

1 FRANK SIMS & STOLPER LLP
Jason M. Frank (Bar No. 190957)
2 Scott H. Sims (Bar No. 234148)
19800 MacArthur Blvd, Suite 855 Irvine, California 92612
3 Tel: (949) 201-2400
Fax: (949) 201-2405

4 YUHL CARR LLP
5 Eric F. Yuhl (Bar No. 102051)
4676 Admiralty Way, Suite 550
6 Marina Del Rey, California 90292
Tel: (310) 827-2800
7 Fax: (310) 827-4200

8 MCNICHOLAS & MCNICHOLAS LLP
John Patrick McNicholas IV (Bar No. 125868)
9 10866 Wilshire Blvd, Suite 1400
Los Angeles California 90024
10 Tel: (310) 474-1582
Fax: (310) 475-7871

11 *Attorneys for Plaintiff and the Proposed Settlement Class*

12 SQUIRE PATTON BOGGS (US) LLP
13 Troy M. Yoshino (Bar No. 197850)
Eric J. Knapp (Bar No. 214352)
14 Steven E. Swaney (Bar No. 221437)
275 Battery St., Suite 2600
15 San Francisco, CA 94111
Tel: (415) 954-0200
16 Fax: (415) 393-9887

17 *Attorneys for Defendant MERCEDES-BENZ USA, LLC*

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

21 WILLIAM S. CALLAWAY, on behalf
22 of himself and all others similarly
situated,

23
24 Plaintiff,

25 v.

26 MERCEDES-BENZ USA, LLC,

27 Defendant.
28

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

CLASS ACTION

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

1 This Agreement is made and entered into by and between William S.
2 Callaway (“Plaintiff”), on the one hand, and Defendant Mercedes-Benz USA,
3 LLC (“MBUSA”), on the other hand, to settle, compromise, release, and
4 discharge the claims on behalf of Plaintiff and all those similarly situated
5 according to the terms and conditions herein.

6 **1. DEFINITIONS**

7 As used in this Agreement (which, as defined below, includes the
8 accompanying Exhibits), the following terms have the meanings set forth below.
9 The plural of any defined term includes the singular, and the singular of any
10 defined term includes the plural, as the case may be.

11 1.1. “Agreement” means this Class Action Settlement Agreement and
12 Release, including the notices and other documents contemplated by this Class
13 Action Settlement Agreement and Release, and any amendments thereto. The
14 Agreement may alternatively be referred to as the “Settlement.”

15 1.2. “Attorneys’ Fees, Costs, and All Other Expenses” means the
16 settlement amounts approved by the Court for payment to Class Counsel to cover
17 attorneys’ fees, costs, and any other expenses incurred by Class Counsel,
18 including but not limited to all costs and expenses of addressing objections and
19 appeals, any claims for attorneys’ fees or costs, and all other possible expenses by
20 others, except for those items specifically assigned as MBUSA’s responsibility
21 under this Agreement.

22 1.3. “Authorized Service Center” means any service center specifically
23 authorized to provide warranty services for Mercedes-Benz vehicles, which
24 service centers are identifiable by ZIP code at
25 https://www.mbusa.com/mercedes/dealers/schedule_service.

26 1.4. “Bypass Wire Repair Claim Form” means the claim form, with the
27 language and substantially in the form set forth in **Exhibit B** to this Agreement,
28 that will accompany the Class Notice and be available on a dedicated website for

1 the settlement and that must be timely completed and submitted for a Settlement
2 Class Member to be eligible for the remedies provided for under this Agreement
3 other than coverage for future repairs as set forth in Section 4 of this Agreement

4 1.5. "Bypass Wire Repair Procedure" means the installation of a bypass
5 wire in a Subject Vehicle's driver seat to prophylactically address concerns about
6 the possibility of future malfunction of the seat heater due to breakage of
7 electrodes in the seat back or outside seat bolster, to be covered by MBUSA's
8 standard two-year parts warranty.

