

1 Troy M. Yoshino, Bar No. 197850
 tyoshino@cbmlaw.com
 2 Eric J. Knapp, Bar No. 214352
 eknapp@cbmlaw.com
 3 Steven E. Swaney, Bar No. 221437
 sswaney@cbmlaw.com
 4 **CARROLL, BURDICK & McDONOUGH LLP**
 Attorneys at Law
 5 44 Montgomery Street, Suite 400
 San Francisco, California 94104
 6 Telephone: 415.989.5900
 Facsimile: 415.989.0932

7 Attorneys for Defendants
 8 MERCEDES-BENZ USA, LLC and
 MISSION IMPORTS d/b/a Mercedes-
 9 Benz of Laguna Niguel

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

13 ELIZABETH CALLAWAY, and
 WILLIAM S. CALLAWAY, on behalf
 14 of themselves and all others similarly
 situated,

15 Plaintiffs,

16 v.

17 MERCEDES-BENZ USA, LLC, a
 18 Delaware limited liability company; and
 MISSION IMPORTS d/b/a Mercedes-
 19 Benz of Laguna Niguel, a California
 corporation,

20 Defendants.

Case No. 8:14-cv-02011-JVS (DFMx)

**MERCEDES-BENZ USA, LLC's
 ANSWER TO SECOND AMENDED
 COMPLAINT**

Complaint Filed: December 18, 2014
 FAC Filed: February 26, 2015
 SAC Filed: June 8, 2015

Hon. James V. Selna

JURY TRIAL DEMANDED

1 Defendant Mercedes-Benz USA, LLC (“MBUSA”) hereby responds to
2 Plaintiffs’ Second Amended Complaint (“SAC”), filed on June 8, 2015 (Dkt No.
3 44), as follows:

4 1. MBUSA admits that plaintiffs purport to bring this action as a class
5 action, but denies that this action may or should be maintained or properly
6 prosecuted as a class action, denies that the class defined by plaintiffs may be
7 certified, and further denies that any class may or should be certified in this action.
8 MBUSA admits that Mercedes-Benz of Laguna Niguel is an authorized Mercedes-
9 Benz dealer in Laguna Niguel, California. MBUSA is without knowledge or
10 information sufficient to form a belief as to the truth of the allegations regarding
11 plaintiffs’ purchase of their vehicle, and on that basis, denies those allegations.
12 MBUSA denies all other allegations in paragraph 1, and specifically denies that
13 there exists any safety defect in plaintiffs’ vehicle or in the putative class vehicles.

14 2. MBUSA denies the allegations in paragraph 2, and specifically denies
15 that there exists any “Safety Defect” in the putative class vehicles.

16 3. MBUSA denies the allegations in paragraph 3.

17 4. The allegations in paragraph 4 state legal conclusions to which no
18 response is required. To the extent an answer is required, MBUSA denies the
19 allegations in paragraph 4, and specifically denies that there exists any “Safety
20 Defect” in the putative class vehicles. MBUSA is without knowledge or
21 information sufficient to form a belief as to the truth of the allegations relating to
22 plaintiff Elizabeth Callaway, and on that basis, denies those allegations.

23 5. The allegations in paragraph 5 state legal conclusions to which no
24 response is required. To the extent an answer is required, MBUSA denies the
25 allegations in paragraph 5, and specifically denies that there exists any “Safety
26 Defect” in the putative class vehicles. MBUSA also denies that the allegations in
27 paragraph 5 are a full or accurate statement of the governing law.

28

1 6. The allegations in paragraph 6 state legal conclusions to which no
2 response is required. To the extent an answer is required, MBUSA denies the
3 allegations in paragraph 6, and specifically denies that there exists any “Safety
4 Defect” in the putative class vehicles.

5 7. The allegations in paragraph 7 state legal conclusions to which no
6 response is required. To the extent an answer is required, MBUSA denies the
7 allegations in paragraph 7, and specifically denies that there exists any “Safety
8 Defect” in the putative class vehicles. MBUSA also denies that the allegations in
9 paragraph 7 are a full or accurate statement of the governing law.

10 8. The allegations in paragraph 8 state legal conclusions to which no
11 response is required. To the extent an answer is required, MBUSA denies the
12 allegations in paragraph 8, and specifically denies that there exists any “Safety
13 Defect” in the putative class vehicles.

