Cal. Civ. Code § 1791(a).

185. Mercedes is a "manufacturer" within the meaning of Cal. Civ. Code § 1791(j).

186. California Plaintiffs and Sub-Class Members bought or leased Class Vehicles with the Mercedes Wheel Configuration Defect.

187. Mercedes made express warranties to California Plaintiffs and Sub-Class members within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2 as set

forth herein.

188. Specifically, each Class Vehicle sold by Mercedes included an express warranty that covered the wheels and tires and warranted that Mercedes would repair or replace any defects in materials and workmanship in the class vehicles. Mercedes provided all purchasers and lessees of the Class Vehicles with a written warranty "for 48 months or 50,000 miles, whichever occurs first" that "starts on the date the vehicle is delivered to the first retail purchaser or put in service as an Authorized Mercedes-Benz Dealership demonstrator … but no later than 18 months from the vehicle production date." Additionally, the tires supplied with the Class Vehicles "are covered against defects in material or workmanship for the period of 12 months and/or 12,000 miles from date of delivery or when the vehicle was put in service."

189. As set forth herein in detail, the Class Vehicles are inherently defective because they are equipped with the Wheel Configuration Defect, because of which California Plaintiffs and Sub-Class Members were harmed and suffered actual damages in that the Class Vehicles' wheels and/or tires are substantially certain to fail before their expected useful life has run.

190. The Wheel Configuration Defect jeopardizes the safety of drivers and passengers of Class Vehicles, and other drivers on the road, and substantially impairs the use, value, and safety of the Class Vehicles to reasonable consumers like Plaintiffs and Class members.

191. California Plaintiffs delivered the Class Vehicles to Mercedes or its authorized repair facility to repair the Defect and notified Mercedes in writing of the need for repair, as set forth herein, but Mercedes failed and continues to fail to make repairs to Plaintiffs' Class Vehicles under its Warranty.

192. Mercedes provided all purchasers and lessees of the Class Vehicles with the express warranty described herein, which became a material part of the bargain. Accordingly, Mercedes's express warranty is an express warranty.

193. Mercedes manufactured and/or installed the wheels, tires, and its component parts in the Class Vehicles, and the wheels, tires, and their component parts are covered by the express warranty.

194. Mercedes provided all purchasers and lessees of the Class Vehicles with a New Vehicle Limited Warranty for 48 months or 50,000 miles, and a warranty applicable to tires for 12 months or 12,000 miles.

195. Discovery will show that Mercedes breached the express warranty by purporting to repair the wheels and/or tires and its component parts by replacing the defective or damaged components with the same defective components and/or instituting temporary fixes, on information and belief, to ensure that the Wheel Configuration Defect manifests outside of the Class Vehicles' express warranty period.

196. California Plaintiffs and the California Sub-Class gave Mercedes notice of its breach by presenting their vehicles to Mercedes dealerships for repairs that were not made and by providing formal written notice to Mercedes, via letter dated August 16, 2024.

197. As a direct and proximate cause of Mercedes's breach, California Plaintiffs and Sub-Class Members suffered, and continue to suffer, damages, including economic damages at the point of sale or lease. Additionally, California Plaintiffs and California Sub-Class Members either have incurred or will incur economic damages at the point of repair in the form of the cost of repair.

198. Additionally, Mercedes breached the express warranty by performing

illusory repairs. Rather than repairing the vehicles pursuant to the express warranty, Mercedes falsely informed class members that there was no problem with their vehicle, or replaced defective components with equally defective components, without actually repairing the vehicles.

199. Furthermore, the express warranties to repair defective parts fail in their essential purpose because the contractual remedy is insufficient to make California Plaintiffs and Sub-Class Members whole and because Mercedes has failed and/or has refused to adequately provide the promised remedies within a reasonable time.

200. Accordingly, recovery by California Plaintiffs and Sub-Class Members is not limited to the express warranties of repair to parts defective in materials or workmanship, and Plaintiffs seek all remedies as allowed by law.

201. As a direct and proximate result of Mercedes' breach of its express warranties, California Plaintiffs and Sub-Class members received goods containing a dangerous condition that substantially impairs the value of the goods sold to Plaintiffs and Class members, and have been damaged in an amount to be determined at trial.

202. Pursuant to Cal. Civ. Code. §§ 1793.2 & 1794, California Plaintiffs and Sub-Class Members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of or a buyback of their Mercedes vehicles, or the overpayment or diminution in value of their Class Vehicles.

203. Pursuant to Cal. Civ. Code § 1794, California Plaintiffs and Sub-Class Members are also entitled to costs and reasonable attorneys' fees.

FIFTH CAUSE OF ACTION

(VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT

FOR BREACH OF IMPLIED WARRANTIES ("SBCWA"),

(Cal. Civ. Code §§ 1791.1 & 1792)

204. California Plaintiffs incorporate by reference and re-allege the preceding paragraphs as if fully set forth herein.

205. California Plaintiffs bring this cause of action individually and on behalf of the California Sub-Class.

206. California Plaintiffs and Sub-Class Members are "buyers" within the meaning of the SBCWA. See Cal. Civ. Code § 1791(b).

207. The Class Vehicles are "consumer goods" within the meaning of Cal. Civ. Code § 1791(a).

208. Mercedes is a "manufacturer" within the meaning of Cal. Civ. Code § 1791(j).

209. Mercedes impliedly warranted to California Plaintiffs and Sub-Class Members that its Class Vehicles were "merchantable" within the meaning of Cal. Civ. Code §§ 1791.1(a) & 1792.

210. In reality, the Class Vehicles do not possess those qualities that a buyer would reasonably expect.

211. Cal. Civ. Code § 1791.1(a) states: "Implied warranty of merchantability" or "implied warranty that goods are merchantable" means that the consumer goods meet each of the following: (1) Pass without objection in the trade under the contract description. (2) Are fit for the ordinary purposes for which such goods are used. (3) Are adequately contained, packaged, and labeled. (4) Conform to the promises or affirmations of fact made on the container or label.

212. The Class Vehicles are not suitable for the market, and would not pass without objection in the automotive industry and market because they are

equipped with the Wheel Configuration Defect which the Class Vehicles' wheels and/or tires are substantially certain to fail before their expected useful life has run.

