

JUL 27 2010

John A. Clarke, Executive Officer/Clerk  
By E. J. Espinoza, Deputy

1 R. Duane Westrup, State Bar No. 58610  
2 Mark L. Van Buskirk, State Bar No. 190419  
3 Jennifer L. Connor, State Bar No. 241480  
4 WESTRUP KLICK, LLP  
5 444 West Ocean Boulevard, Suite 1614  
6 Long Beach, California 90802-4524  
7 Telephone: (562) 432-2551  
8 Facsimile: (562) 435-4856  
9 mvanbuskirk@wkalaw.com

6 Allan A. Sigel, State Bar No. 24908  
7 LAW OFFICES OF ALLAN A. SIGEL, P.C.  
8 1125 Gayley Avenue  
9 Los Angeles, California 90024-3403  
10 Telephone: (310) 824-4070  
11 Facsimile: (310) 208-7271  
12 aas@sigellaw.com

10 Attorneys for Plaintiff HENRY P. UNGER, individually  
11 and on behalf of all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

15 HENRY P. UNGER, suing individually and  
16 on behalf of all others similarly situated,

17 Plaintiff,

18 vs.

20 MERCEDES-BENZ USA, LLC, a  
21 Delaware corporation; and defendant Does  
22 1 through 100, inclusive

22 Defendants.

Case No. BC396926

**CLASS ACTION**

**REVISED [~~PROPOSED~~] ORDER  
GRANTING PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT AND  
DIRECTING DISSEMINATION OF  
NOTICE TO THE CLASS**

**Hearing:**

Date: July 27, 2010  
Time: 8:30 a.m.  
Dept. 30

Complaint Filed: August 22, 2008

1           **WHEREAS**, this action is pending before this Court as a putative class action, and  
2   **WHEREAS**, the Court, having fully read and considered the Motion For Preliminary Approval Of  
3   Class Action Settlement, along with the supporting Memorandum Of Points And Authorities,  
4   supporting Declarations, the proposed Notice Of Settlement Of Class Action, the proposed Reminder  
5   Notice Of Settlement Of Class Action, the proposed Claim Form, and the Settlement Agreement (the  
6   “Settlement”), which together with the exhibits, and having heard oral presentations by the parties’  
7   counsel, hereby finds and concludes as follows:

8           (A)   Based on the Court’s preliminary review, the proposed Settlement appears to be  
9   fair, reasonable, and adequate under the legal standards governing approval of class action  
10   settlements, and in the best interests of the Class Members;

11          (B)   Good cause exists to conditionally certify for settlement purposes the proposed  
12   Class;

13          (C)   All other proceedings in this action should be stayed pending a decision on Final  
14   Approval of the Settlement;

15          (D)   Notice of the proposed Settlement should be directed to all Class Members as  
16   follows: Defendant shall provide to the third-party claims administrator, CPT Group, Inc.,  
17   (“Claims Administrator”), in electronic format, the name, last known address, telephone number,  
18   and e-mail address, where available, of Class Members. Within fifteen (15) days of this Order, the  
19   Claims Administrator shall mail the [Proposed] Notice Of Settlement Of Class Action and  
20   [Proposed] Claim Form to Class Members using First-Class U.S. mail. The [Proposed] Notice Of  
21   Settlement Of Class Action and [Proposed] Claim Form shall also be published on a website  
22   maintained by the Claims Administrator. Reminder Notices and supplemental efforts to contact  
23   Class Members shall be also be undertaken pursuant to the Settlement and as set forth herein;

24          (E)   Class Members shall be given an opportunity to submit claims, to opt-out, or to  
25   object and appear and comment on the proposed Settlement;

26          (F)   A full hearing on the proposed Settlement should be held no later than December 2,  
27   2010 at 8:30 a.m., or such other date as the Court may direct, to consider the reasonableness and  
28   adequacy of the Settlement and whether Final Approval should be granted by the Court.

1 Accordingly, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

2 1. **Definitions.** This Order incorporates by reference the definitions in the Settlement  
3 Agreement, and all terms defined therein shall have the same meaning in this Order as set forth in  
4 the Settlement Agreement.

5 2. **Proposed Settlement And Findings.** The Court finds on a preliminary basis that  
6 the Settlement Agreement filed and incorporated herein by reference and made a part of this Order  
7 of Preliminary Approval, appears to be within the range of reasonableness of a settlement which  
8 could ultimately be given final approval of this Court. Pursuant to the terms of the Settlement  
9 Agreement, Defendant will deposit six million dollars (\$6,000,000) into a non-reversionary  
10 Settlement Fund to be made available for resolution of this Action on a class-wide basis.  
11 According to the evidence provided, the Settlement appears at this stage to be the product of  
12 arm's-length, serious, informed, non-collusive, and non-overreaching negotiations supervised  
13 during two mediation sessions before Hon. Enrique Romero (Ret.) of ADR Services in Los  
14 Angeles, California. It appears to the Court on a preliminary basis, that the Settlement amount is  
15 fair and reasonable to Class Members when balanced against the probable outcome of further  
16 litigation relating to certification, liability and damages issues, and potential appeals of rulings; it  
17 further appears that significant discovery, investigation, research, and litigation has been  
18 conducted such that counsel for the parties at this time are able to reasonably evaluate their  
19 respective positions; it further appears that settlement at this time will avoid substantial costs,  
20 delay and risks that would be presented by the further prosecution of the litigation; it further  
21 appears that during the settlement negotiation process, the parties voluntarily and/or at the request  
22 of the mediator, exchanged information pertinent to the settlement. According, good cause  
23 appearing the Motion For Preliminary Approval Of Settlement is hereby **GRANTED**.