9 1.6. "Claims Period" means the time during which Settlement Class
10 Members may submit a Claim Form under the Settlement, and which is set forth
11 in Section 9.5 of this Agreement.

12 1.7. "Claim Validation Process" shall mean the process approved by the
13 Court as contemplated in Section 9 of this Agreement.

14 1.8. "Class Counsel" means Frank Sims & Stolper LLP, Yuhl Carr LLP,
15 and McNicholas & McNicholas LLP.

16 1.9. "Class Notice" means the notice to the Settlement Class approved by
17 the Court, substantially in the form of **Exhibit A**.

18 1.10. "Class Representative Service Award" means a payment, to be
19 approved by the Court, to Plaintiff in his capacity as class representative to
20 compensate him for participating in the Litigation, performing work in support of
21 the Litigation, and undertaking the risk of liability for attorneys' fees and
22 expenses in the event he was unsuccessful in the prosecution of the Litigation.

23 1.11. "Court" means the Honorable James V. Selna of the United
24 States District Court for the Central District of California, or the Judge of the
25 Central District of California assigned to preside over the Litigation if not Judge
26 Selna.

27
28

1 1.12. “Defense Counsel” means MBUSA’s counsel of record in the
2 Litigation, Troy M. Yoshino, Eric J. Knapp, and Steven E. Swaney of Squire
3 Patton Boggs (US) LLP.

4 1.13. “Effective Date” means the date on which any Final Order and
5 Judgment entered pursuant to the Agreement becomes “final.” The Final Order
6 and Judgment entered pursuant to this Agreement becomes “final” on the day
7 after all appellate rights with respect to that Final Order and Judgment have
8 expired or have been exhausted in a manner that conclusively affirms the Final
9 Order and Judgment.

10 1.14. “Final Order and Judgment” means the order and judgment of
11 the Court dismissing this matter with prejudice as to MBUSA and approving this
12 Agreement.

13 1.15. “Litigation” means *Callaway v. Mercedes-Benz USA, LLC*, Case
14 No. 14-CV-02011 JVS-DFMx (C.D. Cal.), pending in the United States District
15 Court for the Central District of California.

16 1.16. “Notice Plan” means the plan for disseminating Notice to the
17 Settlement Class as required by this Court and the Class Action Fairness Act (28
18 U.S.C. § 1715), as described in Section 8 below.

19 1.17. “Owner or Lessee” means an owner or lessee of a Subject
20 Vehicle.

21 1.18. “Participating Class Member” means any Person who falls
22 within the definition of the Settlement Class, irrespective of whether such Person
23 submits a Claim Form, who has not otherwise opted out of the Litigation.

24 1.19. “Person” means an individual, corporation, partnership, limited
25 partnership, limited liability company, association, joint stock company, estate,
26 legal representative, trust, unincorporated association, government or any political
27 subdivision or agency thereof, any business or legal entity, and such individual’s
28 or entity’s spouse, heirs, predecessors, successors, representatives, and assignees.

1 1.20. "Plaintiff" means William S. Callaway.

2 1.21. "Preliminary Approval Order" means the order to be entered by
3 the Court pursuant to this Agreement, and substantially in the form attached
4 hereto as **Exhibit D**, preliminarily approving the settlement and directing that
5 notice be provided to the Settlement Class.

6 1.22. "Reasonable Replacement Amount" means up to \$1,000.

7 1.23. "Reimbursement Claim Form" means the claim form, with the
8 language and substantially in the form set forth in **Exhibit C** to this Agreement,
9 that will accompany the Class Notice and be available on a dedicated website for
10 the settlement and that must be timely completed and submitted for a Settlement
11 Class Member to be eligible for the remedies provided for under this Agreement
12 other than the coverage for future repairs as set forth in Section 4 of this
13 Agreement.

14 1.24. "Settlement Administrator" means the qualified third-party
15 appointed by the Court to administer the settlement, including implementation of
16 the Notice Plan and certain aspects of the Claim Validation Process.

