

1 **I. BACKGROUND**

2 Following two mediation sessions before Judge Enrique Romero (Ret.), Plaintiff filed a motion
3 with the Court for preliminary approval of the Settlement. On July 27, 2010, following a public
4 hearing and after reading and considering the proposed Settlement, listening to and considering the
5 arguments of counsel for the parties, this Court preliminarily approved the Settlement Class for
6 purpose of settlement and ordered that notice of the proposed Settlement be directed to the Class.

7 Notice was distributed pursuant to the Court's Preliminary Approval Order of July 27, 2010
8 to Class Members. Ten Class Members submitted opt-outs requesting exclusion from the Class, no
9 objections were filed, and only one unfiled letter from a Class Member voicing criticism was received.
10 The Court has reviewed the informal Class Member letter submitted by Class Counsel.

11 By order dated July 27, 2010, the Court set a date for public hearing on the final approval of
12 the Settlement. On December 2, 2010, the Court held a hearing on the final approval of the Settlement
13 ("Final Hearing") to consider: (1) whether the proposed Settlement is just, fair, reasonable, and
14 adequate for the Class and should be granted final approval; (2) whether certification of the Class
15 should be made final; and (3) whether the Court should enter the proposed Order Granting Final
16 Approval Of Class Action Settlement And Entry Of Judgment.

17 The Court has carefully reviewed the Settlement Agreement and the written submissions of
18 the parties. The Court concludes the Settlement is fair, reasonable, and adequate.

19 Accordingly, the Court hereby makes the following findings of fact:

20 **II. FINDINGS**

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

24 2. **Jurisdiction.** The Court has jurisdiction over the subject matter of the Action, the
25 Class Representative, the Settlement Class Members, and Defendant Mercedes-Benz USA, LLC
26 ("Defendant" or "MBUSA").

27 3. **Operative Complaint.** For settlement purposes and with Court approval, the
28 original Complaint filed on August 22, 2008 was dismissed without prejudice, and in lieu thereof the

1 operative First Amended Complaint was filed on July 27, 2010 to correspond to the Settlement Class
2 definition relating to trade assists.

3 4. **Certification Standards And Findings.** California Code of Civil Procedure
4 382 provides for class certification when there is an ascertainable class and a well-defined
5 community of interest among class members. The Settlement Class continues to meet this
6 standard for certification. Specifically, the Court finds and concludes solely for purposes of
7 effectuating the Settlement, that:

- 8 a) the Settlement Class is ascertainable;
- 9 b) the Settlement Class is so numerous that joinder of all Settlement Class Members in
10 the Action is impracticable;
- 11 c) there are questions of law and fact common to the Settlement Class that
12 predominate over any individual questions, including whether the Settlement is fair,
13 adequate, and reasonable, and in the best interests of the Settlement Class given the
14 risks and benefits of proceeding to trial on Class Representative/Plaintiff's claims;
- 15 d) the claims of Class Representative/Plaintiff Henry P. Unger are typical of the
16 claims of the Settlement Class;
- 17 e) Class Representative/Plaintiff Henry P. Unger and Class Counsel/Plaintiff's
18 Counsel, Westrup Klick, LLP, have fairly and adequately represented and protected
19 the interests of the Settlement Class;
- 20 f) a class action is superior to other available methods for the fair and efficient
21 adjudication of the controversy because, among other reasons, (i) settlement of this
22 Action is contingent on certification of the Settlement Class; and (ii) certification of
23 the Settlement Class will permit entry of judgment binding on the Settlement Class.

24 The Court makes no findings regarding whether the Settlement Class is manageable or otherwise
25 properly could be certified in this Action absent the Settlement.

26 5. **Benefits Of Certification.** Certification of the Settlement Class substantially
27 benefits the Court and the litigants. Certification permits approval of the Settlement, avoiding
28 potentially time-consuming, expensive, and uncertain litigation. Certification of the Settlement

1 Class makes relief available to all Settlement Class Members, whom Plaintiff claims are aggrieved
2 by Defendant's actions. Settlement of this case on a class basis permits entry of a judgment
3 binding on Settlement Class Members, thereby avoiding repetitious litigation.