24 3. **Class Action.** Consistent with the Settlement Agreement and the definition of  
25 "Class" and "Class Members" contained therein, the Court hereby conditionally certifies the  
26 following Class for purposes of Settlement only: "All persons who purchased, owned, or leased a  
27 Mercedes-Benz passenger vehicle between August 22, 2004 through May 31, 2010 in California  
28 that was the subject of a Qualifying Trade Assist." Excluded from the Class are current or prior

1 owners or lessees of vehicles: (a) who were lenders, insurers, new or used passenger vehicle  
2 dealers or their managers, body shops and similar passenger vehicle repair facilities, or auction  
3 yards, (b) who purchased or leased an otherwise qualifying vehicle outside of the State of  
4 California, (c) who currently reside outside of California, and/or (4) who were or are owners of  
5 vehicles which were bought back by MBUSA and formally disclosed as Lemon Law buy-back  
6 vehicles. Further, consistent with the Settlement Agreement and the definitions contained therein,  
7 Class Members are divided into and the Court conditionally certifies, for purposes of Settlement  
8 only, two separate Sub-Classes: (i) the "Current Owner Sub-Class"; and (ii) the "Prior Owner Sub-  
9 Class." Certification is conditioned on final approval of the Settlement at the Final Fairness  
10 Hearing. Any person who is a member of the Class and who does not properly and timely opt out  
11 will be included in the "Settlement Class" and a "Settlement Class Member." For purposes of  
12 settlement payment, however, only one settlement payment will be made per family for a  
13 qualifying vehicle even if more than one family member receives Notice of the Settlement. In the  
14 event that the Settlement is not approved, certification of the foregoing Class and Sub-Classes is  
15 revoked.

16       4.       **Adequacy Of Class Representative.** Plaintiff Henry P. Unger ("Plaintiff"), is  
17 hereby appointed and designated, for all purposes, as representative of the Class ("Class  
18 Representative"). Plaintiff, as the class representative, fairly and adequately represents the  
19 interests of the Class. In the event that the Settlement is not approved, however, Defendant's right  
20 to contest Plaintiff's adequacy and other certification issues is reserved.

21       5.       **Class Representative Incentive Award.** The Settlement Agreement provides for  
22 \$25,000 as a Class Representative incentive award payable to Plaintiff and Class Representative  
23 Henry Unger. The Court makes a preliminary finding that the Class Representative incentive  
24 award appears to be fair and reasonable, subject to final approval at the Final Fairness Hearing.  
25 Any further briefing or documents in support of the Class Representative incentive award shall be  
26 filed no later than November 5, 2010.

27       6.       **Adequacy Of Class Counsel.** Plaintiff's counsel, Westrup Klick, LLP and Law  
28 Offices Of Allan A. Sigel, is hereby appointed and designated as counsel for the Class ("Class

1 Counsel"). Class Counsel is authorized to act on behalf of Settlement Class Members with respect  
2 to all acts or consents required by, or which may be given pursuant to, the Settlement, and such  
3 other acts reasonably necessary to consummate the Settlement. Any Settlement Class Member  
4 may enter an appearance through counsel of such Settlement Class Member's own choosing and at  
5 such Settlement Class Member's own expense. Any Settlement Class Member who does enter an  
6 appearance on his or her own will be represented by Class Counsel. In the event that the  
7 Settlement is not approved, however, Defendant's right to contest the adequacy of Plaintiff's  
8 counsel and other certification issues is reserved.

9       7.     **Class Counsel Fees and Costs.** Class Counsel seek attorneys' fees and costs in the  
10 total amount of \$1,500,000, of which approximately \$66,611 represents costs advanced on behalf  
11 of Plaintiff and the putative Class in this Action. This payment of attorneys' fees reflects twenty-  
12 five percent (25%) of the total Settlement Fund. The Court makes a preliminary finding that the  
13 fees and costs sought by Class Counsel appear fair and reasonable, subject to final approval at the  
14 Final Fairness Hearing. Any further briefing or papers in support of the application for Class  
15 Counsel fees and costs shall be filed not later than November 5, 2010.