14 9. MBUSA admits that there are warranties on certified pre-owned
15 vehicles, and admits that Mercedes-Benz of Laguna Niguel is an authorized
16 Mercedes-Benz dealer. MBUSA is without knowledge or information sufficient to
17 form a belief as to the truth of the other allegations in paragraph 9, and on that basis,
18 denies those allegations.

19 10. MBUSA denies the allegations in paragraph 10, and specifically denies
20 that there exists any “Safety Defect” in plaintiffs’ vehicle.

21 11. MBUSA is without knowledge or information sufficient to form a
22 belief as to the truth of the allegations in paragraph 11, and on that basis, denies
23 those allegations.

24 12. MBUSA is without knowledge or information sufficient to form a
25 belief as to the truth of the allegations in paragraph 12, and on that basis, denies
26 those allegations.

27
28

1 13. MBUSA is without knowledge or information sufficient to form a
2 belief as to the truth of the allegations in paragraph 13, and on that basis, denies
3 those allegations.

4 14. MBUSA is without knowledge or information sufficient to form a
5 belief as to the truth of the allegations in paragraph 14, and on that basis, denies
6 those allegations.

7 15. The proposed Release Agreement speaks for itself as to its contents.
8 MBUSA denies any implication that it completely refuses to repair vehicles in the
9 absence of a release. As warranties and other documents state, MBUSA will pay to
10 repair vehicles in certain circumstances, and customers will be responsible for
11 payment in other circumstances. MBUSA admits that when it agrees to compromise
12 on certain claims, without admitting liability or the existence of any alleged defect,
13 it does secure a release agreement. MBUSA is without knowledge or information
14 sufficient to form a belief as to the truth of the other allegations in paragraph 15, and
15 on that basis, denies those allegations.

16 16. MBUSA is without knowledge or information sufficient to form a
17 belief as to the truth of the allegations in paragraph 16, and on that basis, denies
18 those allegations.

19 17. The allegations in paragraph 17 state legal conclusions to which no
20 response is required. To the extent an answer is required, MBUSA denies the
21 allegations in paragraph 17, and specifically denies that there exists any “Safety
22 Defect” in the putative class vehicles.

23 18. MBUSA admits that plaintiffs purport to bring this action as a class
24 action, but denies that this action may or should be maintained or properly
25 prosecuted as a class action, denies that the class defined by plaintiffs may be
26 certified, and further denies that any class may or should be certified in this action.
27 MBUSA further denies that plaintiffs and the putative class are entitled to the relief
28 requested or any other relief.

1 19. The allegations in paragraph 19 state legal conclusions to which no
2 response is required. To the extent an answer is required, MBUSA is without
3 knowledge or information sufficient to form a belief as to the truth of the allegations
4 in paragraph 19, and on that basis, denies those allegations, with the exception that it
5 admits that plaintiffs allege that this action is within the subject matter jurisdiction
6 of this Court by virtue of the Class Action Fairness Act of 2005 and 28 U.S.C. §
7 1332.

8 20. The allegations in paragraph 20 state legal conclusions to which no
9 response is required. To the extent an answer is required, MBUSA is without
10 knowledge or information sufficient to form a belief as to the truth of the allegations
11 in paragraph 20 and on that basis, denies those allegations, with the exception that it
12 admits that venue is proper in this action.

13 21. MBUSA is without knowledge or information sufficient to form a
14 belief as to the truth of the allegations in paragraph 21, and on that basis, denies
15 those allegations.

16 22. MBUSA admits that it is a limited liability company organized under
17 the laws of Delaware and registered with the California Secretary of State.

18 23. MBUSA admits that Defendant Mission Imports d/b/a Mercedes-Benz
19 of Laguna Niguel is a California corporation with its principal place of business in
20 Orange County, California at 1 Star Drive, Laguna Niguel, California.

21 24. MBUSA admits that it engages in the business of marketing Mercedes-
22 Benz vehicles, which sometimes—but not always—are sold with seat heaters, and
23 that some such vehicles are sold and leased in the State of California by Mercedes-
24 Benz authorized dealers, including Mercedes-Benz of Laguna Niguel. MBUSA is
25 without knowledge or information sufficient to form a belief as to the truth of the
26 allegations regarding plaintiffs and all putative class members purchasing or leasing
27 their Mercedes-Benz vehicles from Mercedes-Benz authorized dealers in the State
28

1 of California. Except as expressly admitted, MBUSA denies the other allegations in
2 paragraph 24.