17 1.25. "Settlement Class" means all current and former owners and
18 lessees of Mercedes-Benz model year 2000-2007 M-Class (aka ML-Class), model
19 year 2006-2007 R-Class, and model year 2007 GL-Class vehicles with original-
20 equipment seat heaters who purchased or leased their Subject Vehicles in the
21 United States. Excluded from the Settlement Class are:

- 22 a) Persons who have settled with, released, or otherwise had claims
23 adjudicated on the merits against MBUSA that are substantially
24 similar to those alleged in this matter;
- 25 b) Former owners and lessees whose Subject Vehicles did not
26 experience a seat heater malfunction during the time they owned
27 or leased their Subject Vehicles;
- 28 c) Employees of MBUSA;

1 d) Insurers or other providers of extended service contracts or
2 warranties for the vehicles owned by Settlement Class
3 Members; and

4 e) The Honorable James V. Selna and the Honorable Douglas F.
5 McCormick, and members of their respective families.

6 1.26. "Settlement Class Member" means any Person who falls within
7 the definition of the Settlement Class.

8 1.27. "Settling Parties" means, collectively, Plaintiff, all Participating
9 Class Members, and MBUSA.

10 1.28. "Symptoms Alleged" means an incident in which an original
11 equipment seat heater in a Subject Vehicle overheated, causing a hot spot to
12 develop that can cause a hole to form in the seat cover.

13 1.29. "Third-Party Neutral" means the mutually acceptable neutral
14 agreed upon by Plaintiff and MBUSA.

15 1.30. "Subject Vehicle" means a Mercedes-Benz model year 2000-
16 2007 M-Class, model year 2006-2007 R-Class, or model year 2007 GL-Class
17 vehicle with original-equipment seat heaters.

18 **2. DENIAL OF ANY WRONGDOING AND LIABILITY**

19 2.1. MBUSA denies the material factual allegations and legal claims
20 asserted by the Plaintiff and Settlement Class Members in the Litigation,
21 including, but not limited to, any and all charges of wrongdoing or liability, or
22 allegations of defect, arising out of any of the conduct, statements, acts or
23 omissions alleged, or that could have been alleged, in the Litigation.

24 **3. BACKGROUND**

25 3.1. A class action complaint against MBUSA was filed on December 18,
26 2014, in the United States District Court for the Central District of California
27 alleging that the original-equipment seat heaters in Mercedes-Benz vehicles from
28 model years 2000-2014 could potentially overheat causing damage.

1 3.2. During the course of the Litigation, the parties and their counsel have
2 litigated dispositive motions and discovery disputes, and fully briefed a motion
3 for class certification. The parties and their counsel have also conducted
4 discovery, including written discovery, document productions, and have taken and
5 defended fact witness and expert depositions. The parties have litigated their
6 respective positions in connection with all aspects of the Litigation.

7 3.3. As a result of the Litigation, the Settling Parties and their counsel are
8 thoroughly familiar with the factual and legal issues presented by their respective
9 claims and defenses and recognize the uncertainties as to the ultimate outcome of
10 the Litigation, and that any final result would require years of further complex
11 litigation and substantial expense.

12 3.4. The parties agreed to mediate the case with the Honorable Layn R.
13 Phillips (Ret.). After two mediation sessions with Judge Phillips, and several
14 additional in-person and telephonic negotiations sessions between counsel, the
15 parties reached agreement in principle on the material terms of a class action
16 settlement, other than attorneys' fees and costs and an incentive award for
17 Plaintiff. Thereafter, the parties participated in additional mediation sessions and
18 negotiations with Judge Phillips and between counsel, pursuant to which the
19 parties also reached an agreement on attorneys' fees and costs and an incentive
20 award for Plaintiff subject to Court approval. After further negotiations, the
21 agreement was eventually reduced to this writing.

