

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is entered into by and between Plaintiff Henry P. Unger, individually and in his representative capacity ("Unger" or "Plaintiff") and defendant Mercedes-Benz USA, LLC, a Delaware limited liability company ("MBUSA" or "Defendant"), subject to and conditioned upon Final Judicial Approval of the Agreement's terms after a Fairness Hearing, as those terms are used in this Agreement. The Agreement shall also be effective and binding as to Settlement Class Members as provided below.

RECITALS

- A. On or about August 22, 2008, Unger filed a Complaint in the Superior Court of California for the County of Los Angeles entitled *Henry P. Unger v. Mercedes-Benz USA, LLC*, Case Number BC396926 (the "Action").
- B. On or about September 25, 2008, Defendant filed its Answer to Plaintiff's Complaint. In its Answer, Defendant generally and specifically denied the allegations in the Complaint, denied any wrongdoing by or on behalf of Defendant, and denied that Plaintiff or the putative class were entitled to the relief requested or any other relief. In addition, Defendant raised numerous affirmative defenses.
- C. After propounding discovery, taking depositions, obtaining data, documents, and information and employing various consultants, the Parties participated in two separate arms'-length mediation sessions before the Honorable Enrique Romero (Ret). With the assistance of Judge Romero, the Parties ultimately accepted a Mediator's Proposal and a settlement was reached. The terms of that settlement are embodied in this Agreement.
- D. Plaintiff and Defendant have conducted an investigation of the facts and have analyzed the relevant legal issues with regard to the claims and defenses. The Parties also have each considered the uncertainties of trial and the benefits to be obtained under the proposed Settlement and have considered the costs, risks, and delays associated with the continued prosecution of this litigation and the likely appeals of any rulings in favor of either Plaintiff or Defendant.
- E. Accordingly, it is now the intention of the Parties and the objective of this Agreement to avoid the costs, delays, and uncertainties of a class certification motion process and trial, and to settle and dispose of, fully and completely and forever, any and all claims and causes of action relating to the Settlement Class claims.

AGREEMENT

1. DEFINITIONS

Unless otherwise indicated above, the following shall be defined terms for purposes of this Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are capitalized and listed in alphabetical order:

1.1 The term "Action" means and refers to the civil proceeding pending in the Superior Court of California for the County of Los Angeles entitled *Henry P. Unger v. Mercedes-Benz USA, LLC*, Case Number BC396926.

1.2 The term "Agreement" means and refers to this Settlement Agreement and Release, including all exhibits attached.

1.3 The term "Claims Administrator" means and refers to a third party retained for the purpose of performing all or part of the duties of the Claims Administrator. Plaintiff's selection of a third party as the Class Administrator shall be subject to the approval of Defendant, which approval shall not be unreasonably withheld. The cost of retaining any third party to act as Class Administrator shall be paid from the Settlement Fund.

1.4 As used herein, the terms "Class" and "Class Members" mean and refer 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 Assist. Class Members are divided into two separate sub-classes: (i) the "Current Owner" sub-class; and (ii) the "Prior Owner" sub-class.

(i) The term "Current Owner Sub-Class" means and refers to all Class Members who currently (as of May 31, 2010) own or lease a Mercedes-Benz passenger vehicle as defined in "Class Member."

(ii) The term "Prior Owner Sub-Class" means and refers to all Class Members who, as of May 31, 2010, no longer owned or leased a Mercedes-Benz passenger vehicle as defined in "Class Member."

Excluded from the definition of Class and Class Members are current or prior owners or lessees of vehicles (a) who were lenders or dealerships, (b) who purchased or leased an otherwise qualifying vehicle outside of the State of California, (c) who currently reside outside of California, and/or (d) who were or are owners of vehicles which were bought back by MBUSA and formally disclosed as Lemon Law buy-back vehicles.

1.5 The term "Class Counsel" means and refers to the law firm of Westrup Klick LLP and the Law Offices of Allan A. Sigel, as appointed by the Court.

1.6 The term "Class Period" means and refers to the period from August 22, 2004 through May 31, 2010.

1.7 The term "Claim Form" means and refers to the Proposed Claim Form, as approved by Plaintiff's Counsel, Defendant's Counsel, and the Court, to be available for submission by Settlement Class Members in order to receive payment from the Settlement Fund. The Claim Form shall be substantially in the one-page form attached as Exhibit 3.

1.8 The term "Claims Rate" is calculated as a percentage and is determined by dividing the number of Settlement Class Members who submit a valid and timely Claim Form by

the total number of Settlement Class Members. In calculating the Claims Rate, only one Family Member shall be included for each Mercedes-Benz passenger vehicle.

1.9 The term "Complaint" shall mean and refer to the First Amended Complaint to be filed by Plaintiff in this Action, as amended to reflect the substance of this Agreement.