3 25. MBUSA denies the allegations in paragraph 25, including all subparts,
4 and specifically denies that there exists any “Safety Defect” in the putative class
5 vehicles.

6 26. MBUSA denies the allegations in paragraph 26, and specifically denies
7 that there exists any “Safety Defect” in the putative class vehicles.

8 27. The allegations in paragraph 27 state legal conclusions to which no
9 response is required. To the extent an answer is required, MBUSA denies the
10 allegations in paragraph 27, and specifically denies that there exists any “Safety
11 Defect” in the putative class vehicles.

12 28. The allegations in paragraph 28 state legal conclusions to which no
13 response is required. To the extent an answer is required, MBUSA denies the
14 allegations in paragraph 28, including all subparts, and specifically denies that there
15 exists any “Safety Defect” in the putative class vehicles.

16 29. Pursuant to the Court’s order of May 19, 2015, paragraph 29 should
17 have been eliminated from the Second Amended Complaint. Accordingly, MBUSA
18 is not required to answer the allegations in paragraph 29. To the extent any answer
19 is required to the allegations in paragraph 29, they are denied, including all subparts.
20 MBUSA specifically denies that there exists any “Safety Defect” in the putative
21 class vehicles.

22 30. The allegations in paragraph 30 state legal conclusions to which no
23 response is required. To the extent an answer is required, MBUSA denies the
24 allegations in paragraph 30.

25 31. The allegations in paragraph 31 state legal conclusions to which no
26 response is required. To the extent an answer is required, MBUSA denies the
27 allegations in paragraph 31, and specifically denies that there exists any “Safety
28 Defect” in the putative class vehicles.

1 32. MBUSA admits that plaintiffs purport to bring this action as a class
2 action, but denies that this action may or should be maintained or properly
3 prosecuted as a class action, denies that the putative class defined by plaintiffs may
4 be certified, and further denies that any putative class may or should be certified in
5 this action.

6 33. MBUSA admits that the categories of persons excluded from the
7 putative class plaintiffs attempt to define in paragraph 32 should be excluded, but
8 denies that the list is comprehensive.

9 34. The allegations in paragraph 34 state legal conclusions to which no
10 response is required. To the extent an answer is required, MBUSA denies that this
11 action may or should be maintained or properly prosecuted as a class action, denies
12 that the putative class defined by plaintiffs may be certified, and further denies that
13 any putative class may or should be certified in this action. MBUSA further denies
14 that plaintiffs and the putative class are entitled to the relief requested or any other
15 relief.

16 35. The allegations in paragraph 35 state legal conclusions to which no
17 response is required. To the extent an answer is required, MBUSA denies that this
18 action may or should be maintained or properly prosecuted as a class action, denies
19 that the putative class defined by plaintiffs may be certified, and further denies that
20 any putative class may or should be certified in this action. MBUSA further denies
21 that plaintiffs and the putative class are entitled to the relief requested or any other
22 relief.

23 36. MBUSA denies that plaintiffs may modify the definition of the putative
24 class after further discovery. MBUSA also denies that this action may or should be
25 maintained or properly prosecuted as a class action, denies that the putative class
26 defined by plaintiffs may be certified, and further denies that any putative class may
27 or should be certified in this action. MBUSA also denies that plaintiffs and the
28 putative class are entitled to the relief requested or any other relief.

1 37. MBUSA admits that plaintiffs purport to bring this action as a class
2 action, but denies that this action may or should be maintained or properly
3 prosecuted as a class action, denies that the putative class and subclasses defined by
4 plaintiffs may be certified, and further denies that any putative class or subclass may
5 or should be certified in this action. MBUSA admits that the categories of persons
6 excluded from the putative class and subclasses plaintiffs attempt to define in
7 paragraph 37 and its subparts should be excluded, but denies that the list is
8 comprehensive.

9 38. MBUSA admits that the categories of persons excluded from the
10 putative class and subclasses plaintiffs attempt to define in paragraph 37 should be
11 excluded, but denies that the list is comprehensive.

12 39. The allegations in paragraph 39 state legal conclusions to which no
13 response is required. To the extent an answer is required, MBUSA denies the
14 allegations in paragraph 39. MBUSA also denies that this action may or should be
15 maintained or properly prosecuted as a class action, denies that the putative class
16 and subclasses defined by plaintiffs may be certified, and further denies that any
17 putative class or subclass may or should be certified in this action.