213. Mercedes' Wheel Configuration Defect makes the Class Vehicles unsuitable for safe driving. The Class Vehicles are not in merchantable condition, and are therefore, not fit for their ordinary purposes.

214. Furthermore, Class Vehicles are not adequately labeled because the labeling fails to disclose the Wheel Configuration Defect.

215. Mercedes breached the implied warranty of merchantability by manufacturing and selling Class Vehicles equipped with Wheel Configuration Defect. Furthermore, the Wheel Configuration Defect has caused Plaintiffs and other Class members to not receive the benefit of their bargain and have caused Class Vehicles to depreciate in value.

216. The wheel configuration installed in the Class Vehicles was defective at the time they left the possession of Mercedes, as set forth above. The Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and not fit for their ordinary purpose of providing safe and reliable transportation. The Class Vehicles contain an inherent defect in the Wheel Configuration and present an undisclosed safety risk to drivers, occupants, and others. Thus, Mercedes breached its implied duty of merchantability.

217. Mercedes cannot disclaim its implied warranties as it knowingly sold or leased a defective product.

218. Mercedes knew, or should have known, that the Class Vehicles posed a safety risk and were defective and knew, or should have known, of these breaches of implied warranties prior to sale or lease of the Class Vehicles to

California Plaintiffs and Sub-Class Members,

219. California Plaintiffs and Sub-Class Members have had sufficient direct dealings with Mercedes and/or its authorized dealers, franchisees, representatives, and agents to establish privity of contract between Mercedes and California Plaintiffs and each of the California Sub-Class Members. Mercedes' authorized dealers, franchisees, representatives, and agents were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles. The warranty agreements were designed for and intended to benefit only the ultimate purchasers and lessees of the Class Vehicles, i.e., California Plaintiffs and Sub-Class Members

220. Nonetheless, privity is not required here because California Plaintiffs and each of the California Sub-Class Members are intended third-party beneficiaries of contracts between Mercedes and its dealers, and specifically, of Mercedes' implied warranties. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have no rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the consumers only.

221. In addition, by extending express written warranties to end-user purchasers and lessees, Mercedes brought itself into privity with California Plaintiffs and Sub-Class Members.

222. Mercedes has not validly disclaimed, excluded, or modified the implied warranties or duties described above, and any attempted disclaimer or exclusion of the implied warranties was and is ineffectual.

223. California Plaintiffs and Sub-Class Members used the Class Vehicles and their wheels, in a manner consistent with their intended use and performed

each and every duty required under the terms of the warranties, except as may have been excused or prevented by the conduct of Mercedes or by operation of law in light of Mercedes' unconscionable conduct.

224. Mercedes had actual knowledge of and received timely notice of the Defect at issue in this litigation and, notwithstanding such notice, failed and refused to offer an effective remedy. California Plaintiffs provided Mercedes with notice of its breaches of warranty, via letter dated August 16, 2024.

225. In addition, Mercedes received, on information and belief, numerous consumer complaints and other notices from customers advising of the Defect associated with the Wheel Configuration installed in the Class Vehicles.

226. As a direct and proximate result of Mercedes' breach of the implied warranty of merchantability, California Plaintiffs and Sub-Class Members received goods whose defective condition substantially renders them unsafe for their intended purpose and impairs their value to California Plaintiffs and Sub-Class Members; California Plaintiffs and Sub-Class Members have suffered damages and Mercedes was unjustly enriched by keeping the profits for its unsafe products while never having to incur the cost of repair, replacement or a recall.

227. Pursuant to Cal. Civ. Code §§ 1791.1(d) and 1794, California Plaintiffs and Sub-Class Members are entitled to damages and other legal and equitable relief, including, at their election, the purchase price of or a buyback of their Class Vehicles, or the overpayment or diminution in value of their Class Vehicles.

228. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and California Plaintiffs and Sub-Class Members are also entitled to costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

(VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT ("CLRA"))

(Cal. Civ. Code § 1750, *et seq.*)

229. California Plaintiffs incorporate by reference and re-allege the preceding paragraphs as if fully set forth herein.

230. California Plaintiffs bring this cause of action individually and on behalf of the CLRA Sub-Class.

231. Mercedes' actions, representations and conduct violated the CLRA because they extend to transactions that intended to result and which have resulted, in the sale or lease of goods to California Plaintiffs and CLRA Sub-Class Members. Cal. Civ. Code § 1770.

232. Mercedes is a "person" as defined by Cal. Civ. Code § 1761(c).

233. California Plaintiffs and CLRA Sub-Class Members are "consumers" as defined by Cal. Civ. Code § 1761(d) because they purchased their Class Vehicles primarily for personal, family, or household use.

234. The Class Vehicles are "goods" within the meaning of Cal. Civ. Code § 1761(a).

235. Mercedes made numerous representations concerning the Class Vehicles' specifications that were misleading, including marketing and advertising the workmanship of Class Vehicles and the nature and extent of Mercedes' Warranty.

236. Mercedes also omitted material facts about the Class Vehicles, namely the Wheel Configuration Defect.

237. In purchasing or leasing Class Vehicles, California Plaintiffs and CLRA Sub-Class Members were deceived by Mercedes' failure to disclose that

the Class Vehicles contain the Wheel Configuration Defect, resulting in expensive damage for which Mercedes will not provide coverage under its express or implied warranties.

238. Mercedes violated the CLRA in at least the following respects:

a. in violation of § 1770(a)(5), Mercedes represented that the Class Vehicles have approval, characteristics, and uses or benefits which they do not have;

b. in violation of § 1770(a)(7), Mercedes represented that the Class Vehicles are of a particular standard, quality or grade, when they are of another;

c. in violation of Section 1770(a)(9), Mercedes has advertised the Class Vehicles as safe with the intent not to sell them as advertised; and

d. in violation of § 1770(a)(16), Mercedes represented that the goods have been supplied in accordance with previous representations, when they were not.

239. Mercedes violated the CLRA by representing the Class Vehicles were safe and free of defects when they were not and Defendant knew, or should have known, that the representations and advertisements were false and misleading.

240. Mercedes had a duty to disclose the Wheel Configuration Defect because Mercedes had exclusive knowledge of the Defect prior to making sales and leases of Class Vehicles and because Mercedes made partial representations about the quality of Class Vehicles but failed to fully disclose that the Wheel Configuration Defect plagues Class Vehicles.