16       8.     **First Amended Complaint.** Pursuant to the Settlement Agreement and the parties'  
17 Stipulation, and with leave of the Court, Plaintiff's original Complaint filed on August 22, 2008 is  
18 hereby dismissed without prejudice, and in lieu thereof, Plaintiff's First Amended Complaint is  
19 deemed filed as of the date of entry of this Order.

20       9.     **Approval Of Notices And Claim Form.** The Court hereby approves, as to form  
21 and content, the proposed Notice Of Settlement Of Class Action ("Notice Of Settlement") and the  
22 proposed Reminder Notice Of Settlement Of Class Action ("Reminder Notice") attached,  
23 respectively, at Exhibit "1" and Exhibit "2" hereto. The Court also approves, as to form and  
24 content, the proposed Claim Form ("Claim Form") for Class Members' use in submission of  
25 claims, attached at Exhibit "3" hereto.

26       10.    **Claims Administrator And Dissemination Of Notice.** The Court hereby appoints  
27 CPT Group, Inc. as Claims Administrator and hereby directs the Claims Administrator to  
28 disseminate, pursuant to the terms of the Settlement, copies of the Notice Of Settlement and Claim

1 Form to all Class Members as follows:

- 2 a) Upon entry of this Order, counsel for Defendant shall deliver electronically to the  
3 Claims Administrator a list containing the names, last known addresses, telephone  
4 numbers, and e-mail addresses, where available, of Class Members. Defendant shall  
5 also deliver electronically to Class Counsel and the Claims Administrator, a listing of  
6 all Mercedes-Benz passenger vehicles by VIN, model year, model, along with the  
7 Class Member names and number of current and prior owners per VIN.
- 8 b) No later than fifteen (15) court days after entry of this Order, the Claims Administrator  
9 shall mail each Class Member via First Class Mail the Notice Of Settlement and Claim  
10 Form under the terms and conditions set forth in the Settlement Agreement. The  
11 Claims Administrator shall also publish on a website maintained by the Claims  
12 Administrator a copy of the Notice Of Settlement and a downloadable copy of the  
13 Claim Form, along with the Claim Administrator's contact information (including  
14 telephone number) and Plaintiff's counsel's contact information (including telephone  
15 number);
- 16 c) Any Class Member who wishes to make a claim to receive a payment from the  
17 Settlement Fund must complete and return the Claim Form within sixty (60) days  
18 (must be postmarked by October 15, 2010) from the date the Notice Of Settlement was  
19 mailed pursuant to the terms and conditions set forth in the Settlement Agreement.
- 20 d) For Class Members who have not yet submitted a Claim Form, thirty (30) days prior  
21 to the deadline for submitting the Claim Form, the Claims Administrator shall mail via  
22 First Class Mail a Reminder Notice to those Class Members. Where the information  
23 is available, the Claims Administrator shall also attempt to contact the Class Member  
24 via telephone and e-mail. Any Class Member who has requested exclusion, however,  
25 shall not be contacted or mailed a Reminder Notice.
- 26 e) For Class Members who have not yet submitted a Claim Form, fifteen (15) days prior  
27 to the deadline for submitting the Claim Form, the Claims Administrator shall mail via  
28 First Class Mail a Reminder Notice to those Class Members. Where the information

1 is available, the Claims Administrator shall also attempt to contact the Class Member  
2 via telephone and e-mail. Any Class Member who has requested exclusion, however,  
3 shall not be contacted or mailed a Reminder Notice.

4 The Court finds that the proposed First-Class U.S. postal mail distribution of the Notice Of  
5 Settlement and Claim Form, along with the follow-up U.S. postal mail distribution of Reminder  
6 Notices and publication of the Notice Of Settlement and Claim Form on the Claim Administrator's  
7 website, meets the requirements of due process, is the best notice practicable under the  
8 circumstances, and sufficient notice to all persons entitled thereto.

9 11. **Deadlines For Claim Submissions.** In order for Class Members' claims for  
10 payment from the Settlement Fund to be timely, they must be postmarked within sixty (60) days  
11 following the date of mailing of Notice Of Settlement and Claim Form (must be postmarked by  
12 October 15, 2010). Any Class Member who does not timely submit a valid Claim Form will not  
13 be entitled to receive payment from the Settlement Fund.

14 12. **Deadlines For Opt-Outs.** In order for Class Members' opt-outs to be considered  
15 timely, they must be postmarked within sixty (60) days following the date of mailing of Notice Of  
16 Settlement and Claim Form (must be postmarked by October 15, 2010). Any Class Member who  
17 does not submit a timely written request for exclusion will be irrevocably bound by all  
18 proceedings, orders, and judgments in this action, which will be preclusive in all actions or other  
19 proceedings.