18 40. MBUSA denies that plaintiffs may reserve the right to modify the
19 definitions of the putative class and subclasses after further discovery. MBUSA
20 also denies that this action may or should be maintained or properly prosecuted as a
21 class action, denies that the putative class and subclasses defined by plaintiffs may
22 be certified, and further denies that any putative class or subclass may or should be
23 certified in this action.

24 41. MBUSA denies that plaintiffs may reserve the right to only seek class
25 certification under Fed. R. Civ. P. 23(b)(2) for injunctive relief and not to seek class
26 certification under Fed. R. Civ. P. 23(b)(3) for monetary damages. MBUSA also
27 denies that this action may or should be maintained or properly prosecuted as a class
28 action, denies that the putative class and subclasses defined by plaintiffs may be

1 certified, and further denies that any putative class or subclass may or should be
2 certified in this action. MBUSA also denies that plaintiffs and the putative class are
3 entitled to the relief requested or any other relief.

4 42. MBUSA admits that plaintiffs purport to bring this action as a class
5 action, but denies that this action may or should be maintained or properly
6 prosecuted as a class action, denies that the putative class and subclasses defined by
7 plaintiffs may be certified, and further denies that any putative class or subclass may
8 or should be certified in this action.

9 43. The allegations in paragraph 43 state legal conclusions to which no
10 response is required. To the extent an answer is required. MBUSA denies the
11 allegations in paragraph 43. MBUSA also denies that this action may or should be
12 maintained or properly prosecuted as a class action, denies that the putative class
13 defined by plaintiffs may be certified, and further denies that any putative class may
14 or should be certified in this action.

15 44. The allegations in paragraph 44 state legal conclusions to which no
16 response is required. To the extent an answer is required, MBUSA denies the
17 allegations in paragraph 44. MBUSA also denies that this action may or should be
18 maintained or properly prosecuted as a class action, denies that the putative class
19 defined by plaintiffs may be certified, and further denies that any putative class may
20 or should be certified in this action.

21 45. The allegations in paragraph 45 state legal conclusions to which no
22 response is required. To the extent an answer is required, MBUSA denies the
23 allegations in paragraph 45. MBUSA also denies that this action may or should be
24 maintained or properly prosecuted as a class action, denies that the putative class
25 defined by plaintiffs may be certified, and further denies that any putative class may
26 or should be certified in this action.

27 46. The allegations in paragraph 46 state legal conclusions to which no
28 response is required. To the extent an answer is required, MBUSA denies the

1 allegations in paragraph 46. MBUSA also denies that this action may or should be
2 maintained or properly prosecuted as a class action, denies that the putative class
3 defined by plaintiffs may be certified, and further denies that any putative class may
4 or should be certified in this action.

5 47. The allegations in paragraph 47 state legal conclusions to which no
6 response is required. To the extent an answer is required, MBUSA denies the
7 allegations in paragraph 47, including all subparts. MBUSA specifically denies that
8 there exists any “Safety Defect” in the putative class vehicles. MBUSA also denies
9 that this action may or should be maintained or properly prosecuted as a class
10 action, denies that the putative class defined by plaintiffs may be certified, and
11 further denies that any putative class may or should be certified in this action.

12 48. The allegations in paragraph 48 state legal conclusions to which no
13 response is required. To the extent an answer is required, MBUSA denies the
14 allegations in paragraph 48. MBUSA also denies that this action may or should be
15 maintained or properly prosecuted as a class action, denies that the putative class
16 defined by plaintiffs may be certified, and further denies that any putative class may
17 or should be certified in this action.

18 **FIRST CAUSE OF ACTION**

19 49. MBUSA repeats and realleges its answers to paragraphs 1-48, and
20 further denies that plaintiffs’ alleged reservation of rights or pleading or active
21 concealment allegations for any purpose is proper.

22 50. MBUSA denies the allegations in paragraph 50, and specifically denies
23 that there exists any “Safety Defect” in the putative class vehicles.

24 51. The allegations in paragraph 51 state legal conclusions to which no
25 response is required. To the extent an answer is required, MBUSA denies the
26 allegations in paragraph 51, and specifically denies that there exists any “Safety
27 Defect” in the putative class vehicles.