1.10 The term "Court" means and refers to the Superior Court of California for the County of Los Angeles where this Action is pending, Department 30, the Honorable John A. Kronstadt, Judge presiding.

1.11 The term "Family Member" means and refers to a relative by blood, adoption, or marriage, a domestic partner, or other individual with the same or different last name, who resides at the same address as a Class Member and who is listed in MBUSA's customer database as an owner, co-owner, lessee, driver, or secondary driver for a given Mercedes-Benz passenger vehicle.

1.12 The term "Fairness Hearing" means and refers to the hearing at or after which the Court will make a final decision whether to approve this Agreement as fair, reasonable and adequate.

1.13 The term "Final Judicial Approval" means and refers to the later of: (i) the date of the Final Order by the Court if no objections are filed; (ii) if there are objections to the settlement which are not withdrawn, and if an appeal, review or writ is not sought from the Final Order, the sixty-first (61) day after service of notice of entry of the Final Order; (iii) the withdrawal of the last objection to the Settlement; or (iv) if any appeal, review or writ is sought from the Final Order, the day after the Final Order is affirmed or the appeal, review or writ is dismissed or denied, and the Final Order is no longer subject to further judicial review.

1.14 The term "Final Order" means and refers to the order finally certifying the Class for settlement purposes only and approving the Settlement and this Agreement.

1.15 The term "Full Notice" means and refers to the legal notice of the terms of the proposed Settlement, as approved by Plaintiff's Counsel, Defendant's Counsel, and the Court, to be provided pursuant to Section 3 of this Agreement. The Full Notice shall be substantially in the form attached as Exhibit 1.

1.16 The term "Judgment" means and refers to the judgment entered by the Court in conjunction with the Final Order. The Judgment shall dismiss the Action with prejudice.

1.17 The term "Net Settlement Fund" means and refers to the net funds available to Class Members, calculated as follows: Settlement Fund 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).

1.18 The term "Preliminary Approval Order" means and refers to the order concerning notice and setting the Fairness Hearing.

1.19 The term "Qualifying Trade Assist" means and refers to a Trade Assist where the financial assistance amount paid or reimbursed by MBUSA was equal to or exceeded \$3,000. This \$3,000 threshold may be met in either a single payment or in the aggregate of multiple Trade Assist payments to or for the benefit of the same Class Member for the same Mercedes-Benz passenger vehicle.

1.20 The term "Reminder Notice" means and refers to a reminder postcard, as approved by Plaintiff's Counsel, Defendant's Counsel, and the Court, to be provided to Class Members under the terms of Section 3.4 of this Agreement. The Reminder Notice shall be substantially in the form attached as Exhibit 2. To the extent a Class Member's email address and telephone number are available to the Claims Administrator, the Claims Administrator shall email a copy of the Reminder Notice to the Class Member as well as contacting the Class Member by telephone.

1.21 The term "Settlement" means and refers to the settlement of this Action and related claims effectuated by this Agreement.

1.22 The term "Settlement Class" means and refers to all Settlement Class Members who are members of the Class who have not properly and timely requested to be excluded from the Class.

1.23 The term "Settlement Class Member" means and refers to all Class Members who purchased, owned, or leased a Mercedes-Benz passenger vehicle during the Class Period and who did not properly and timely request to be excluded. Settlement Class Members are divided into two separate sub-classes: (i) the "Settlement Current Owner" sub-class; and (ii) the "Settlement Prior Owner" subclass.

(i) The term "Settlement Current Owner Sub-Class" means and refers to all Settlement Class Members who currently (as of May 31, 2010) own or lease a Mercedes-Benz passenger vehicle as defined in "Settlement Class Member."

(ii) The term "Settlement Prior Owner Sub-Class" means and refers to all Settlement Class Members who, as of May 31, 2010, no longer owned or leased a Mercedes-Benz passenger vehicle as defined in "Settlement Class Member."

Membership in the Settlement Class and in one of the Sub-Classes shall be determined by MBUSA's records, and as verified by the Claims Administrator upon review of the timely submitted and completed Claim Forms.

1.24 The term "Settlement Fund" means and refers to the amount of money (and any interest earned) that Defendant will pay into a separate account from which the following payments will be made: (i) payments to Settlement Class Members; (ii) payments of Plaintiff's attorneys' fees and costs (as approved by the Court); (iii) the costs associated with notice and administration of the Settlement; and (iv) any remaining or claimed funds to be paid to a charitable organization(s). No amount of the Settlement Fund will revert to Defendant. The Settlement Fund shall be administered by the Claims Administrator under the direction and Order of the Court.