20 13. **Objections.** Any Class Member who wishes to appear through separate counsel  
21 and/or object to the fairness, reasonableness, or adequacy of the Settlement must serve on all  
22 counsel of record for the parties and file with the Court notice of objection within sixty (60) days  
23 following the date of mailing of Notice Of Settlement and Claim Form (must be filed and served  
24 no later than October 15, 2010). The notice of objection shall include a notice of intention to  
25 appear and/or object, together with copies of any papers stating the specific reason for the  
26 objection and any legal support the Class Member intends to present to the Court in connection  
27 with this Settlement, or be forever barred from separately appearing and/or objecting to this  
28 Settlement.

1           14.     **Claims Administrator's Declaration.** No less than twenty-five (25) court days  
2 before the date set for Final Fairness Hearing, the Claims Administrator shall provide counsel for  
3 Plaintiff and Defendant, under penalty of perjury, a declaration that it has mailed Notice and Claim  
4 Forms to the best available postal addresses of all Class Members. Further, the Claims  
5 Administrator's declaration shall specify sufficient information to show the rate of participation,  
6 requests for exclusion, and the submission of claims.

7           15.     **Hearing.** A hearing shall be held at 8:30 a.m. on December 2, 2010, in the  
8 courtroom of the Honorable John A. Krondstadt, Department 30, of the Superior Court of  
9 California for the County of Los Angeles, located at 111 North Hill Street, Los Angeles,  
10 California, to consider whether the Court should give final approval of the Settlement, including:  
11 whether the proposed settlement of this litigation on terms and conditions provided for in the  
12 Settlement Agreement is fair, adequate, and reasonable and should be finally approved by the  
13 Court, whether Judgment should be entered herein; whether the distribution of the Settlement  
14 Fund should be approved as fair, adequate, and reasonable to the Class Members; and to finally  
15 approve expense and fee award to Plaintiff's counsel and incentive awards to Plaintiff.

16           16.     **Approval Of Distribution Of Settlement Funds.** The Settlement Agreement  
17 provides for a Settlement Fund of six million dollars (\$6,000,000), which will be used to pay the  
18 Settlement Class Members, Class Representative incentive award, Class Counsel fees and costs,  
19 and any claims administration costs. The Court makes a preliminary finding that this Settlement  
20 Fund, and proposed distribution pursuant to the Settlement Agreement, is fair, reasonable, and  
21 adequate to the Class.

22           17.     **Approval Of Deposit For Settlement Administration.** To effectuate  
23 administration of the Settlement, within two (2) banking days after entry of this Order, Defendant  
24 shall deposit \$50,000 of the Settlement Fund into and account to be maintained by the Claims  
25 Administrator and to be billed by the Claims Administrator in connection with the administration  
26 of the Settlement until the date of Final Judicial Approval.

27           18.     **Stay.** As of the date this Order is signed, this Action shall be stayed in all respects  
28 excepts as necessary to obtain approval and effectuate administration of the Settlement.

1           19.     **Ineffectual Settlement.** In the event the Settlement does not become effective in  
2 accordance with the terms of the Settlement Agreement, or the Settlement is not finally approved, or  
3 is terminated, canceled, or fails to become effective for any reason, this Order shall be rendered null  
4 and void and vacated, the First Amended Complaint shall be rendered null and void and of no effect  
5 *ab initio* and vacated, Plaintiff shall be granted leave to re-file his original complaint, and the parties  
6 shall revert to their respective positions as before entering into the Settlement.

7           20.     In the event the Settlement is approved at the Final Fairness Hearing, the Court  
8 shall enter a Final Order Approving The Settlement And Judgment. The Final Order shall be fully  
9 binding with respect to all Class Members who did not request exclusion in accordance with the terms  
10 of the Settlement.

11           21.     In sum, the date for performance are as follows:

12     August 16, 2010	Third-Party Claims Administrator shall mail 13     Notice Of Settlement Of Class Action
14     September 15, 2010	15     Third-Party Claims Administrator shall mail 16     the 30-day Reminder Notice Of Settlement Of 17     Class Action
18     September 30, 2010	19     Third-Party Claims Administrator shall mail 20     the 15-day Reminder Notice Of Settlement Of 21     Class Action
22     October 15, 2010	23     Last day for Class Members to opt-out or to 24     object to the Settlement.
25     October 15, 2010	26     Last day for Class Members to timely submit a 27     Claim Form
28     October 25, 2010	Third-Party Claims Administrator to provide counsel for Plaintiff and Defendant declaration verifying mailings and participation of Class Members

November 5, 2010	Last day for filing and serving papers in moving for and in support of Final Approval of Settlement, along with applications for any Fee/Expense and Incentive Awards
December 2, 2010	Final Fairness Hearing

22. The Court reserves the right to adjourn or continue the date of the Final Fairness Hearing and all dates provided for in the Settlement without further notice to Class Members, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

Dated: JUL 27 2010

**JOHN A. KRONSTADT**  
 HON. JOHN A. KRONSTADT  
 Judge Of The Superior Court Of California,  
 County Of Los Angeles

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **Exhibit 1**

## Notice of Proposed Settlement of Class Action

**TO:** All persons who purchased, owned, or leased a Mercedes-Benz passenger vehicle between August 22, 2004 through May 31, 2010 in California that was the subject of a Qualifying Trade Assistand whose name appears in the Mercedes-Benz USA, LLC ("MBUSA") customer database, and who are either the "Current Owner" or a "Prior Owner" of the passenger vehicle ("Class Members"). If this Notice was addressed to you, you are a Class Member.