28

1 52. The allegations in paragraph 52 state legal conclusions to which no
2 response is required. To the extent an answer is required, MBUSA denies the
3 allegations in paragraph 52, and specifically denies that there exists any “Safety
4 Defect” in the putative class vehicles.

5 53. The allegations in paragraph 53 state legal conclusions to which no
6 response is required. To the extent an answer is required, MBUSA denies the
7 allegations in paragraph 53, and specifically denies that there exists any “Safety
8 Defect” in the putative class vehicles.

9 54. The allegations in paragraph 54 state legal conclusions to which no
10 response is required. To the extent an answer is required, MBUSA denies the
11 allegations in paragraph 54, and specifically denies that there exists any “Safety
12 Defect” in the putative class vehicles.

13 55. The allegations in paragraph 55 state legal conclusions to which no
14 response is required. To the extent an answer is required, MBUSA denies the
15 allegations in paragraph 55, and specifically denies that there exists any “Safety
16 Defect” in the putative class vehicles.

17 56. The allegations in paragraph 56 state legal conclusions to which no
18 response is required. To the extent an answer is required, MBUSA denies the
19 allegations in paragraph 56, and further denies that plaintiffs and the putative class
20 are entitled to the requested relief or any other relief.

21 57. MBUSA denies that plaintiffs and the putative class are entitled to the
22 requested relief or any other relief. MBUSA also denies that there exists any
23 “Safety Defect” in the putative class vehicles. MBUSA further denies that plaintiffs
24 may reserve the right to seek additional preliminary or permanent injunctive relief.

25 58. The allegations in paragraph 58 state legal conclusions to which no
26 response is required. To the extent a response is required, MBUSA denies the
27 allegations in paragraph 58, and specifically denies that plaintiffs and the putative
28 class are entitled to the requested relief or any other relief.

SECOND CAUSE OF ACTION

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

59. MBUSA repeats and realleges its answers to paragraphs 1-48 and 50-55.

60. The allegations in paragraph 60 state legal conclusions to which no response is required. To the extent a response is required, MBUSA denies that the allegations in paragraph 60 are a full or accurate statement of the governing law.

61. The allegations in paragraph 61 state legal conclusions to which no response is required. To the extent a response is required, MBUSA denies the allegations in paragraph 61, and specifically denies that there exists any “Safety Defect” in the putative class vehicles.

62. The allegations in paragraph 62 state legal conclusions to which no response is required. To the extent an answer is required, MBUSA denies the allegations in paragraph 62, and specifically denies that there exists any “Safety Defect” in the putative class vehicles.

63. The allegations in paragraph 63 state legal conclusions to which no response is required. To the extent an answer is required, MBUSA denies the allegations in paragraph 63.

64. The allegations in paragraph 64 state legal conclusions to which no response is required. To the extent an answer is required, MBUSA denies the allegations in paragraph 64.

65. The allegations in paragraph 65 state legal conclusions to which no response is required. To the extent an answer is required, MBUSA denies the allegations in paragraph 65.

66. MBUSA denies the allegations in paragraph 66, and specifically denies that plaintiffs and the putative class may reserve the right to allege other violations of law which constitute other unlawful business acts and practices.

1 75. MBUSA admits that it received a letter from plaintiffs that was dated as
2 being sent on December 18, 2014. The letter speaks for itself, and except as
3 expressly admitted, MBUSA denies the other allegations in paragraph 75.

4 76. MBUSA denies that plaintiffs and the putative class are entitled to the
5 relief requested or any other relief. MBUSA further denies that there exists any
6 “Safety Defect” in the putative class vehicles.

7 77. MBUSA denies that plaintiffs and the putative class are entitled to the
8 relief requested or any other relief, and further denies that plaintiffs may reserve the
9 right to seek additional preliminary or permanent injunctive relief.

10 **PRAYER FOR RELIEF**

11 No response to the Prayer for Relief is required. To the extent a response
12 may be deemed required, MBUSA denies that plaintiffs are entitled to the relief
13 requested or any other relief. MBUSA also specifically denies that there exists any
14 “Safety Defect” in the putative class vehicles.

15 **AFFIRMATIVE DEFENSES**

16 As separate and distinct affirmative defenses to the allegations in the SAC,
17 MBUSA alleges as follows:

18 **FIRST AFFIRMATIVE DEFENSE**

19 Plaintiffs’ SAC fails to state a claim upon which relief may be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 The claims made by plaintiffs and the putative class on whose behalf
22 plaintiffs purport to sue are barred, in whole or in part, because some or all of them
23 lack standing to bring this action or seek the relief requested.