241. Specifically, Mercedes was under a duty to Plaintiffs and Class

Members to disclose the defective nature of the Class Vehicles because:

a. Mercedes was in a superior position to know the true state of facts about the Wheel Configuration Defect –a defect that can pose a safety risk—and associated repair costs in the Class Vehicles;

b. California Plaintiffs and CLRA Sub-Class Members could not reasonably have been expected to learn or discover that the Class Vehicles have a defect that affects operability of Class Vehicles and creates safety concerns until manifestation of the Wheel Configuration Defect;

c. Mercedes knew that California Plaintiffs and CLRA Sub-Class Members could not reasonably have been expected to learn or discover the Wheel Configuration Defect until manifestation of the Defect; and

d. Mercedes made incomplete representations about the safety and reliability of Class Vehicles generally, while withholding material facts from California Plaintiffs and CLRA Sub-Class Members that contradicted these representations.

242. The facts concealed or not disclosed by Mercedes to California Plaintiffs and CLRA Sub-Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease Class Vehicles or pay a lesser price. Had California Plaintiffs and CLRA Sub-Class Members known about the defective nature of the Class Vehicles, they would not have purchased or leased the Class Vehicles, or they would have paid less. A vehicle made by a reputable manufacturer of safe

vehicles is worth more than a comparable vehicle made by a disreputable manufacturer of unsafe vehicles that conceals defects rather than promptly remedies them.

243. Mercedes intended that California Plaintiffs and CLRA Sub-Class Members would, in the course of their decision to expend monies in purchasing, leasing and/or repairing Class Vehicles, reasonably rely upon the misrepresentations, misleading characterizations, warranties and material omissions concerning the quality of the Class Vehicles and its wheels and/or tires with respect to materials, workmanship, design and/or manufacture.

244. California Plaintiffs and CLRA Sub-Class Members reasonably relied on Mercedes' misrepresentations and omissions in purchasing or leasing Class Vehicles.

245. California Plaintiffs and California Sub-Class Members have been damaged as a proximate result of Mercedes' violations of the CLRA and have suffered actual damages as a direct and proximate result of purchasing or leasing defective Class Vehicles.

246. Pursuant to the provisions of Cal. Civ. Code § 1782(a), on July 17, 2024, Plaintiff's counsel served Mercedes with notice of its alleged violations of Cal. Civ. Code § 1770(a) relating to the Class Vehicles purchased by Plaintiff and Class Members and demanded that Mercedes, within thirty (30) days of such notice, correct or agree to correct the actions described therein and agree to reimburse associated out-of-pocket costs. Mercedes did not respond or otherwise correct the actions described therein, and did not reimburse associated out-of-pocket costs, or otherwise remedy the harm alleged.

247. Under Cal. Civ. Code § 1780(a), California Plaintiffs and CLRA

Sub-Class Members seek actual damages, an order enjoining Mercedes from further engaging in the unfair and deceptive acts and practices alleged herein, restitution, attorney's fees and costs.

248. Under Cal. Civ. Code § 1780(b), California Plaintiffs and CLRA Sub-Class Members seek an additional award against Mercedes of up to $5,000 for each Class Member who qualifies as a "senior citizen" or "disabled person" under the CLRA. Mercedes knew or should have known that its conduct was directed to one or more Class Members who are senior citizens or disabled persons. Mercedes' conduct caused one or more of these senior citizens or disabled persons to suffer a substantial loss of property set aside for retirement or for personal or family care and maintenance, or assets essential to the health or welfare of the senior citizen or disabled person. One or more Class Members who are senior citizens or disabled persons are substantially more vulnerable to Mercedes' conduct because of age, poor health or infirmity, impaired understanding, restricted mobility, or disability, and each of them suffered substantial physical, emotional, or economic damage resulting from Mercedes' conduct.

249. Pursuant to Cal. Civ. Code § 3345, California Plaintiffs and CLRA Sub-Class Members seek an award of trebled damages on behalf of all senior citizens and disabled persons comprising the Class as a result of Mercedes' conduct alleged herein.

250. Pursuant to CLRA Section 1780(a)(4), California Plaintiffs and CLRA Sub-Class Members also seek punitive damages against Mercedes because it carried out reprehensible conduct with willful and conscious disregard of the rights and safety of others, subjecting California Plaintiffs and CLRA Sub-Class Members to potential cruel and unjust hardship as a result. *See* Cal. Civ. Code §

1780(a)(4). Mercedes intentionally and willfully deceived California Plaintiffs and Sub-Class Members on life-or-death matters, and concealed material facts that only Mercedes knew. Mercedes' unlawful conduct likewise constitutes malice, oppression, and fraud warranting exemplary damages under Cal. Civ. Code § 3294.

251. California Plaintiffs further seek any other just and proper relief available under the CLRA.

SEVENTH CAUSE OF ACTION

VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW ("UCL")

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

252. California Plaintiffs repeat and re-allege the allegations above as if fully set forth herein.

253. California Plaintiffs bring this claim on behalf of themselves and California Sub-Class Members.

254. The UCL broadly prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200.

255. A business act or practice is "unfair" under the UCL if the reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

256. Mercedes has engaged in "unfair" business practices and/or acts by falsely representing the qualities of its express and implied warranties for Class Vehicles; by misrepresenting the characteristics of its Class Vehicles; by failing to disclose the Defect to consumers; and by refusing to provide warranty coverage for the Wheel Configuration Defect.

257. The acts and practices alleged herein are unfair because they caused California Plaintiffs and Sub-Class Members, and reasonable consumers like them, to believe that Mercedes was offering something of value that did not, in fact, exist. Mercedes intended for California Plaintiffs and Sub-Class Members to rely on its representations. As a result, purchasers and lessees, including California Plaintiffs, reasonably perceived that they were receiving Class Vehicles with certain benefits. This perception induced reasonable consumers to purchase or lease Class Vehicles which they would not otherwise have done had they known the truth.

258. The gravity of the harm to California Plaintiffs and Sub-Class Members resulting from these unfair acts and practices outweighs any conceivable reasons, justifications and/or motives of Mercedes for engaging in such deceptive acts and practices. By committing the acts and practices alleged above, Mercedes engaged in unfair business practices within the meaning of the UCL.