1.25 The term "Trade Assist" as used in this Agreement means and refers to the practice by MBUSA of providing financial assistance either directly to a customer or indirectly through an authorized Mercedes-Benz dealership for the benefit of a customer and includes financial assistance that a dealership or customer used in connection with a purchase or lease of a different Mercedes-Benz passenger vehicle, such as on a trade-in of a prior vehicle. A "Trade Assist" also includes similar MBUSA-paid financial assistance such as moneys paid by MBUSA or an authorized Mercedes-Benz dealership to or credited to the account of a purchaser or lessee who did not trade in that vehicle at that time, and/or which were classified as "lease payments," "special authorization claims," "customer satisfaction" payments, "trade allowance," or "customer retention" payments. Excluded from the definition of a "Trade Assist" is financial assistance in the form of a refund, replacement vehicle, or other MBUSA-paid consideration when MBUSA itself re-acquired a Mercedes-Benz passenger vehicle and performed the disclosure and title-branding process for that vehicle described in the Automotive Consumer Notification Act .

2. SETTLEMENT TERMS.

2.1 Certification Of The Class. Solely for the purposes of this Settlement and the proceedings contemplated herein, the Parties stipulate and agree that the Class shall be certified in accordance with the definitions contained in this Agreement.

2.2 Amended Complaint. The parties agree to present the Court with a Stipulated Order dismissing, without prejudice, Plaintiff's original Complaint that was filed on August 22, 2008 and accepting a separate, new complaint filed in its place and designated as Plaintiff's First Amended Complaint. The First Amended Complaint's class definition will conform to the class definition contained in this Agreement consistent with the allegations that MBUSA failed to disclose to subsequent purchasers and/or lessees that MBUSA had 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 and a related purchase or lease of a different Mercedes-Benz passenger vehicle. The First Amended Complaint's allegations will address Defendant's past occasional practice in California of issuing Trade Assists when the repair history or cumulative days of warranty-related repair service arguably met the requirements for disclosure under the Automotive Consumer Notification Act or other laws.

2.3 Change In Practices. Defendant denies that any of its past or present practices violate California law, including, but not limited to, the Song-Beverly Consumer Warranty Act and the Automotive Consumer Notification Act. However, in an abundance of caution, Defendant has agreed to implement a change of practice to track the number of days that a Mercedes-Benz passenger vehicle is out-of-service by reason of warranty-related repairs.

2.4 Deposit of Settlement Fund. Within two (2) banking days after obtaining Preliminary Approval of the Settlement, Defendant, shall, by electronic transfer, deposit \$50,000 of the Settlement Fund into an account to be maintained by the Claims Administrator to be billed against by the Claims Administrator in connection with the administration of the Settlement between the time of Preliminary Approval and Final Judicial Approval. To the extent the total cost of administration reasonably exceeds \$50,000, the unpaid balance owed to the Claims Administrator will be paid out of the Settlement Fund and in accordance with this Agreement. To

the extent that the total cost of administration does not exceed \$50,000, the unused portion of the \$50,000 administration fee will be returned to the Settlement Fund and be made available for other disbursements in accordance with this Agreement. Within five (5) banking days after Final Judicial Approval, Defendant shall, by electronic transfer, deposit the balance of the Settlement Fund into an account to be maintained by the Claims Administrator in order to make the following disbursements: (i) payments to Settlement Class Members; (ii) payments of Plaintiff's attorneys' fees and costs (as approved by the Court); (iii) the costs associated with notice and administration of the Settlement; and (iv) any remaining or unclaimed funds to be paid to a charitable organization(s). No amount of the Settlement Fund will revert to Defendant.

2.5 Amount of Settlement Fund. Defendant will deposit a minimum of six million dollars (\$6,000,000) in accordance with paragraph 2.4, the first \$50,000 for administration costs and at least \$5,950,000 as the balance of the Settlement Fund. However, in the event that the actual number of Class Members exceeds 4,000 members, then the Settlement Fund will be increased on a pro rata basis up to seven million dollars (\$7,000,000). (For example, if the actual number of Class Members is 4,200 an increase of 5% over the original estimate of 4,000. Accordingly, and in this example, the \$6 million Settlement Fund would then be increased by a corresponding 5% or by \$200,000). It is the parties intent that the actual number of Current Owner Sub-Class members is approximately 1,300 and that the actual number of the Prior Owner Sub-Class members is approximately 2,700. In the event that the increase in the actual number of Current Owner Sub-Class members or Prior Owner Sub-Class members exceeds twenty percent (20%) of 1,300 or 2,700 members, respectively, this Settlement and Agreement will be voidable and subject to renegotiation at Plaintiff's election. In calculating the actual number of Class Members and/or Sub-Class members for purposes of this paragraph 2.5, only one Family Member shall be included for each Mercedes-Benz passenger vehicle.