24 **THIRD AFFIRMATIVE DEFENSE**

25 Plaintiffs’ claims and those of the putative class are barred by the applicable
26 statutes of limitations, including but not limited to California Code of Civil
27 Procedure § 338, California Civil Code § 1783, and California Business and
28 Professions Code § 17208.

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

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims and those of the putative class are barred to the extent they have failed to mitigate their damages.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs and the putative class may not seek equitable relief because they have an adequate remedy at law.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims and those of the putative class are barred by the terms of the applicable warranties and all associated disclaimers, including plaintiffs’ or the putative class members’ failure to comply with such terms, as well as their failure to make claims during the applicable warranty period.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims and those of the putative class are barred because they are not in privity with MBUSA.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims and those of the putative class were not brought within a reasonable time after they were or should have been discovered and therefore are barred by the doctrine of laches. MBUSA has been prejudiced by plaintiffs’ delay in bringing stale, tardy claims.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims and those of the putative class are barred to the extent they are moot.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims and those of the putative class are barred to the extent any injury they sustained was caused by their own negligent conduct or the negligent conduct of persons for whose conduct MBUSA bears no responsibility.

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

ELEVENTH AFFIRMATIVE DEFENSE

Any claims for damages, restitution, or other monetary recovery by plaintiffs or members of the putative class must be offset and reduced by the value received from the vehicles purchased or leased.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs’ claims and those of the putative class are barred by the doctrines of unclean hands, waiver and/or estoppel.

THIRTEENTH AFFIRMATIVE DEFENSE

There are superseding and/or intervening causes for the damages, if any, incurred by plaintiffs and the putative class members that bar recovery against MBUSA.

FOURTEENTH AFFIRMATIVE DEFENSE

At the time and place mentioned in the SAC, MBUSA violated no legal duty owing by it to plaintiffs and/or members of the putative class.

FIFTEENTH AFFIRMATIVE DEFENSE

The claims of plaintiffs and the putative class are barred, in whole or in part, by the doctrines of *res judicata*, collateral estoppel, release, accord and satisfaction, settlement, arbitration and award, fraud, offset, and voluntary payment.

SIXTEENTH AFFIRMATIVE DEFENSE

The claims made by plaintiffs and putative class members are barred, in whole or in part, to the extent that certification of this action as a class action would violate MBUSA’s constitutional right to separate trials.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs’ claim for punitive damages violates the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution, and similar California constitutional provisions, because it seeks to punish MBUSA based upon unconstitutionally vague standards as applied to the conduct alleged in this case. Plaintiffs’ claim for punitive damages violates the Eighth Amendment to the United

1 States Constitution, and similar California constitutional provisions because it seeks
2 to impose an excessive fine on MBUSA, is penal in nature, and seeks to punish
3 MBUSA based upon unconstitutionally vague standards as applied to the conduct in
4 this case.

5 **EIGHTEENTH AFFIRMATIVE DEFENSE**

6 The claims made by plaintiffs and the putative class are barred, in whole or in
7 part, to the extent that they seek to deprive MBUSA of procedural and substantive
8 safeguards, including but not limited to traditional defenses to liability, in violation
9 of the due process clause of the United States Constitution and the analogous
10 provisions of any applicable state constitutions.

11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 Plaintiffs' claims for relief under the Consumers Legal Remedies Act,
13 California Civil Code §1750 et seq., are barred by plaintiffs' failure to comply with
14 the notice requirements set forth in California Civil Code § 1782(a).

15 **TWENTIETH AFFIRMATIVE DEFENSE**

16 MBUSA denies all allegations not expressly admitted and specifically
17 reserves all affirmative or other defenses that it may have against the putative class.
18 It is not necessary at this time for MBUSA to delineate such defenses against the
19 putative class because no class has been certified and the putative class members are
20 not parties to this litigation.

21 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

22 MBUSA reserves the right to raise such additional affirmative defenses as
23 may be established during discovery and by evidence in this case.

24

25 WHEREFORE, MBUSA prays for judgment as follows:

- 26 1. That plaintiffs and the putative class take nothing;
27 2. That the Court enter judgment in favor of MBUSA on each cause of
28 action alleged against it in the SAC;