259. A business act or practice is also "fraudulent" under the UCL if it is likely to deceive members of the consuming public. Mercedes engaged in a uniform course of conduct which was intended to, and did in fact, deceive California Plaintiffs and Sub-Class Members and induced them into buying Class Vehicles. Mercedes' course of conduct and marketing practices were fraudulent within the meaning of the UCL because they deceived Plaintiffs, and were likely to deceive members of the Class, into believing that they were entitled to a benefit that did not, in fact, exist. Mercedes' misrepresentations are likely to deceive and have deceived the public.

260. A business act or practice is also "unlawful" under the UCL if it violates any other law or regulation. Mercedes has violated the MMWA, the CLRA, and other laws as set forth herein.

261. Mercedes has engaged in unfair competition and unfair, unlawful and fraudulent business practices by the conduct, statements, and omissions described above, and by knowingly and intentionally concealing from California Plaintiffs and Sub-Class Members that the Class Vehicles suffer from the Wheel Configuration Defect (and the costs, risks, and diminished value of the Vehicles as a result of this problem).

262. Mercedes committed an unlawful business act or practice in violation of Cal. Bus. & Prof. Code § 17200, et seq., by systematically breaching its warranty obligations and by violating the CLRA and the Song-Beverly Consumer Warranty Act as alleged herein.

263. Mercedes committed unfair business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, et seq., because the acts and practices described herein, including but not limited to Merecedes failure to provide a permanent remedy to fix the Defect, were immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiff and Class Members. Mercedes' acts and practices were additionally unfair because the harm to California Plaintiff and California Class Members is substantial and is not outweighed by any countervailing benefits to consumers or competition. Further, Mercedes' acts and practices were unfair in that they were contrary to legislatively declared or public policy.

264. Mercedes committed fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, et seq., when it concealed the existence and nature of the Defect, while representing in its marketing, advertising, and other broadly disseminated representations that the Class Vehicles were safe when, in fact, the Defect creates a significant and material safety hazard and

inhibits the quality and functionality of the Class Vehicles. Mercedes' representations, omissions, and active concealments about the Defect are likely to mislead the public with regard to the true defective nature of Class Vehicles.

265. Mercedes' unfair or deceptive acts or practices occurred repeatedly in the course of its trade or business and were likely to mislead a substantial portion of the purchasing public.

266. Mercedes should have disclosed the Wheel Configuration Defect and this information because Mercedes was in a superior position to know the true facts related to the Defect, and California Plaintiffs and Sub-Class Members could not reasonably be expected to learn or discover the true facts related to the Wheel Configuration Defect. California Plaintiffs and Sub-Class Members relied upon Mercedes' express representations and promises, as well as omissions, regarding the workmanship of and the warranties for the Class Vehicles, believed them to be true, and would not have agreed to purchase or lease Class Vehicles had they known the truth about the Defect.

267. Therefore, the omissions and acts of concealment, fraud, and deceit by Mercedes pertained to information that was material to California Plaintiffs and Sub-Class Members, as it would have been to all reasonable consumers.

268. Mercedes had a duty to disclose the Wheel Configuration Defect because Mercedes had exclusive knowledge of the Defect prior to making sales and leases of Class Vehicles and because Mercedes made partial representations about the quality of Class Vehicles, but failed to fully disclose that the Wheel Configuration Defect plagues Class Vehicles.

269. In failing to disclose that Class Vehicles contain the Wheel Configuration Defect, the true nature of the quality and workmanship of Class

Vehicles, and suppressing other material facts from California Plaintiffs and Sub-Class Members, Mercedes breached its duties to disclose these facts, violated the UCL, and caused injuries to Plaintiffs and Class Members.

270. California Plaintiffs and Sub-Class Members acted reasonably when they relied on Mercedes' misrepresentations and omissions in purchasing or leasing Class Vehicles—reasonably believing these were true and lawful.

271. The injuries suffered by California Plaintiffs and Sub-Class Members greatly outweigh any potential countervailing benefit to consumers or to competition, nor are they injuries that California Plaintiffs and Sub-Class Members should have reasonably avoided.

272. Through its fraudulent, unfair, and unlawful acts and practices, Mercedes has improperly obtained money from California Plaintiffs and Sub-Class Members.

273. California Plaintiffs and Sub-Class Members seek to enjoin further unlawful, unfair and/or fraudulent acts or practices by Mercedes relating to the Wheel Configuration Defect in Class Vehicles and from violating the UCL in the future by selling Class Vehicles with the Wheel Configuration Defect.

274. California Plaintiffs and Sub-Class Members also seek to obtain restitutionary disgorgement of all monies and revenues generated as a result of such practices, require notice of this dangerous condition be given to the Class, and all other relief allowed under Cal. Bus. & Prof. Code § 17200. Members.

275. California Plaintiffs notified Mercedes of its breaches of the UCL via letter, dated August 16, 2024.

Claims on Behalf of the Florida Sub-Class

EIGHTH CAUSE OF ACTION
BREACH OF EXPRESS WARRANTY
(F.S.A. §§ 672.313 And 680.21)

276. Plaintiff Baldwin ("Florida Plaintiff") repeats and re-alleges each and every allegation contained above as if fully set forth herein.

277. Florida Plaintiff brings this count on behalf of himself and the Florida Sub-Class against Mercedes.

278. Mercedes is and was at all relevant times a "merchant" with respect to motor vehicles under F.S.A. §§ 672.104(1) and 680.1031(3)(k), and a "seller" of motor vehicles under § 672.103(1)(d).

279. With respect to leases, Mercedes is and was at all relevant times a "lessor" of motor vehicles under F.S.A. § 680.1031(1)(p).

280. The Class Vehicles are and were at all relevant times "goods" within the meaning of F.S.A. §§ 672.105(1) and 680.1031(1)(h).

281. The wheel configuration and related components installed in the Class Vehicles by Mercedes are covered by the express warranty.

282. Mercedes provided all purchasers and lessees of the Class Vehicles with an express warranty described herein, which became a material part of the bargain. Accordingly, Mercedes's express warranty is an express warranty under Florida state law.