2.6 Distribution of Net Settlement Fund to Settlement Current Owner Sub-Class members. Seventy percent (70%) of Net Settlement Funds collectively will be made available to Settlement Current Owner Sub-Class members who submit a valid and timely Claim Form. Payment of Net Settlement Funds to Settlement Current Owner Sub-Class members will be determined on a pro rata basis as determined by the Settlement Current Owner Sub-Class member's purchase price or lease payments made. If the Claims Rate of the Current Owner Sub-Class is equal to or exceeds fifteen percent (15%), then the total amount of Net Settlement Fund available to Settlement Current Owner Sub-Class members will be distributed to members who submit a valid Claim Form. However, in the event that the Claims Rate of the Current Owner Sub-Class is less than fifteen percent (15%), payment to any individual Settlement Current Owner Sub-Class member shall not exceed twenty percent (20%) of the purchase price or lease payments made by the Settlement Current Owner Sub-Class member, with the balance paid to Western Center On Law And Poverty pursuant to Code of Civil Procedure Section 384 and in accordance with paragraph 2.9 of this Agreement.

2.7 Distribution of Net Settlement Fund to Settlement Prior Owner Sub-Class members. Thirty percent (30%) of Net Settlement Funds collectively will be made available to Settlement Prior Owner Sub-Class members who submit a valid and timely Claim Form. Payment of Net Settlement Funds to Prior Owner Sub-Class members will be determined on a pro rata basis as determined by the Settlement Prior Owner Sub-Class member's purchase price or lease payments made. If the Claims Rate of the Prior Owner Sub-Class is equal to or exceeds

fifteen percent (15%), then the total amount of Net Settlement Fund available to Settlement Prior Owner Sub-Class members will be distributed to members who submit a valid Claim Form. However, in the event that the Claims Rate of the Prior Owner Sub-Class is less than fifteen percent (15%), payment to any individual Settlement Prior Owner Sub-Class member shall not exceed ten percent (10%) of the purchase price or lease payments made by the Settlement Prior Owner Sub-Class member, with the balance paid to Western Center On Law And Poverty pursuant to Code of Civil Procedure Section 384 and in accordance with paragraph 2.9 of this Agreement.

2.8 If a payment is made from the Net Settlement Fund to a Settlement Current Owner Sub-Class member or to a Settlement Prior Owner Sub-Class member, then no other Family Member of that payee may receive a payment from the Net Settlement Fund for the same Mercedes-Benz passenger vehicle as determined by vehicle identification number ("VIN"), even if that Family Member is a member of the Settlement Class and receives notice of the proposed Settlement. It is the intent of the parties that there shall be no multiple settlement payments for the same VIN to more than one Family Member of any person listed in MBUSA's records as an owner, joint owner, lessee, driver, or secondary driver for a given VIN, and that if a Family Member of a Settlement Class Member timely requests exclusion from the Class then no Family Member associated with that VIN may receive a payment from the Net Settlement Fund for that VIN.

2.9 Payment of Residual Net Settlement Fund to Charity. In the event that a Claims Rate of the respective Sub-Class is less than fifteen percent (15%) after payments are made to the Settlement Current Owner Sub-Class and the Settlement Prior Owner Sub-Class, then any remaining Net Settlement Funds shall be paid to Western Center On Law And Poverty pursuant to paragraphs 2.6 and 2.7 of this Agreement. If a Settlement Class member's check has not been cashed within ninety (90) days of its mailing to the Settlement Class member, the Claims Administrator shall attempt to contact the Settlement Class member by either U.S. Mail or by telephone (if available) in order to verify whether the Settlement Class member received his or her check. If the Settlement Class member did not receive his or her check, the Claims Administrator shall issue a stop payment order on the original check and issue a replacement check to the Settlement Class member. In the event that any check payable to a Settlement Class member has not been cashed within 180 days of the date of the mailing of the original settlement check, the Claims Administrator shall issue a stop payment order on the check and those funds shall be paid to Western Center On Law And Poverty pursuant to Code of Civil Procedure Section 384 and in accordance with this Agreement.

2.10 Distribution To The Settlement Class. Distributions to Settlement Class Members who timely complete a valid Claim Form shall be mailed within twenty-one (21) days of Final Judicial Approval. For purposes of this Settlement, a completed Claim Form is deemed "valid" only if it meets the conditions set forth in this Agreement and on the Claim Form.

2.11 Incentive Award To Plaintiff. The Parties agree that subject to the Court's approval, Plaintiff Henry P. Unger shall be entitled to an incentive award of \$25,000 in recognition of the risk that Plaintiff, as the Class representative, assumed in commencing the lawsuit, both financial and otherwise, and the amount of time and effort spent as the Class representative. Accordingly, upon this Agreement receiving Final Judicial Approval, Plaintiff

will be paid an amount approved by the Court up to \$25,000, within ten (10) days after Final Judicial Approval, from the Settlement Fund, separate and apart from the Prior Owner settlement amount payable to him as a member of the Prior Owner Sub-Class. Any such incentive award will result in the issuance of a Form 1099 to Plaintiff, who shall bear full responsibility for any tax consequences resulting from the payment.