4 6. **Settlement Notice.** The Court previously approved the form of Notice Of
5 Settlement, Claim Form, and Reminder Postcards and the proposed manner of their distribution to
6 Settlement Class Members. (*See Order Granting Preliminary Approval Of Settlement*). The Court
7 again finds that the Settlement Notice reasonably and adequately informed Settlement Class
8 Members of the nature of the Action, the terms of the proposed Settlement, the proposed release of
9 claims, and Settlement Class Members' rights to submit a Claim Form and participate in the
10 Action and Settlement or exclude themselves or object to the Settlement. In compliance with the
11 Preliminary Approval Order, Notice Of Settlement, Claim Form, and pre-addressed business reply
12 return envelope ("Notice Packets") were mailed via U.S. First Class Mail to Class Members'
13 addresses. On September 3, 2010, September 15, 2010, and September 30, 2010, for Class
14 Members who had not yet submitted Claim Forms or opt-outs, the Reminder Notice postcards
15 were also mailed. In addition, at 15-day and 30-day intervals, for Class Members who had not yet
16 submitted Claim Forms or opt-outs, the Claims Administrator also e-mailed and telephoned those
17 Class Members, to the extent that contact information was available. There were numerous
18 contacts with Class Members that resulted from the e-mail and telephonic communications,
19 resulting in transmittal of Notice Packets that had not reached Class Members through the original
20 mailing. Accordingly, this was the best notice practicable under the circumstance and was
21 reasonably calculated to communicate actual notice of the Settlement to Class Members.

22 7. **Fairness Of Settlement.** The Settlement is entitled to a presumption of fairness.
23 (*See, Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801-1802)

- 24 a) The Settlement was reached through arm's-length negotiations between the parties
25 and without any collusion between the parties;
- 26 b) Plaintiff's investigation, discovery, and analysis of discovery have been more than
27 sufficient to allow the Court and counsel to decide on the fairness of this Settlement
28 carefully and with deliberation;

1 c) Counsel for both parties are experienced in class action litigation and cases
2 involving the underlying substantive legal claims and have recommended approval
3 of the Settlement; and

4 d) There were no objections to the Settlement and only 10 opt-out of 3,688 putative
5 Class Members.

6 8. **Notice and Opt-Out/Objection Deadlines.** There was an adequate interval
7 of sixty (60) days between Notice and the deadline to permit Class Members to opt-out or to object
8 and to take the necessary actions to effect their decision. Further, the parties stipulated to allow
9 late-received claims, effectively extending the response deadline by two weeks.

10 9. **Final Approval Hearing.** A hearing upon Plaintiff's Motion For Final Approval
11 Of Settlement was set for December 2, 2010. The Court considered the written submissions by
12 the Parties and the oral argument of all counsel.

13 10. **Extent Of Litigation Activities.** The action has been vigorously prosecuted and
14 defended, the complaint having been filed August 22, 2008. There was extensive discovery that
15 took place including multiple depositions of MBUSA's representatives regarding their policies,
16 procedures, and practices relating to documenting repair history on vehicles, monitoring the days
17 a vehicle is "out of service" by reason of repair, and trade assists practices; the ability to identify
18 vehicles, along with the consumers that purchased or leased them, that were or should have been
19 reacquired due to warranty-related problems; consultation and experts retained on both sides for
20 valuation purposes; review of thousands of pages of vehicle repair history documents; extensive
21 document production including repair history summaries of thousands of potentially qualifying
22 vehicles, full repair histories of a statistician-selected sample of potentially qualifying vehicles,
23 and comprehensive production of the class representative's vehicle for time periods before, during
24 and after his period of ownership; and exchange of auction data for branded versus non-branded
25 Mercedes vehicles.

26 11. **Additional Settlement Considerations.** In this context the Court assessed the
27 reasonableness of the Settlement in light of two additional compelling factors: (1) there was no
28 certification of the putative class; and (2) there was no adjudication of any non-compliance with

1 any statutory or case law by MBUSA in its dealings with the members of the putative class.
2 Certification would have still required significant further discovery, including gathering of
3 documents from third-party dealerships, engaging experts, motion drafting, and a substantial
4 expenditure of attorney time for both parties. Adjudication of the merits of the claims of the
5 putative class would have resulted in further expenditure of attorney time, both for further
6 discovery, research, investigation, and drafting of briefs required to prosecute the claims at trial
7 assuming they were certified. Significantly, there is a dearth of certified "lemon law" class actions
8 and the factual predicates underlying Plaintiff's legal claims are relatively novel and complex. The
9 Court makes no findings as to the likelihood of certification being granted or denied, and makes no
10 findings on the merits of either the class representative's claim on the merits or the claims of the
11 putative class on the merits, but notes that MBUSA vigorously disputed both certification and the
12 merits throughout the time this matter has been pending. These further risks and expenditures, of
13 course, would have impacted upon the desirability of the Settlement pre-certification and pre-trial.