283. Mercedes provided all purchasers and lessees of the Class Vehicles with a written warranty "for 48 months or 50,000 miles, whichever occurs first" that "starts on the date the vehicle is delivered to the first retail purchaser or put in service as an Authorized Mercedes-Benz Dealership demonstrator … but no later than 18 months from the vehicle production date." Additionally, the tires supplied with the Class Vehicles "are covered against defects in material or

workmanship for the period of 12 months and/or 12,000 miles from date of delivery or when the vehicle was put in service."

284. Mercedes's warranties regarding the Class Vehicles formed a basis of the bargain that was breached when Florida Plaintiff and members of the Florida Sub-Class purchased or leased the Class Vehicles with the Wheel Configuration Defect.

285. Florida Plaintiff and members of the Florida Sub-Class experienced defects within the warranty period. Despite the existence of express warranties, Mercedes failed to inform Florida Plaintiff and members of the Florida Sub-Class that the Class Vehicles were equipped with the Wheel Configuration Defect. When providing repairs under the express warranty, these repairs were ineffective and incomplete and did not provide a permanent repair for the Defect.

286. Mercedes breached the express warranty through the acts and omissions described above, including by promising to repair or adjust defects in materials or workmanship of any part supplied by Mercedes and then failing to do so. Mercedes has not repaired or adjusted, and has been unable to repair or adjust, the Class Vehicles materials and workmanship defects.

287. Privity is not required here because Florida Plaintiff and members of the Florida Sub-Class are intended third-party beneficiaries of contracts between Mercedes and its distributors and dealers, and specifically, of Mercedes's express warranties and any warranties provided with certified pre-owned vehicles. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the consumer only.

288. Any attempt by Mercedes to disclaim or limit recovery to the terms of the express warranty is unconscionable and unenforceable here. Specifically, the warranty limitation is unenforceable because Mercedes knowingly sold or leased defective products without informing consumers about the Wheel Configuration Defect. The time limits are unconscionable and inadequate to protect Florida Plaintiff and the members of the Florida Sub-Class. Among other things, Florida Plaintiff and members of the Florida Sub-Class did not determine these time limitations and/or did not know of other limitations not appearing in the text of the warranties, the terms of which were drafted by Mercedes and unreasonably favored Mercedes. A gross disparity in bargaining power and knowledge of the extent, severity, and safety risk of the Wheel Configuration Defect existed between Mercedes and members of the Florida Sub-Class.

289. Further, the limited warranty promising to repair and/or correct a manufacturing or workmanship defect fails of its essential purpose because the contractual remedy is insufficient to make Florida Plaintiff and the members of the Florida Sub-Class whole, because Mercedes has failed and/or has refused to adequately provide the promised remedies, i.e. a permanent repair, within a reasonable time.

290. Florida Plaintiff was not required to notify Mercedes of the breach because affording Mercedes a reasonable opportunity to cure its breach of written warranty would have been futile. Mercedes was also on notice of the Wheel Configuration Defect from the complaints and service requests it received from Class Members, including those formal complaints submitted to NHTSA, and through other internal sources.

291. Nonetheless, Florida Plaintiff and members of the Florida Sub-Class

provided notice to Mercedes of the breach of express warranties when they took their vehicles to a Mercedes-authorized provider of warranty repairs.

292. As a result of Mercedes's breach of the applicable express warranties, owners and/or lessees of the Class Vehicles suffered, and continue to suffer, an ascertainable loss of money, property, and/or value of their Class Vehicles.

293. As a direct and proximate result of Mercedes' breach of express warranties, Florida Plaintiff and members of the Florida Sub-Class have been damaged in an amount to be determined at trial.

294. As a result of Mercedes's breach of express warranties, Florida Plaintiff and Florida Sub-Class Members are entitled to legal and equitable relief against Mercedes, including actual damages, specific performance, attorney's fees, costs of suit, and other relief as appropriate.

NINTH CAUSE OF ACTION
BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY (F.S.A. §§ 672.314 AND 680.212)

295. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

296. Florida Plaintiff brings this count on behalf of himself and the Florida Sub-Class against Defendants.

297. Mercedes is and was at all relevant times a "merchant" with respect to motor vehicles under F.S.A. §§ 672.104(1) and 680.1031(3)(k), and a "seller" of motor vehicles under § 672.103(1)(d).

298. With respect to leases, Mercedes is and was at all relevant times a "lessor" of motor vehicles under F.S.A. § 680.1031(1)(p).

299. The Class Vehicles are and were at all relevant times "goods" within

the meaning of F.S.A. §§ 672.105(1) and 680.1031(1)(h).

300. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law under F.S.A. §§ 672.314 and 680.212.

301. Mercedes knew or had reason to know of the specific use for which the Class Vehicles were purchased or leased. Mercedes directly sold and marketed Class Vehicles to customers through authorized dealers, like those from whom Florida Plaintiff and members of the Florida Sub-Class bought or leased their vehicles, for the intended purpose of consumers purchasing the vehicles. Mercedes knew that the Class Vehicles would and did pass unchanged from the authorized dealers to Florida Plaintiff and members of the Florida Sub-Class, with no modification to the defective Class Vehicles.

302. Mercedes provided Florida Plaintiff and members of the Florida Sub-Class with an implied warranty that the Class Vehicles and their components and parts are merchantable and fit for the ordinary purposes for which they were sold. However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable and safe transportation because, inter alia, the Class Vehicles and their wheel configuration and/or related components suffered from an inherent defect at the time of sale and thereafter and are not fit for their particular purpose of providing safe and reliable transportation.

303. This implied warranty included, among other things: (i) a warranty that the Class Vehicles that were manufactured, supplied, distributed, and/or sold by Mercedes were safe and reliable for providing transportation; and (ii) a warranty that the Class Vehicles would be fit for their intended use while the Class Vehicles were being operated.

304. Contrary to the applicable implied warranties, the Class Vehicles at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiff and Class Members with reliable, durable, and safe transportation. Instead, the Class Vehicles were and are defective at the time of sale or lease and thereafter as more fully described above. Mercedes knew of this defect at the time these sale or lease transactions occurred.