**IF YOU ARE A CLASS MEMBER, YOU SHOULD READ THIS NOTICE CAREFULLY  
BECAUSE IT WILL AFFECT YOUR RIGHTS.**

### **1. WHY SHOULD I READ THIS NOTICE?**

This Notice informs you about a class action lawsuit and proposed Settlement. Currently pending in the California Superior Court for the County of Los Angeles is an action entitled *Henry P. Unger v. Mercedes-Benz USA, LLC, Case No. BC 396926* (the "Action"). This Notice advises you of the benefits that may be available to you under the proposed Settlement and your rights and options as a Class Member, and notifies you that a hearing will be held to approve the Settlement. On XXXXXXXXXXXX, 2010, Judge John A. Kronstadt of the Los Angeles County Superior Court, tentatively approved a proposed settlement in this Action.

### **2. WHAT IS THE CASE ABOUT?**

Plaintiff Henry P. Unger ("Plaintiff") filed a class action lawsuit against MBUSA on behalf of himself and all Class Members. The law firm Westrup Klick LLP and the Law Offices of Allan A. Sigel ("Plaintiffs' Class Counsel") represent Plaintiff and the Class Members.

The lawsuit alleges among other things that MBUSA violated various laws by failing to disclose to Class Members (like yourself) that MBUSA provided financial assistance to either a Mercedes-Benz dealership or to a customer, such as in connection with a trade-in of one Mercedes-Benz passenger vehicle for a different Mercedes-Benz passenger vehicle. Plaintiff alleges that MBUSA should have disclosed that the traded-in or other qualifying passenger vehicle was or should have been repurchased by MBUSA or by one of its authorized dealers after the original or other retail owner or lessee requested that the car be repurchased or otherwise had a complaint about warranty service. MBUSA denies that it has done anything wrong, denies that it has violated the law, and further denies Plaintiff's other allegations. However, to avoid the expense, inconvenience and interference with its business operations created by the Action, it has concluded that it is in its best interests to settle the Action on the terms summarized in this Notice.

The settlement was reached through lengthy arms-length negotiations between the parties after litigating the case for approximately twenty-two months, conducting discovery, consultations with experts, and the exchange of information. (See Section 5, below.)

The Court has determined that the Action should proceed as a Class Action, for purposes of settlement only, with Plaintiff as the representative of the Class, and granted preliminary approval of the settlement subject to a final fairness hearing discussed below.

### **3. WHAT DO I NEED TO DO TO COLLECT MONEY?**

**You MUST submit the claim form that you received with this notice in order to receive a settlement check. If you do not submit your claim form, you will not receive any money, but you will still be bound by the terms of the settlement, including the release of any claims you might have relating to the allegations in the Action and the Settlement.**

**Your claim form must be mailed to the Class Administrator and be postmarked on or before XXXXXXXXXX, 2010. If you do submit a claim form, your settlement check will be mailed to you within XX days of the entry of an order of final court approval of this Settlement or later depending on whether there are any objectors to the Settlement.**

### **4. WHAT HAPPENS IF I DO NOTHING?**

**If you do nothing, you will not receive any money. You will still be deemed a Class Member, be part of the Class Action and you will be releasing all claims you might have relating to the allegations in the Action and the Settlement.**

### **5. THE PROPOSED SETTLEMENT.**

The Parties have agreed to the settlement generally described below.

Under the terms of the Settlement, Class Members are divided into two sub-classes: (i) "Current Owner Sub-Class" are Class Members who currently (as of May 31, 2010) own or lease the identified Mercedes-Benz passenger vehicles; and (ii) "Prior Owner Sub-Class" are Class Members who, as of May 31, 2010, no longer own or lease the identified Mercedes-Benz passenger vehicles but did so previously. The Parties have identified the vehicles that were the subject of a MBUSA-paid financial assistance on trade-ins and on other vehicles that meet the parameters of the Class Action, and have identified the current and prior retail owners of those vehicles who otherwise meet those parameters. Not all vehicles whose owners received financial assistance are included in the Class; there are certain time period, ownership, geographic, dollar threshold, and other parameters. Only one settlement payment will be made per family for a qualifying vehicle even if more than one family member receives this notice for the same vehicle.