14 **12. Objections To The Settlement.** There were no objections to the Settlement. The
15 one informal letter of Class Member that did not comply with the objection procedures set forth in
16 the Notice Of Settlement was nonetheless carefully considered by the Court. The benefits to be
17 given the Settlement Class under the terms of the Settlement are reasonable considering the
18 strengths and weaknesses of the claims asserted in this Action. Since the claims rates in both the
19 Current Owner and Prior Owner Sub-Classes exceeded the fifteen percent (15%) threshold, there
20 will be no *cypres* distribution of Settlement Funds except for any possible checks left uncashed by
21 participating Settlement Class Members. The distribution of Settlement Funds between the
22 Current Owner and Prior Owner Sub-Classes is reasonable given the disparity in damages between
23 current versus prior owners of the qualifying vehicles. Moreover, the distribution of Settlement
24 Funds among participating Class Members within their respective Sub-Class is fair and equitable
25 given the wide-range of purchase and lease prices depending on the vehicle model, model year,
26 and acquisition year.

27 **13. Opt-Out Requests.** There are only 10 out 3,688 Class Members who requested to
28 opt-out of the Settlement. The number of opt-outs represents some .0027% of the total Class.

1 Those who opt-out may pursue Defendant if they believe a better result could and should have
2 been achieved.

3 14. **Benefits To The Settlement Class.** Here, Defendant will deposit six million
4 dollars (\$6,000,000) into a non-reversionary Settlement Fund to be made available for resolution
5 of this Action on a class-wide basis. According to the evidence provided, the Settlement is the
6 product of arm's-length, serious, informed, non-collusive, and non-overreaching negotiations
7 supervised during two mediation sessions before Hon. Enrique Romero (Ret.) of ADR Services in
8 Los Angeles, California. It appears to the Court that the Settlement amount is fair and reasonable
9 to Class Members when balanced against the probable outcome of further litigation relating to
10 certification, liability and damages issues, and potential appeals of rulings; it further appears that
11 significant discovery, investigation, research, and litigation has been conducted such that counsel
12 for the parties at this time are able to reasonably evaluate their respective positions; it further
13 appears that settlement at this time will avoid substantial costs, delay and risks that would be
14 presented by the further prosecution of the litigation; it further appears that during the settlement
15 negotiation process, the parties voluntarily and/or at the request of the mediator, exchanged
16 information pertinent to the settlement.

17 15. **Fair, Adequate, And Reasonable Settlement.** Given these factors the Court finds
18 the Settlement to be fair, reasonable, and adequate and provides fair, reasonable, just, and adequate
19 compensation for the dismissal of this Action and release of Settlement Class Members' claims in
20 light of the uncertainties and risks of litigation and the delays that would ensue from continued
21 prosecution of this action.

22 16. Accordingly, the Settlement is fair, adequate, reasonable, and in the interests of the
23 Settlement Class.

24 17. **Adequacy Of Representation.** At all times in the prosecution of this action, the
25 negotiation of the Settlement, and its presentation to this Court, the Settlement Class has been
26 adequately represented by Class Representative, Henry Unger, and well-qualified Class Counsel,
27 Westrup Klick, LLP and Law Offices Of Allan A. Sigel, P.C. Class Counsel is experienced in
28 consumer class action cases and has exercised skill and experience in representing the Settlement

1 Class and have fully and fairly represented and protected the interests of the Settlement Class in
2 the action and in negotiating the Settlement.

3 18. **Attorneys' Fees.** The Settlement provides for payment of up to \$1,500,000 to
4 Class Counsel as attorneys' fees, costs, and expenses in the Action, subject to the Court's
5 approval. Defendant has agreed not to oppose a Class Counsel's request to be paid fees, costs, and
6 expenses in that amount to be deducted from the all-in and non-reversionary \$6,000,000
7 Settlement Fund.