305. As a result of Mercedes's breach of the applicable implied warranties, Florida Plaintiff and members of the Florida Sub-Class suffered an ascertainable loss of money, property, and/or value of their Class Vehicles. Additionally, as a result of the Wheel Configuration Defect, Florida Plaintiff and members of the Florida Sub-Class were harmed and suffered actual damages in that the Class Vehicles are substantially certain to fail before their expected useful life has run.

306. Mercedes' actions, as complained of herein, breached the implied warranty that the Class Vehicles were of merchantable quality and fit for such use in violation of the Uniform Commercial Code and relevant state law.

307. Florida Plaintiff and members of the Florida Sub-Class have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Mercedes's conduct described herein.

308. Privity is not required here because Florida Plaintiff and members of the Florida Sub-Class are intended third-party beneficiaries of contracts between Mercedes and its distributors and dealers, and specifically, of Mercedes's express warranties, including any warranties provided with certified pre-owned vehicles. The dealers were not intended to be the ultimate consumers of the Class Vehicles and have rights under the warranty agreements provided with the Class Vehicles; the warranty agreements were designed for and intended to benefit the consumer

only.

309. Florida Plaintiff and members of the Florida Sub-Class were not required to notify Mercedes of the breach because affording Mercedes a reasonable opportunity to cure its breach of warranty would have been futile. Mercedes was also on notice of the Wheel Configuration Defect from the complaints and service requests it received from Florida Plaintiff and the Class Members and through other internal sources. Mercedes was also on notice based on the pre-litigation demand provided via letter, on August 16, 2024.

310. Nonetheless, Florida Plaintiff and members of the Florida Sub-Class provided notice to Mercedes of the breach of express warranties when they took their vehicles to a Mercedes-authorized provider of warranty repairs.

311. As a direct and proximate cause of Mercedes's breach, Florida Plaintiff and members of the Florida Sub-Class suffered damages and continue to suffer damages, including economic damages at the point of sale or lease and diminution of value of their Class Vehicles. Additionally, Florida Plaintiff and members of the Florida Sub-Class have incurred or will incur economic damages at the point of repair in the form of the cost of repair as well as additional losses.

312. As a direct and proximate result of Mercedes's breach of the implied warranty of merchantability, Florida Plaintiff and members of the Florida Sub-Class have been damaged in an amount to be proven at trial.

TENTH CAUSE OF ACTION
VIOLATIONS OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT
(F.S.A. §§ 501.201-.213)

313. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

314. Florida Plaintiff brings this cause of action on behalf of himself and on behalf of the members of the Florida Sub-Class against all Defendants.

315. Mercedes's business acts and practices alleged herein constitute unfair, unconscionable and/or deceptive methods, acts or practices under the Florida Deceptive and Unfair Trade Practices Act, § 501.201, et seq., Florida Statutes ("FDUTPA").

316. At all relevant times, Florida Plaintiff and members of the Florida Sub-Class were "consumers" within the meaning of the FDUTPA. F.S.A. § 501.203(7).

317. Mercedes's conduct, as set forth herein, occurred in the conduct of "trade or commerce" within the meaning of the FDUTPA. F.S.A. § 501.203(8).

318. FDUPTA prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce" at set forth in the statute. Fla. Stat. § 501.204(1). Breach of express and implied warranties constitutes an unfair or deceptive act or practice under FDUTPA. Mercedes engaged in unlawful trade practices, and unfair or deceptive acts or practices that violated the FDUTPA.

319. Mercedes participated in unfair or deceptive trade practices that violated the FDUTPA. As described below and alleged throughout the Complaint, by failing to disclose the Wheel Configuration Defect, by concealing the Wheel Configuration Defect, by marketing its vehicles as safe, reliable, well-engineered, and of high quality, and by presenting itself as a reputable manufacturer that valued safety, performance and reliability, and that stood behind its vehicles after they were sold, Mercedes knowingly and intentionally misrepresented and omitted material facts in connection with the sale or lease of the Class Vehicles. Mercedes

systematically misrepresented, concealed, suppressed, or omitted material facts relating to the Class Vehicles and the Wheel Configuration Defect in the course of its business.

320. Mercedes also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale and lease of the Class Vehicles.

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

322. Mercedes knew that the Class Vehicles suffered from an inherent defect, were defectively designed and/or manufactured, and were not suitable for their intended use.

323. Mercedes knew or should have known that its conduct violated the FDUTPA.

324. Mercedes was under a duty to Florida Plaintiff and the Florida Sub-Class Members to disclose the defective nature of the Class Vehicles because:

a. Mercedes was in a superior position to know the true state of facts about the safety defect in the Class Vehicles;

b. Mercedes made partial disclosures about the quality of the Class Vehicles without revealing the defective nature of the Class Vehicles; and

c. Mercedes actively concealed the defective nature of the Class Vehicles from Florida Plaintiff and the Florida Sub-Class Members at the time of sale or lease and thereafter.

325. By failing to disclose the Wheel Configuration Defect, Mercedes knowingly and intentionally concealed material facts and breached their duty not to do so.

326. The facts concealed or not disclosed by Mercedes to Florida Plaintiff and the Florida Sub-Class Members are material because a reasonable person would have considered them to be important in deciding whether or not to purchase or lease Defendants' Class Vehicles, or to pay less for them. Whether a vehicle's tires fail during driving is a material safety concern. Had Florida Plaintiff and the Florida Sub-Class Members known that the Class Vehicles suffered from the Wheel Configuration Defect described herein, they would not have purchased or leased the Class Vehicles or would have paid less for them.

327. Florida Plaintiff and the Florida Sub-Class Members are reasonable consumers who do not expect that their vehicles will suffer from the Wheel Configuration Defect. That is the reasonable and objective consumer expectation for vehicles.

328. As a result of Mercedes' misconduct, Florida Plaintiff and the Florida Sub-Class Members have been harmed and have suffered actual damages in that the Class Vehicles are defective and require repairs or replacement.

329. As a direct and proximate result of Mercedes' unfair or deceptive acts or practices, Florida Plaintiff and the Florida Sub-Class Members have suffered and will continue to suffer actual damages.

330. Mercedes's violations present a continuing risk to Florida Plaintiff and

the Florida Sub-Class Members as well as to the general public. Mercedes' unlawful acts and practices complained of herein affect the public interest. Mercedes was on notice based on Florida Plaintiff's pre-litigation demand via letter, dated August 16th, 2024.