2.12 Attorneys' Fees And Non-Settlement Implementation Costs. The Parties agree that Westrup Klick LLP and the Law Offices of Allan A. Sigel, as Class Counsel, shall be entitled to request, subject to the Court's approval, an award of attorneys' fees and costs not to exceed twenty-five percent (25%) of the Settlement Fund. The request shall be made by formal noticed motion or application for award of fees and costs. Defendant agrees not to oppose such a request but shall be given notice of the request and of the hearing date on the motion. Upon receiving Final Judicial Approval, the Claims Administrator shall cause an electronic transfer from the Settlement Fund within five (5) banking days the award of attorneys' fees and costs, as approved by the Court, to an account maintained by Westrup Klick LLP.

2.13 Settlement Implementation Costs. All costs of providing the Class Notice and all other costs of administration of the Class and of the Settlement shall be paid from the Settlement Fund.

2.14 Parties' Audit Rights and Obligation of Claims Administrator to Maintain Records. Plaintiff and Defendant shall have the right to inspect and audit the books and records of account of the Claims Administrator, upon two (2) banking days' advance notice. The Claims Administrator shall have the duty to maintain books and records of its activities, of all communications from or to Settlement Class Members, and of the disbursements it makes pursuant to this Agreement. The Claims Administrator shall maintain contemporaneous written records of the date and amount of time undertaken for each of its activities in the process of publication, notification, claims processing, settlement payment, fee and cost payments, and all other activities undertaken in furtherance of the administration of the settlement describes in this Agreement. Subsequent to mailing Class Notice through the date of the Fairness Hearing, the Claims Administrator shall make weekly reports to counsel for both parties regarding the mailing efforts, responses rates, requests for exclusions, and any objections received. The Claims Administrator will have the obligation to maintain as confidential and private the names, address, telephone numbers, e-mail addresses, and other personal identifying information of Settlement Class Members, subject to production in camera to the Court in the event disclosure of all or any part of the personal identifying information of Settlement Class Members is sought by any person, by subpoena or otherwise.

2.15 Other Fees And Costs. Except as otherwise set forth herein, the Parties shall bear all of their own costs, fees and expenses relating to or arising out of or in connection with the Action and/or this Settlement.

3. CLASS SETTLEMENT PROCEDURES.

3.1 Settlement Approval. As soon as practicable after the signing of this Agreement, Plaintiff shall file an application for a Preliminary Approval Order, preliminarily approving this Agreement as fair, reasonable, and adequate, seeking the appointment of the Class representative(s), seeking the appointment of Class Counsel, seeking appointment of the Claims Administrator, and approving the Class Notice, and setting a date and time of the Fairness Hearing.

3.2 Class Notice and Claim Form. Prior to the hearing date of the motion for preliminary approval, Defendant will provide to the Claims Administrator, in an electronic format, a listing of Class Members including name, last known address, telephone number and email address, where available. Defendant will simultaneously provide to Class Counsel, in electronic format, a listing of all Mercedes-Benz passenger vehicles included in the Class, including VIN, model year, model, and the names and number of current or prior owners per VIN, and will include that same information in the listing provided to the Claims Administrator. Prior to the Preliminary Approval hearing date, the parties shall meet and confer regarding methods to obtain the most accurate and detailed contact information for Class Members. Within 15 days following the Court's Preliminary Approval of the Class Action Settlement, the Claims Administrator shall, by U.S. Mail and after utilizing standard devices to obtain updated addresses and forwarding addresses, cause a copy of the Class Notice and the Claim Form to be delivered to all Class Members.

3.3 Return of Claim Form. Class Members will have sixty (60) days from the date the Claim Forms were initially mailed to submit the completed Claim Forms to the Claims Administrator. No Claim Form will be honored if it is postmarked more than sixty (60) days from the date of the initial mailing of the Notice and Claim Forms to Class Members. If a Claim Form is postmarked more than sixty (60) days after the initial mailing but before the Fairness Hearing, the Parties may agree to accept the late Claim Form for good cause to be determined by counsel for the Parties; provided, however, that if counsel for the Parties do not agree, the Claim Form shall not be accepted. The Claims Administrator will certify jointly to Class Counsel and Defendant's counsel what claims were timely submitted.

3.4 Reminder Notice. Thirty (30) days prior to the deadline for submitting a Claim Form, the Claims Administrator will mail a Reminder Notice to all Class Members who have not yet submitted a Claim Form. Fifteen (15) days prior to the deadline for submitting a Claim Form, the Claims Administrator will mail a second Reminder Notice to all Class Members who have not yet submitted a Claim Form. To the extent a Class Member's email address and/or telephone number are available to the Claims Administrator, for each Class Member who has not yet submitted a Claim Form by these 30- and 15-day periods prior to the claim submission deadline, the Claims Administrator shall email a copy of the Reminder Notice to the Class Member as well as contacting the Class Member by telephone.