22 3.5. This Agreement represents a compromise and settlement of highly
23 disputed claims. Nothing in this Agreement is intended or will be construed as an
24 admission by MBUSA that the claims in the Litigation have merit or that MBUSA
25 bears any liability to Plaintiff or the Settlement Class on those claims or any other
26 claims, or as an admission by Plaintiff that MBUSA's defenses in the Litigation
27 have merit.
28

1 **4. CONSIDERATION TO THE CLASS**

2 **A. Bypass Wire Repair Procedure**

3 4.1. Participating Class Members who are Current Owners or Lessees of
4 the Subject Vehicles may validate class membership and elect to receive the
5 Bypass Wire Repair Procedure by submitting the Bypass Wire Repair Claim Form
6 within sixty (60) days of Class Notice . Participating Class Members who elect to
7 receive the Bypass Wire Repair Procedure and timely submit a valid Claim Form
8 will have sixty (60) days from the Effective Date to contact an Authorized
9 Mercedes-Benz Dealer to schedule an appointment to have Bypass Wire Repair
10 Procedure performed on the driver's seat of their Subject Vehicles, at no cost to
11 the Participating Class Member. However, the scheduled appointment may be
12 more than sixty (60) days from the Effective Date, provided that the Participating
13 Class Member contacted an Authorized Mercedes-Benz Dealer to schedule an
14 appointment within sixty (60) days from the Effective Date. Participating Class
15 Members who elect to receive the Bypass Wire Repair Procedure will be sent a
16 further notice after the Effective Date that they have sixty (60) days to schedule
17 their repair appointment as further described in Section 9.5 below.

18 4.2. The Bypass Wire Repair Procedure will be covered by MBUSA's
19 standard two-year parts warranty. Participating Class Members who receive the
20 Bypass Wire Repair Procedure will not be eligible to receive coverage for
21 qualified future repairs as described in Section 4.3 below for their Subject
22 Vehicles.

23 **B. Coverage for Qualified Future Repairs**

24 4.3. For Current Owners or Lessors who do not submit a Bypass Wire
25 Repair Claim Form, commencing on the Effective Date, MBUSA will offer to
26 make qualified repairs to original-equipment seat heaters in Subject Vehicles
27 through Authorized Mercedes-Benz Dealers, if and as needed, subject to the
28 following limitations:

1 4.3.1. MBUSA will offer to perform qualified repairs upon
2 confirmation that the original-equipment seat heater in the Subject
3 Vehicle exhibited, after the Effective Date, the Symptoms Alleged in
4 this case.

5 4.3.2. Coverage for qualified future repairs will be offered up to a
6 maximum of two (2) years from the Effective Date, or 180,000 miles
7 from the Subject Vehicle's original in-service date, whichever occurs
8 first, subject to the following restrictions:

- 9 • For seat heaters in Subject Vehicles needing qualified repairs
10 within two years of the Effective Date and having 40,000
11 miles or less from the Vehicle's original in-service date,
12 MBUSA will cover 75% of the Reasonable Repair Amount;
- 13 • For seat heaters in Subject Vehicles needing qualified repairs
14 within two years of the Effective Date and having between
15 40,000 miles and 80,000 miles from the Vehicle's original in-
16 service date, MBUSA will cover 50% of the Reasonable
17 Repair Amount;
- 18 • For seat heaters in Subject Vehicles needing qualified repairs
19 within two years of the Effective Date and having between
20 80,000 miles and 140,000 miles from the Vehicle's original in-
21 service date, MBUSA will cover 25% of the Reasonable
22 Repair Amount;
- 23 • For seat heaters in Subject Vehicles needing qualified repairs
24 within two years of the Effective Date and having between
25 140,000 miles and 180,000 miles from the Vehicle's original
26 in-service date, MBUSA will cover 15% of the Reasonable
27 Repair Amount;
- 28

- For seat heaters needing qualified repairs after two years from the Effective Date or more than 180,000 miles from the Subject Vehicle's original in-service date, whichever occurs first, MBUSA shall not be required to offer to cover any portion of a repair/replacement.