**Current Owner Sub-Class.** Members of the Current Owner Sub-Class who submit a valid timely claim form collectively will receive up to seventy percent (70%) of the Net Settlement Funds. Payment to any individual member of the Current Owner Sub-Class will be made on a pro rata basis, determined by the individual Current Owner Sub-Class member's purchase price or lease payments made when compared to the total purchase price or lease payments made by all Current Owner Sub-Class members who submit a valid timely claim form. However, in the event that the Current Owner Sub-Class Claims Rate is less than fifteen percent (15%), payment to any individual Current Owner Sub-Class member shall not exceed twenty percent (20%) of the purchase price or lease payments made by the Current Owner Sub-Class member, with the balance paid to Western Center On Law And Poverty charity pursuant to Code of Civil Procedure Section 384 and in accordance with the terms of the Settlement. The "Claims Rate" is calculated as a percentage and is determined by dividing the number of Current Owner Sub-Class Members who submit a valid timely claim form by the total number of Current Owner Sub-Class Members. For purposes of this Settlement, there are approximately 1,300 members of the Current Owner Sub-Class.

Assuming a Net Settlement Fund of \$4,375,000 is available to Class Members (after attorneys' fees and costs, class representative incentive award and estimated costs of Settlement administration), 70% of \$4,375,000, or \$3,062,500, will be allocated to the Current Owner Sub-Class.

**Example of a 100% Claims Rate.** If by way of example, a 100% Claims Rate is achieved, each of the 1,300 Current Owner Sub-Class members will receive, on average, \$2,355 (\$3,062,500 divided by 1,300 Current Owner Sub-Class members). However, your individual amount will vary depending on the purchase price of your car (or total lease payments made) when those factors are compared to the total of all purchase prices and lease payments of the members of the Current Owner Sub-Class who timely submit claim forms.

**Example of a 50% Claims Rate.** If by way of example, a 50% Claims Rate is achieved, the 650 Current Owner Sub-Class members submitting a claim form (50% claims rate of 1,300 total Current Owner Sub-Class members) will receive, on average, \$4,711 (\$3,062,500 divided by 650 Current Owner Sub-Class members that submit claim forms). However, your individual amount will vary depending on the purchase price of your car (or total lease payments made) when those factors are compared to the total of all purchase prices and lease payments of the members of the Current Owner Sub-Class who timely submit claim forms.

Typically, claims rates often range between 15% and 80%.

**Prior Owner Sub-Class.** Members of the Prior Owner Sub-Class who submit a valid timely claim form will collectively receive up to thirty percent (30%) of the Net Settlement Funds. Payment to any individual member of the Prior Owner Sub-Class will be made on a pro rata basis determined by the individual Prior Owner Sub-Class member's purchase price or lease payments made when compared to the total purchase price or lease payments made by all Prior Owner Sub-Class members who submit a valid timely claim form. However, in the event that the Prior Owner Sub-Class Claims Rate is less than fifteen percent (15%), payment to any individual Prior Owner Sub-Class member shall not exceed ten percent (10%) of the purchase price or lease payments made by the Prior Owner Sub-Class member, with the balance paid to Western Center On Law And Poverty charity pursuant to Code of Civil Procedure Section 384 and in accordance with the terms of the Settlement. The "Claims Rate" is calculated as a percentage and is determined by dividing the number of Prior Owner Sub-Class Members who submit a valid timely claim form by the total number of Prior Owner Sub-Class Members. For purposes of this Settlement, there are approximately 2,700 members of the Prior Owner Sub-Class.

Assuming a Net Settlement Fund of \$4,375,000 is available to Class Members (after attorneys' fees and costs, class representative incentive award and estimated costs of Settlement administration), 30% of \$4,375,000 or \$1,312,500, will be allocated to the Prior Owner Sub-Class.

**Example of a 100% Claims Rate.** If by way of example, a 100% Claims Rate is achieved, each of the 2,700 Prior Owner Sub-Class members will receive, on average, \$486 (\$1,312,500 divided by 2,700 Prior Owner Sub-Class members). However, your individual amount will vary depending on the purchase price of your car (or total lease payments made) when those factors are compared to the total of all purchase prices and lease payments of the members of the Prior Owner Sub-Class who timely submit claim forms.

**Example of a 50% Claims Rate.** If by way of example, a 50% Claims Rate is achieved, the 1,350 Prior Owner Sub-Class members submitting a claim form (50% claims rate of 2,700 total Prior Owner Sub-

Class members) will receive, on average, \$972 (\$1,312,500 divided by 1,350 Prior Owner Sub-Class members that submit claim forms). However, your individual amount will vary depending on the purchase price of your car (or total lease payments made) when those factors are compared to the total of all purchase prices and lease payments of the members of the Prior Owner Sub-Class who timely submit claim forms.

Typically, claims rates often range between 15% and 80%.

**Net Settlement Fund.** The Net Settlement Fund represents the net funds available to Class Members and is calculated as follows: six million dollars (\$6,000,000) less costs attributable to administration of the Settlement (including costs of notice and the costs incurred by the Claims Administrator), less class representative incentive award (subject to the Court's approval), less attorneys' fees and costs awarded (subject to the Court's approval).