331. Florida Plaintiff and the Florida Sub-Class Members seek, inter alia, actual damages in an amount to be determined at trial, reasonable attorneys' fees; and any other just and proper relief available under the FDUTPA. Because Mercedes acted with willful and conscious disregard of the rights and safety of others, Mercedes's conduct constitutes malice, oppression, and fraud warranting punitive damages.

Claims on Behalf of the Class

ELEVENTH CAUSE OF ACTION

(Breach of Express Warranty under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2303 *et seq*.)

332. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

333. Plaintiffs bring this cause of action on behalf of themselves individually and on behalf of the Class against Defendant.

334. Defendant provided all purchasers and lessees of the Class Vehicles with an express warranty described *infra*, which became a material part of the bargain. Accordingly, Defendant's express warranty is an express warranty under Nevada law.

335. The wheels, tires, and their component parts were manufactured and/or installed in the Class Vehicles by Defendant and are covered by the express warranty.

336. According to Mercedes, "This warranty is for 48 months or 50,000 miles, whichever occurs first."

337. The warranty contains the following statements:

(a) "Your vehicle is covered under the terms of these warranties and your Authorized Mercedes-Benz Dealership will exchange or repair any defective parts in accordance with the terms of such warranties within stated limits."

(b) "DEFECTS: Mercedes-Benz USA, LLC (MBUSA) warrants to the original and each subsequent owner of a new Mercedes-Benz vehicle that any Authorized Mercedes-Benz Dealership will make any repairs or replacements necessary to correct defects in material or workmanship, but not design, arising during the warranty period."

338. Defendant breached the express warranties by selling and leasing Class Vehicles with wheels and/or tires that were defective, requiring repair or replacement within the warranty period, and refusing to honor the express warranty by repairing or replacing, free of charge, the wheels, tires, and their component parts. Mercedes has failed to "repair" the defects as alleged herein.

339. Plaintiffs were not required to notify Mercedes of the breach or was not required to do so because affording Mercedes a reasonable opportunity to cure its breach of written warranty would have been futile. Defendant was also on notice of the defect from complaints and service requests it received from Class Members, from repairs and/or replacements of the wheels and tires, and from other internal sources.

340. As a direct and proximate cause of Defendant's breach, Plaintiffs and

the other Class Members have suffered, and continue to suffer, damages, including economic damages at the point of sale or lease. Additionally, Plaintiffs and the other Class Members have incurred or will incur economic damages at the point of repair in the form of the cost of repair.

341. Plaintiffs and the other Class Members are entitled to legal and equitable relief against Defendant, including actual damages, consequential damages, specific performance, attorneys' fees, costs of suit, and other relief as appropriate.

TWELFTH CAUSE OF ACTION

(Breach of Implied Warranty under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2303 *et seq*.)

342. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

343. Plaintiffs bring this cause of action against Defendant on behalf of themselves and on behalf of the Class.

344. The Class Vehicles are a "consumer product" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

345. Plaintiffs and Class Members are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

346. Defendant is a "supplier" and "warrantor" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

347. Mercedes impliedly warranted that the Class Vehicles were of merchantable quality and fit for use. This implied warranty included, among other things: (i) a warranty that the Class Vehicles and their wheels and tires were manufactured, supplied, distributed, and/or sold by Mercedes would provide safe

and reliable transportation; and (ii) a warranty that the Class Vehicles and their wheels and tires would be fit for their intended use while the Class Vehicles were being operated.

348. Contrary to the applicable implied warranties, the Class Vehicles and their wheels and tires at the time of sale and thereafter were not fit for their ordinary and intended purpose of providing Plaintiffs and Class Members with reliable, durable, and safe transportation. Instead, the Class Vehicles are defective, including the Wheel Configuration Defect.

349. Defendant's breach of implied warranties has deprived Plaintiffs and Class Members of the benefit of their bargain.

350. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum or value of $25,000. In addition, the amount in controversy meets or exceeds the sum or value of $50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

351. Defendant has been afforded a reasonable opportunity to cure its breach, including when Plaintiffs and Class Members brought their vehicles in for diagnoses and repair of the Wheel Configuration Defect.

352. As a direct and proximate cause of Defendant's breach of implied warranties, Plaintiffs and Class Members sustained and incurred damages and other losses in an amount to be determined at trial. Defendant's conduct damaged Plaintiffs and Class Members, who are entitled to recover actual damages, consequential damages, specific performance, diminution in value, costs, attorneys' fees, and/or other relief as appropriate.

353. As a result of Defendant's violations of the Magnuson-Moss Warranty Act as alleged herein, Plaintiffs and Class Members have incurred damages.

THIRTEENTH CAUSE OF ACTION

(For Unjust Enrichment)

354. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

355. Plaintiffs bring this cause of action on behalf of themselves and the Class.

356. As a direct and proximate result of Defendant's failure to disclose known defects, Defendant has profited through the sale and lease of the Class Vehicles. Although these vehicles are purchased and leased through Defendant's agents, the money from the vehicle sales flows directly back to Defendant.

357. Additionally, as a direct and proximate result of Defendant's failure to disclose known defects in the Class Vehicles, Plaintiffs and Class Members have vehicles that require repeated, high-cost repairs that can and therefore have conferred an unjust substantial benefit upon Defendant.

358. Defendant has been unjustly enriched due to the known defects in the Class Vehicles through the use money paid that earned interest or otherwise added to Defendant's profits when said money should have remained with Plaintiffs and Class Members.

359. As a result of the Defendant's unjust enrichment, Plaintiffs and Class Members have suffered damages.

360. Plaintiffs do not seek restitution under their Unjust Enrichment claim. Rather, Plaintiffs and Class Members seek non-restitutionary disgorgement of the financial profits that Defendant obtained as a result of its unjust conduct.

361. Additionally, Plaintiffs seek injunctive relief to compel Defendant to offer, under warranty, remediation solutions that Defendant identifies. Plaintiffs

also seeks injunctive relief enjoining Defendant from further deceptive distribution, sales, and lease practices with respect to Class Vehicles, enjoining Defendant from selling the Class Vehicles with the misleading information; compelling Defendant to provide Class Members with a replacement components that do not contain the defects alleged herein; and/or compelling Defendant to reform its warranty, in a manner deemed to be appropriate by the Court, to cover the injury alleged and to notify all Class Members that such warranty has been reformed. Money damages are not an adequate remedy for the above requested non-monetary injunctive relief.