3.5 Deficient Claim Forms. If a Claim Form is not completed in full, the Claims Administrator shall mail a deficiency notice to the Class Member advising the Class Member to cure the deficiency. The deficiency notice will give the Class Member fourteen (14) days from the date of mailing of the deficiency notice to cure the deficiency. The corrected Claim Form

must be postmarked not later than the fourteenth (14) day after the date of mailing of the deficiency notice (or the sixtieth (60) day to submit a Claim Form, whichever is longer) or the corrected Claim form will be rejected as untimely by the Claims Administrator. If the Claims Administrator has a question regarding the content of a Claim Form or as to the need for follow-up with a Class Member who timely submitted a claim form because of the content of that Claim Form, the Claims Administrator shall contact both Class Counsel and Defense Counsel for assistance in resolving the question.

3.6 Response Period. Class Members will have sixty (60) calendar days from the date the Full Notice and Claim Form were initially mailed to return their Claim Form, request to be excluded from the Settlement or object to the settlement. No request for exclusion from the Settlement will be honored if it is postmarked more than sixty (60) days from the date of the initial mailing of the Full Notice and Claim Form.

3.7 Content of Notice. By the mailing or other transmittal of the Full Notice, each Class Member will be fully advised of the Settlement, the opportunity to submit a Claim Form, the opportunity to object to the Settlement and the opportunity to be excluded from the Settlement. Class Members will be informed of the Court-established deadlines for submitting Claim Forms, filing objections or requesting to be excluded from the Settlement. The Claims Administrator will maintain an agreed-upon website and will post on that website, for the period between Preliminary Approval and the Fairness Hearing, a copy of the Full Notice, a downloadable copy of a Claim Form, the Claims Administrator's contact information (including telephone number) and Plaintiff's counsel's contact information (including telephone number). Class Counsel will also be entitled to provide a link on its website to the website hosted by the Claims Administrator regarding this Settlement.

3.8 Claims Administrator Declaration. The Claims Administrator shall provide counsel for the Parties, twenty-five (25) court days prior to the Fairness Hearing, a declaration of due diligence and proof of mailing with regard to the mailing of Notice and Claim Form. The declaration will also set forth information relating to the number of Notices and Claim Forms mailed, items returned as undeliverable, re-mailing efforts and results, the mailing of Reminder Notices, the number of valid Claim Forms received, the number of invalid Claim Forms received and requests for exclusion for the Settlement. The information in the Declaration will be categorized by Settlement Current Owner Sub-Class and Settlement Prior Owner Sub-Class and by purchase and lease claim forms.

3.9 Presumption of Mailing. It will be conclusively presumed that if a mailing has not been returned within sixty (60) days of the mailing of the Notice and Claim forms that the Settlement Class Member received the Notice and Claim Form.

3.10 Disputes. In the event of any dispute over the Settlement, the Parties shall meet and confer in good faith for the purpose of resolving the dispute and, if the dispute cannot be resolved, shall submit the dispute to the Court for final, binding decision.

3.11 Objections. Any Class Member who wishes to object to the Settlement must file a written objection with the Court, and serve copies on Class Counsel and Defendant's counsel, no later than sixty (60) days following the date the Notice and Claim Forms were mailed by the

Claims Administrator and indicate if they intend to appear at the Fairness Hearing. The objection must set forth, in clear and concise terms, the legal and factual arguments supporting the objection. Unless otherwise requested by the Court, Class Members shall not be entitled to speak at the Fairness Hearing unless they have submitted a timely written objection pursuant to this Section.

3.12 Exclusion From The Class. The Notice shall permit any prospective Class Member to elect to opt out of the settlement, i.e., to elect not to be part of the Class and not to be bound by this Agreement, provided that the affected person mails a request for exclusion from the Settlement, to the Claims Administrator no later than sixty (60) days following the date the Notice and Claim Forms were mailed by the Claims Administrator. No later than twenty-five (25) court days prior to the Fairness Hearing, the Class Administrator shall prepare a list of the persons who, pursuant to the Notice, have excluded themselves from the Class in a valid and timely manner, and shall deliver that list to the Class Counsel and Defendant's Counsel.

3.13 No Solicitation of Settlement Objections or Exclusions. Both Defendant and Plaintiff, and their respective counsel, agree that none of them will take any steps to encourage any Class Members to opt-out of the settlement, to request exclusion from the Class, or to object to the Settlement. Defendant and Plaintiff, and their respective counsel, also agree that none of them will take any steps to discourage Class Members from returning claim forms. Plaintiff and Class Counsel agree that none of them nor their agents, employees, or other persons acting on their behalves will solicit any Class Member who opts out of or objects to the Settlement to become an individual client of Class Counsel. No employee, partner, associate, owner, shareholder, spouse, or family member of Class Counsel shall be entitled to object to the Settlement if any of same are Settlement Class Members.