The Parties agreed that, subject to the Court's final approval, the named Plaintiff, Henry P. Unger shall be entitled to an incentive award of up to \$25,000 in recognition of the risk to Plaintiff as the Class representative in commencing the lawsuit in the Action, both financial and otherwise, and the amount of time and effort spent by Plaintiff as the Class representative. The Parties also agreed that, subject to the Court's final approval, Plaintiffs' Class Counsel shall be entitled to an award of attorneys' fees and costs of up to \$1,500,000, which the Parties agreed represents a fair and commensurate amount in view of the nature of the Action, the amount of attorneys' fees and costs incurred to date, and the results achieved for the benefit of California consumers.

For a copy of the entire settlement agreement, please contact Plaintiff's Class Counsel at the telephone number provided at the end of this notice or view a copy online at [www.xxxxxxxxxxxxxx](http://www.xxxxxxxxxxxxxx).

## **6. RELEASE OF ALL CLAIMS.**

If the settlement is granted final approval, each Settlement Class Member, regardless of whether a Class Member submitted a valid timely claim form, will be determined by the Court to release and covenant not to sue MBUSA, its parent, subsidiary, affiliate, predecessor or successor entities, its agents, authorized dealerships, employees, officers, directors and attorneys, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action, contingent or accrued, arising under state or federal law which relate to the allegations and claims arising from payment of a trade assist or similar MBUSA-paid financial assistance (lease payment, goodwill payment, or customer retention payment to the extent that such payment is in the amount of \$3,000 or more), or arising from the absence of disclosure of a trade assist or similar MBUSA-paid financial assistance to subsequent owners, made on a Mercedes-Benz passenger vehicle purchased and/or leased by Settlement Class members, claims arising under the Automotive Consumer Notification Act, Civil Code, Consumer Legal Remedies Act, Song-Beverly Consumer Warranty Act, and Business & Professions Code (including Section 17200 and 17500), claims for restitution, damages, statutory damages, civil penalties, and punitive damages, and any other injury, damage, or loss that was or could have been asserted by Settlement Class members arising from claims related thereto. ("Released Claims") The release will also include a waiver of Civil Code section 1542 as they relate to Released Claims. Excluded from this Release is any person, and their claims, not included in the definition of Class Members or persons who submit a valid timely request to be excluded from the Settlement (Opt-Out).

**7. FINAL FAIRNESS HEARING.**

A final hearing will be held before Judge John A. Kronstadt of the Los Angeles County Superior Court, on XXXXXXXXX, 2010 at 8:30 a.m., to determine whether the proposed Settlement is fair, reasonable and adequate and should be finally approved. The hearing will take place at the Los Angeles County Superior Court, in Dept. 30, located at 111 North Hill Street, Los Angeles California, 90012. **You are not required to attend the hearing in order to participate in the settlement, and you may participate in the fairness hearing either by attending in person or by submitting your written support, opposition, or other response to the proposed settlement as provided in Section 10 below.**

The address for the Final Approval Hearing is: Los Angeles County Superior Court, Dept. 30, 111 North Hill Street, Los Angeles California, 90012.

**8. CLASS ADMINSTRATOR.**

The Class Administrator is:

XX

**9. WHAT DO I NEED TO DO IF I WANT TO REQUEST EXCLUSION FROM THE SETTLEMENT (OPT-OUT)?**

You have the right to exclude yourself from the Action and the Settlement. **Class Members who request to be excluded from the Settlement will NOT receive any money, nor will they have released their claims.** If you wish to be excluded, you must submit a written letter post-marked no later than XXXXXXXXX, 2010, with: (i) the case name; (ii) your name, address, and telephone number; and (iii) the following statement: "I want to be excluded from the Settlement Class in Unger v. Mercedes-Benz USA, LLC, Los Angeles Superior Court Case No. BC396926." To be considered valid, a request for exclusion must set forth all of this information and must be timely received. It must be signed by you personally, in order to be valid. Your request for exclusion must be mailed to:

XX

If you timely and validly request exclusion from the Class, you will not receive any benefits from the Settlement; you will not be bound by the judgment entered in the Action and you will not be precluded from otherwise prosecuting any individual claim, if timely, against MBUSA based on the allegations in the Action.

**10. WHAT MUST I DO TO OBJECT TO THE SETTLEMENT?**

If you want to object to the terms of the settlement, you must follow the procedures set forth below. If your objection is rejected you will be bound by the final judgment just as if you had not objected. You may not opt-out of the settlement and also file an objection.

To object to the Settlement, Class Members (or an attorney retained at their own expense) must file their Objection with the Court on or before XXXXXXXXX, 2010. Objectors must state in writing their full name, address, and all objections and reasons therefore, and include any and all supporting papers, and, if applicable, the Objector's statement of intent to appear at the final approval hearing. To object, you must file your Objection with the Superior Court of California, County of Los Angeles.