FOURTEENTH CAUSE OF ACTION

(For Fraud by Omission and/or Fraudulent Concealment)

362. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

363. Plaintiffs bring this cause of action on behalf of themselves individually and on behalf of the Class against Defendant.

364. Defendant knew that the Class Vehicles suffered from an inherent Wheel Configuration Defect, were defectively designed and/or manufactured, and were not suitable for their intended use.

365. Defendant concealed from and failed to disclose to Plaintiffs and Class Members the defective nature of the Class Vehicles.

366. Defendant was under a duty to Plaintiffs and Class Members to disclose the defective nature of the Class Vehicles because:

a. Defendant was in a superior position to know the true state of facts about the safety defect contained in the Class Vehicles;

b. The omitted facts were material because they directly impact

the safety of the Class Vehicles;

c. Defendant knew the omitted facts regarding the Wheel Configuration Defect were not known to or reasonably discoverable by Plaintiffs and Class Members;

d. Defendant made partial disclosures about the quality of the Class Vehicles without revealing their true defective nature; and,

e. Defendant actively concealed the defective nature of the Class Vehicles from Plaintiffs and Class Members.

367. The facts concealed or not disclosed by Defendant to Plaintiffs and the other Class Members are material in that a reasonable person would have considered them to be important in deciding whether to purchase or lease Defendant's Class Vehicles or pay a lesser price for them. Whether a vehicle's wheels and/or tires are defective, causing tire blowouts, is a material safety concern. Had Plaintiffs and Class Members known about the defective nature of the Class Vehicles, they would not have purchased or leased the Class Vehicles or would have paid less for them.

368. Defendant concealed or failed to disclose the true nature of the design and/or manufacturing defects contained in the Class Vehicles to induce Plaintiffs and Class Members to act thereon. Plaintiffs and the other Class Members justifiably relied on Defendant's omissions to their detriment. This detriment is evident from Plaintiffs and Class Members' purchase or lease of Defendant's defective Class Vehicles.

369. Defendant continued to conceal the defective nature of the Class Vehicles even after Class Members began to report the problems. Indeed,

Defendant continues to cover up and conceal the true nature of the problem today.

370. As a direct and proximate result of Defendant's misconduct, Plaintiffs and Class Members have suffered and will continue to suffer actual damages. Plaintiffs and the Class reserve their right to elect either to (a) rescind their purchase or lease of the defective Vehicles and obtain restitution or (b) affirm their purchase or lease of the defective Vehicles and recover damages.

371. Defendant's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the Class's rights and well-being to enrich Defendant. Defendant's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

FIFTEENTH CAUSE OF ACTION

(For Declaratory and Injunctive Relief)

372. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

373. Plaintiffs bring this cause of action on behalf of themselves individually and the Class against Defendant.

374. As illustrated in the foregoing allegations, there is an actual controversy between Mercedes and Plaintiffs concerning: (1) whether the wheels and/or tires found in Class Vehicles are defectively designed and manufactured; (2) whether Mercedes knew, or should have known, of that Wheel Configuration Defect; (3) whether Mercedes knew, or should have known, that the Wheel Configuration Defect would impact the safety and performance of the Class Vehicles.

375. Pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, this

Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought," provided that the declaratory relief requested does not fall within any of the exemptions set forth in the Act.

376. Plaintiffs ask this Court for an order enjoining Mercedes from further deceptive distribution, sales, and lease practices with respect to Class Vehicles; compelling Mercedes to issue a voluntary recall for the Class Vehicles pursuant to 49 U.S.C. § 30118(a); compelling Mercedes to repair and eliminate the Wheel Configuration Defect from every Class Vehicle; enjoining Mercedes from selling the Class Vehicles with the misleading information; and/or compelling Mercedes to reform its warranty, in a manner deemed to be appropriate by the Court, to cover the injury alleged and to notify all Class Members that such warranty has been reformed.

RELIEF REQUESTED

377. Plaintiffs, on behalf of themselves and all others similarly situated, request the Court to enter judgment against Defendant, as follows:

(a) A declaration that any applicable statutes of limitations are tolled due to Defendant's fraudulent concealment and that Defendant is estopped from relying on any statutes of limitations in defense;

(b) An order certifying the proposed Class and Sub-Classes, designating Plaintiffs as named representatives of the Class, and designating the undersigned as Class Counsel;

(c) A declaration that Defendant is financially responsible for notifying all Class Members of the Wheel Configuration

Defect;

(d) An order enjoining Defendant from further deceptive distribution, sales, and lease practices with respect to Class Vehicles; compelling Defendant to issue a voluntary recall for the Class Vehicles pursuant to 49 U.S.C. § 30118(a); compelling Defendant to repair and eliminate the Wheel Configuration Defect from every Class Vehicle; enjoining Defendant from selling the Class Vehicles with the misleading information; and/or compelling Defendant to reform its warranty, in a manner deemed to be appropriate by the Court, to cover the injury alleged and to notify all Class Members that such warranty has been reformed;

(e) An award to Plaintiffs and the Class for compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial;

(f) Any and all remedies provided pursuant to the Magnuson-Moss Warranty Act;

(g) Any and all remedies provided pursuant to the causes of action and statutes alleged herein;

(h) A declaration that Defendant must disgorge, for the benefit of the Class, all or part of the ill-gotten profits it received from the sale or lease of its Class Vehicles or make full restitution to Plaintiffs and Class Members;

(i) An award of attorneys' fees and costs, as allowed by law;

(j) An award of pre-judgment and post-judgment interest, as

provided by law;

(k) Leave to amend the Complaint to conform to the evidence produced at trial; and

(l) Such other relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

378. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all issues in this action so triable.

Dated: September 20, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL has been prepared with Times New Roman, 14-point font, one of the font and point selections approved by the Court in LR 5.1.

/s/ *Nathaniel J. Heber*
Nathaniel J. Heber
Georgia Bar No. 821058

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL to all counsel of record via the Court's CM/ECF system.

This 20th day of September, 2024.

/s/ *Nathaniel J. Heber*
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