4. DISMISSAL OF ACTION AND RELEASES.

4.1 Approval Of This Agreement. As soon as practicable after execution of this Agreement, counsel for all Parties will jointly take all necessary and appropriate steps to secure the Court's approval of this Agreement

4.2 Final Order. At or before the Fairness Hearing, Class Counsel shall move for entry of the Final Order and Judgment.

4.3 Effect Of Agreement If Terminated Or Settlement Is Not Approved. This Agreement was entered into only for the purpose of this Settlement. Defendant contends that no ascertainable class would have been certified based on the allegations of the Complaint for a variety of reasons, but the Parties agreed to reach a settlement rather than undertake the process of briefing and arguing class certification on the merits. Defendant does not consent to the certification of the Settlement Class, or any other certification of a class, for any purpose other than to effectuate this Settlement of this Action. In the event that the Court does not approve the Settlement or the Final Order is not entered or Final Judicial Approval is not obtained for any reason, then this Agreement shall be deemed null and void *ab initio*. The matter shall then proceed as though the Settlement Class had never been conditionally certified and such findings made for certification had never been made, without prejudice to the ability of any party thereafter to request or oppose class certification on any basis. Any pleadings filed pursuant to

this Agreement shall also be void *ab initio*, deemed withdrawn and the Parties will revert to the pleading status immediately prior to execution of this Agreement. Moreover, any order conditionally certifying the Settlement Class will have no *res judicata* or collateral estoppel effect in this or any other action, or otherwise have any effect on Defendant's ability to argue that a class should not be certified in this or any subsequent litigation. Any certification of the Settlement Class, under this Agreement or otherwise, shall not constitute or be construed (in this or any other proceeding or forum) as an admission of any wrongdoing or any other admission on the part of Defendant, or as the basis of a finding, or as evidence, that this Action or any other proposed or certified class action is appropriate for class treatment in any proceeding under state or federal law in any jurisdiction.

4.4 Dismissal Of The Action With Prejudice. The Court's Final Order granting approval of this Agreement shall include provisions for the dismissal of this Action with prejudice and the entry of a final Judgment of dismissal. Notwithstanding the dismissal of the Action, the parties stipulate that the Court shall retain jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure section 664.6 and to address any matters arising from the Claims Administrator's activities in implementing the Settlement or otherwise.

4.5 Release As To All Settlement Class Members. Effective upon the date of Final Judicial Approval, Plaintiff and each Settlement Class Member, regardless of whether a Settlement Class Member submitted a timely Claim Form, releases and covenants not to sue, MBUSA, its parent, subsidiary, affiliate, predecessor or successor entities, its agents, authorized dealerships, employees, insurers, 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 to a Settlement Class Member, or arising from the absence of disclosure of a Trade Assist to any subsequent Settlement Class Member, made on a Mercedes-Benz passenger vehicle purchased and/or leased by Settlement Class Members, whether arising under the Automotive Consumer Notification Act, Civil Code, Consumer Legal Remedies Act, Song-Beverly Consumer Warranty Act, Business & Professions Code (including Section 17200 and 17500), Magnuson-Moss Warranty--Federal Trade Commission Improvement Act, and/or any other statute or common law relating to warranties, consumers, disclosure, and/or motor vehicles, including but not limited to claims for restitution, damages, statutory damages, civil penalties, punitive damages, and any other injury, damage, loss, or remedy, in law or equity, that was or could have been asserted by Settlement Class Members arising from claims related thereto (herein referred to as "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.

4.6 Section 1542 Waiver. Effective upon the date of Final Judicial Approval, Plaintiff and each Settlement Class Member, regardless of whether a Settlement Class Member submitted a timely Claim Form, is deemed to waive any rights he or she may have under California Civil Code section 1542, or any other statute or common law of similar effect, with respect to the Released Claims as defined in paragraph 4.5 of this Agreement. Section 1542 provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

4.7 Defendant's Release Of Plaintiff. Effective upon the date of Final Judicial Approval, Defendant hereby releases Plaintiff and Plaintiff's counsel from any claims of abuse of process, malicious prosecution, or any other claims arising out of the institution, prosecution, assertion, or resolution of this Action, including, but not limited to, claims for attorneys' fees, costs of suit, or sanctions of any kind.

5. ADDITIONAL PROVISIONS.

5.1 No Admission Of Liability Or Wrongdoing. This Agreement reflects the compromise and settlement of disputed claims among the Parties. Its constituent provisions, and any and all drafts, communications and discussions relating thereto, including during the mediation, are privileged and confidential and shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person, including Defendant, and shall not be offered or received in evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. Defendant has denied and continues to deny each of the claims and contentions alleged by Plaintiff in the Action, and, except for any conditional certification for settlement purposes, denies that any certifiable class exists as alleged by Plaintiff in the Complaint or otherwise. Defendant has repeatedly asserted and continues to assert defenses to the claims and contentions alleged by Plaintiff in the Action, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action. Furthermore, it is expressly agreed and understood that no payment or obligation undertaken by Defendant pursuant to this Agreement is to be construed as a penalty, fine, damages of any kind or other form of assessment for any alleged offense.