8 19. Class Counsel has spent or will spend in excess of 3,559.6 hours working on this
9 case, a reasonable amount of time given the nature of the case and the claims at issue in the action.
10 Class Counsel's normal hourly rates are generally \$450 per hour (except that senior/founding
11 partner of Westrup Klick, LLP, R. Duane Westrup and sole practitioner of Law Offices Of Allan
12 A. Sigel, P.C., Allan A. Sigel, bill at \$700 per hour). This hourly rate is within the range of hourly
13 fees reasonably and normally charged by attorneys in this area of comparable experience in cases
14 of similar nature and complexity. Class Counsel also paid and will pay litigation costs and
15 expenses in excess of \$71,981.46.

16 20 In view of the significant costs advanced by Class Counsel in prosecuting the
17 claims, including the hearings, mediation, experts retained, and discovery proceedings described
18 above, and the possibility of no recovery because of the contingent nature of Class Counsel's
19 recovery, the time records made available by Class Counsel, as well as the novelty of the questions
20 of law and fact involved in this case, the Court concludes that \$1,500,000 in attorneys' fees and
21 costs to Class Counsel is reasonable.

22 21. **Incentive Award.** Subsequent to the Settlement, the parties entered into a Joint
23 Stipulation, approved by this Court on August 6, 2010, that reduced the request for an incentive
24 award to Class Representative/Plaintiff Henry Unger to \$15,000 subject to the Court's approval.
25 Defendant has agreed not to oppose a request in that amount to be deducted from the all-in and
26 non-reversionary \$6,000,000 Settlement Fund. Class Representative Plaintiff submitted a
27 Declaration setting forth the tasks and time he spent working on the case. Considering the
28 extensive demands on Class Representative Plaintiff Henry Unger on individualized discovery

1 requests, requests by counsel, and the time he expended on the case, along with value conferred to
2 Class Members because of his willingness to prosecute this litigation, an incentive award in the
3 amount of \$15,000 to Class Representative Plaintiff Henry Unger is reasonable and does not
4 unduly favor the Plaintiff.

5 **III. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**

6 22. For purposes of the Action, the Court has subject matter and personal jurisdiction
7 over the parties, including all Settlement Class Members.

8 23. Pursuant to Code of Civil Procedure section 382 and California Rules of Court
9 Rule 3.769, the Court certifies, solely for purposes of effectuating the Settlement, the Class which
10 consists of the following:

11 All persons who purchased, owned, or leased a Mercedes-Benz passenger vehicle
12 between August 22, 2004 through May 31, 2010 in California that was the subject of
13 a Qualifying Trade Assist.” Excluded from the Class are current or prior owners or
14 lessees of vehicles: (a) who were lenders, insurers, new or used passenger vehicle
15 dealers or their managers, body shops and similar passenger vehicle repair facilities,
16 or auction yards, (b) who purchased or leased an otherwise qualifying vehicle outside
17 of the State of California, (c) who currently reside outside of California, and/or (4) who
18 were or are owners of vehicles which were bought back by MBUSA and formally
19 disclosed as Lemon Law buy-back vehicles.

20 Consistent with the Settlement Agreement, the Court also conditionally certifies, for purposes of
21 Settlement only, two separate Sub-Classes: (i) the “Current Owner Sub-Class”; and (ii) the “Prior
22 Owner Sub-Class.” Any person who is a member of the Class and who did not properly and
23 timely opt-out is hereby included in the “Settlement Class” and a “Settlement Class Member.

24 24. The Court acknowledges Defendant would not have entered into the Settlement
25 without adequate assurance that it would not be precluded from contesting class certification in the
26 event the Settlement is not consummated. Accordingly, in the event that the approval of the
27 Settlement is reversed on appeal or the Effective Date is not reached for any reason, Defendant
28 shall not be estopped or otherwise precluded from opposing a motion for class certification in the
Action.

29 25. The Court grants final approval of the Settlement and finds that said Settlement and
the releases therein have been entered and given in good faith and are, in all respects, fair,
reasonable, and adequate.

1 26. This Action is hereby dismissed with prejudice as to the Class Representative
2 Plaintiff and all Settlement Class Members who did not properly and timely request exclusion
3 from the Class.

4 27. Upon the Effective Date, Plaintiff Henry Unger and all Settlement Class Members
5 shall be forever barred from bringing or prosecuting, in any capacity, any action or proceeding that
6 involves or asserts any of the Released Claims against any Released Party and shall conclusively
7 be deemed to have released and forever discharged the Released Party from all Released Claims.