A Class Member may file an objection by: (i) filing in person at the Superior Court of California, County of Los Angeles, 111 North Hill Street, Los Angeles, California, 90012; or (ii) mailing the objection to the Superior Court of California, County of Los Angeles, Department 30, 111 North Hill Street, Los Angeles, California 90012.

You must also serve all such written objections and requests to appear upon Plaintiff's Class Counsel and MBUSA's counsel at the following addresses:

Plaintiff's Class Counsel

Mark L. Van Buskirk  
Westrup Klick, LLP  
444 West Ocean Blvd., Suite 1614  
Long Beach, CA 90802

MBUSA's Counsel

Ronald F. Frank  
Burke, Williams & Sorensen LLP  
444 South Flower Street, Suite 2400  
Los Angeles, CA 90071

**Class Members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be entitled to be heard at the settlement approval hearing.**

**If you have further questions regarding this lawsuit you may contact Plaintiff's Class Counsel, Mark L. Van Buskirk of Westrup Klick LLP, at 1-888-268-6884. DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR THE LITIGATION TO THE CLERK OF THE COURT, TO THE JUDGE, TO MERCEDES-BENZ USA, LLC OR TO COUNSEL FOR MBUSA.**

# **Exhibit 2**

## MERCEDES-BENZ CLASS ACTION SETTLEMENT

Our records show that you are a class member in the Mercedes-Benz class action case. Pursuant to the terms of the settlement, you are entitled to **SUBSTANTIAL CASH COMPENSATION** if you complete and timely return a claim form.

The deadline for mailing the claim form required to participate in the settlement is:

**XXXXXXXXXX, 2010**

**IF YOU DO NOT SUBMIT A CLAIM FORM, YOU WILL NOT RECEIVE ANY MONEY, BUT YOU WILL STILL BE BOUND BY THE TERMS OF THE SETTLEMENT, INCLUDING THE RELEASE OF CLAIMS.**

For more information about this settlement or to get copies of the claim form you will need for filing a claim, you can call Class Counsel Mark L. Van Buskirk at 1-888-268-6884 or contact the claims administrator, xxxxxxxxxxxxxx, at 1-xxx-xxx-xxxx or visit the website at www.xxxxxxxxxxxx

Mercedes-Benz Claims Administrator  
Address  
City, State Zip

PRESORTED  
FIRST CLASS MAIL  
U.S. POSTAGE PAID  
DENVER, CO  
PERMIT 4178

**FIRST [FINAL] REMINDER**

Important Legal Notice

# **Exhibit 3**

**CLAIM FORM**

Unger v. Mercedes-Benz USA, LLC.  
Los Angeles Superior Court Case No. BC396926

**IN ORDER TO RECEIVE COMPENSATION UNDER THIS SETTLEMENT, THIS CLAIM FORM MUST BE SIGNED AND RETURNED TO THE CLAIMS ADMINISTRATOR, CPT GROUP, INC., AND BE POSTMARKED ON OR BEFORE XXXXXXXXXX, 2010.**

1. CONTACT INFORMATION

CORRECTED INFORMATION

Name [inserted by CPT]  
Address [inserted by CPT]  
Tel [inserted by CPT]  
Email [inserted by CPT]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. PASSENGER VEHICLE INFORMATION:

[Model year, Model, and VIN will be inserted and pre-printed by CPT prior to mailing.]

3. SECTION TO COMPETE

If you PURCHASED the vehicle, complete SECTION 4.  
If you LEASED the vehicle, complete SECTION 5.

4. PURCHASE INFORMATION

The purchase price of the vehicle was \$ \_\_\_\_\_ (Exclude from the purchase price any amounts that were due from pay-off of a prior vehicle that were added or rolled into the purchase price of this vehicle.)

5. LEASE INFORMATION

The total of ALL payments due under the lease was or is \$ \_\_\_\_\_ (Exclude from the total any amounts that were due from pay-off of a prior vehicle that were added or rolled into the leased cost of this vehicle.)

6. CURRENT OWNERSHIP

If you currently own or possess the vehicle, check here: \_\_\_\_\_  
If you do not currently own or possess the vehicle, check here: \_\_\_\_\_

7. SIGN AND DATE

I certify that the foregoing is true and correct to the best of my knowledge or recollection.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

**PLEASE MAIL THIS CLAIM FORM IN THE ENVELOPE PROVIDED.  
SEE REVERSE SIDE FOR OTHER INFORMATION.**

**IF YOUR MAILING ADDRESS CHANGES AFTER YOU MAIL IN THIS FORM, PLEASE  
PROVIDE THE UPDATED MAILING ADDRESS TO THE CLAIMS ADMINISTRATOR.**

**If you have any questions, please contact one of the following:**

**Claims Administrator:**

**Name:**

**Address**

**Tel**

**Email**

**Website**

**Class Counsel:**

**Name**

**Address**

**Tel**

**Email**

**Website**