5.2 Fair, Adequate And Reasonable Settlement. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Action and have arrived at this Settlement in arms'-length negotiations, taking into account all relevant factors, present and potential. This Settlement was reached after extensive negotiations.

5.3 Real Parties In Interest. In executing this Agreement, the Parties warrant and represent that they, including Plaintiff in his individual and representative capacities on behalf of the Class, are the only persons having any interest in any of the claims that are described or referred to herein, or in any of the pleadings, records, and papers in the Action, and, except as provided herein, neither said claims nor any part thereof have been assigned, granted or transferred in any way to any other person, firm or entity,

5.4 Voluntary Agreement. This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm or entity.

5.5 Binding On Successors. This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

5.6 Parties Represented By Counsel. The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.

5.7 Authorization. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each Party is fully entitled and duly authorized to give the complete and final general release and discharge as described above.

5.8 Construction And Interpretation. Neither Party nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them.

5.9 Headings. The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement.

5.10 Exhibits. The exhibits to this Agreement are integral parts of the Agreement and Settlement and are hereby incorporated and made a part of this Agreement.

5.11 Entire Agreement. This Agreement and any exhibits thereto set forth the entire agreement of the Parties with respect to this Settlement and supersede any and all other prior agreements, the June 2, 2010 Memorandum of Understanding, and all negotiations, whether oral or written, leading up to the execution of this Agreement regarding the subjects covered herein. The Parties acknowledge that no representations, inducements, promises or statements relating to the subjects covered herein, oral or otherwise, have been made by the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference herein, and further agree that there is no other agreement, covenant, representation, inducement, promise or statement relating to the subjects covered herein not set forth in writing in this Agreement and its exhibits.

5.12 Modifications And Amendments. No amendment, change or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties.

5.13 Governing Law. This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of law principles.

5.14 Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of her or its obligations hereunder to carry out the express intent of the Parties hereto.

5.15 Execution Date. This Agreement shall be deemed executed upon the last date of execution by all of the undersigned counsel.

5.16 Continuing Jurisdiction. The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Agreement.

5.17 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

5.18 Severability. Should any paragraph, sentence, clause or provision of this Agreement be held invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision or the remaining portions of this Agreement.

IN WITNESS WHEREOF, the parties hereto, acting by and through their respective counsel of record, have so AGREED.

Dated: 2010-07-11


HENRY P. UNGER, Plaintiff

Dated: _____

MERCEDES-BENZ USA, LLC

By: CHARLES SHADY
General Counsel
Mercedes-Benz USA, LLC

APPROVED AS TO FORM

Dated: _____

BURKE WILLIAMS & SORENSEN, LLP

By: _____
RONALD F. FRANK
Attorneys for Defendant
MERCEDDES-BENZ USA, LLC

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Dated: _____

HENRY P. UNGER, Plaintiff

Dated: _____

MERCEDES-BENZ USA, LLC

(BB) 7/12/10

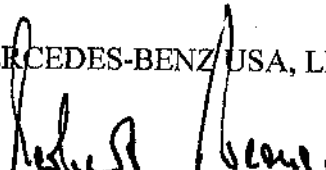


By: ERNST LIEB
President and Chief Executive Officer
Mercedes-Benz USA, LLC

Dated: _____

MERCEDES-BENZ USA, LLC

(BB) 7/12/10



By: HERBERT WERNER
Vice-President and Chief Financial Officer
Mercedes-Benz USA, LLC

APPROVED AS TO FORM

Dated: July 12, 2010

BURKE, WILLIAMS & SORENSEN, LLP

(Handwritten initials)

By:

Ronald Frank

RONALD F. FRANK
Attorneys for Defendant
MERCEDES-BENZ USA, LLC

Dated: _____

WESTRUP KLINK LLP

By:

MARK L. VAN BUSKIRK
Attorneys for Plaintiff
HENRY P. UNGER

Dated: _____

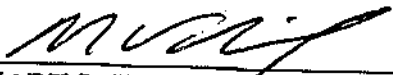
LAW OFFICES OF ALLAN A. SIGEL, P.C.

By:

ALLAN A. SIGEL
Attorneys for Plaintiff
HENRY P. UNGER

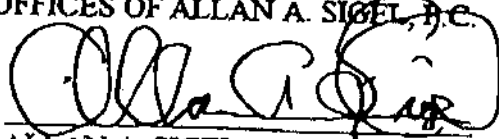
Dated: 7/12/10

WESTRUP KLICK LLP

By: 
MARK L. VAN BUSKIRK
Attorneys for Plaintiff
HENRY P. UNGER

Dated: 7/12/10

LAW OFFICES OF ALLAN A. SIGEL, P.C.

By: 
ALLAN A. SIGEL
Attorneys for Plaintiff
HENRY P. UNGER