8 28. For purposes of the preceding paragraph, "Released Claims" means and includes
9 any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys'
10 fees, damages, action or causes of action, contingent or accrued, arising under state or federal law
11 which relate to the allegations and claims arising from payment of a Trade Assist to a Settlement
12 Class Member, made on a Mercedes-Benz passenger vehicle purchased and/or leased by
13 Settlement Class Members, whether arising under the Automotive Consumer Notification Act,
14 Civil Code, Consumer Legal Remedies Act, Song-Beverly Consumer Warranty Act, Business &
15 Professions Code (including Section 17200 and 17500), Magnuson-Moss Warranty-Federal Trade
16 Commission Improvement Act, and/or any other statute or common law relating to warranties,
17 consumers, disclosure, and/or motor vehicles, including but not limited to claims for restitution,
18 damages, statutory damages, civil penalties, punitive damages, and any other injury, damage, loss,
19 or remedy, in law or equity, that was or could have been asserted by Settlement Class Members
20 arising from claims related thereto. Excluded from this Release is any person, and their claims,
21 not included in the definition of Class Members or persons who submit a valid timely request to be
22 excluded from the Settlement.

23 29. As of the Effective Date, Plaintiff Henry Unger and each member of the Settlement
24 Class shall, conclusively be deemed to have acknowledged that the Released Claims may include
25 claims, rights, demands, causes of action, liabilities, or suits that are not known or suspected to
26 exist as of the date of Final Judicial Approval with respect to the Released Claims against the
27 Released Parties.

1 30. The Settlement and this Order are not an admission of liability or fault by
2 Defendant or the Released Parties, or a finding of the validity of any claims in the Action or of any
3 wrongdoing or violation of the law by Defendant or the Released Parties. Neither the Settlement
4 nor this Order, nor any act performed or document executed pursuant thereto: a) is or may be
5 deemed to be used as an admission of, or evidence of, the validity of any Released Claim, or of
6 any wrongdoing or liability of the Defendant; and b) is or may be deemed to be or may be used as
7 an admission of, or evidence of, any fault or omission of the Defendant in any civil, criminal, or
8 administrative proceeding in any court, administrative agency, or other tribunal.

9 31. Reasonable attorneys' fees, costs, and expenses are awarded to Class
10 Counsel/Plaintiff's Counsel, Westrup Klick, LLP and Law Offices Of Allan A. Sigel, P.C., in the
11 amount of \$1,500,000.

12 32. A service award or enhancement is awarded to Class Representative and named
13 Plaintiff Henry Unger in the amount of \$15,000.

14 33. In all other respects, each party is to bears its own fees and costs.

15 34. Each payment shall be made in the time specified in the Settlement.

16 35. Without affecting the finality of this Order and related Judgment in any way, the
17 Court hereby retains exclusive and continuing jurisdiction over the Action, the Class
18 Representative, the Settlement Class Members and Defendant for purposes of supervising the
19 implementation, enforcement, construction, and interpretation of the Settlement, the Court's Order
20 granting Preliminary Approval dated July 27, 2010, this Order and the related Judgment.

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1 36. Notwithstanding the reservation of jurisdiction in Paragraph 35, this is a final and
2 appealable judgment that ends the litigation of all claims alleged in this Action. The Court directs
3 that a judgment be entered in accordance with this Order and Judgment.

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5 **IT IS SO ORDERED.**

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8 Dated: DEC 2 2010

JOHN A. KRONSTADT

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

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PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is 444 West Ocean Boulevard, Suite 1614, Long Beach, California 90802-4524.

On November 5, 2010, I served the following documents described as **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND ENTRY OF JUDGMENT**. I served the documents on all interested parties, as follows:

Ronald F. Frank
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, California 90071-2953
Tel: 213/236-0600
Fax: 213/236-2700

ALLAN A. SIGEL
LAW OFFICES OF ALLAN A. SIGEL
1125 GAYLEY AVENUE
LOS ANGELES, CALIFORNIA 90024
TEL: 310/824-4070
FAX: 310/208-7271

The documents were served by the following means (specify):

- a. **By Personal Service.** I caused the documents to be personally delivered to the persons at the addresses listed above. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not less than 18 years of age between the hours of eight in the morning and six in the evening.
- b. **By United States Mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above. I placed the envelope for collection and mailing, following our ordinary business practice. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Long Beach, California.
- c. **By Overnight Delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: November 5, 2010



JAMES VELOFF