4.4. All repairs described in Section 4(B) must be performed by an Authorized Service Center, and all claims covered by this Section will be processed through MBUSA's standard payment processes with its Authorized Service Centers.

C. Reimbursement for Qualified Past Repairs

4.5. In addition to qualified future repairs, Participating Class Members shall also be entitled to submit claims for reimbursement, up to the Reasonable Repair Amount, of out-of-pocket costs paid by Participating Class Members for past repairs/replacements to original equipment seat heaters in Subject Vehicles that occurred before the Effective Date, subject to the following limitations:

4.5.1. To be eligible for reimbursement under Paragraph 4.5, Participating Class Members will be required to submit a timely and valid Reimbursement Claim Form, including Proof of Payment, within 60 days of Class Notice.

4.5.2. Reimbursement under this Section will be subject to confirmation that the claimed repair to the original-equipment seat heater in the Subject Vehicle was related to the Symptoms Alleged.

4.5.3. The maximum amount of reimbursement for a qualified past repair is capped at the Reasonable Repair Amount.

4.6. Recovery described in this Section 4(C) shall take place pursuant to the Claim Validation Process described in Section 9 of this Agreement.

4.7. There shall be no double recovery under the settlement. Thus, if a Participating Class Member is eligible for, or previously received, goodwill,

1 extended warranty coverage, or any other form of coverage for the repair, the total
2 amount of any coverage or reimbursement due to the Participating Class Member
3 as a Reimbursement For Past Repair shall be offset against prior amounts given.

4 4.8. Neither Class Counsel nor anyone on their behalf shall attempt to
5 proactively contact Participating Class Members, either directly or indirectly, for
6 the purpose of encouraging them to select any particular option, or discouraging
7 them from selecting any particular option, offered in this Agreement.

8 **5. PAYMENTS BY MBUSA**

9 5.1. **To Participating Class Members Submitting Claims:** MBUSA
10 agrees to reimburse reasonable and necessary costs paid by Settlement Class
11 Members for qualified past repairs up Reasonable Repair Amount as detailed in
12 Section 4(B) above—and pursuant to the claims procedures set out in Section 9,
13 where covered repairs are documented by repair orders (or similar itemized
14 invoices) and proof of payment, with a completed, mailed claim form submitted
15 to the Settlement Administrator under penalty of perjury.

16 5.2. **To Plaintiff:** Subject to Court approval, MBUSA agrees to pay the
17 amount awarded by the Court to Plaintiff as a Class Representative Service
18 Award, so long as the award does not exceed \$10,000. MBUSA agrees not to
19 oppose any request for a Class Representative Service Award for Plaintiff that
20 does not exceed \$10,000, or to encourage or assist any third-party or Settlement
21 Class Member in opposing such a request. Any Class Representative Service
22 Award to Plaintiff shall be paid by MBUSA within fifteen (15) business days of
23 the Effective Date, care of Class Counsel. Plaintiff, Class Counsel, and MBUSA
24 negotiated and agreed to the amount of Class Representative Service Award only
25 after reaching agreement in principle on the material terms of this settlement for
26 the Class

27 5.3. **To Class Counsel:** Subject to Court approval, MBUSA agrees pay
28 the amount awarded by the Court to Class Counsel for Attorneys' Fees and Costs,

1 so long as the award does not exceed \$5,622,387.50 in Attorneys' Fees and
2 \$584,387.50 in Costs. MBUSA agrees not to oppose, and will not encourage or
3 assist any third-party or Settlement Class Member in opposing, Class Counsel's
4 request for Attorneys' Fees in a total amount of up to \$5,662,387.50 and Costs in
5 a total amount of up to \$584,085.21. Class Counsel shall file their motion
6 requesting an award of attorneys' fees and costs no later than thirty (30) days after
7 the Court enters an order granting preliminary approval of this Settlement.
8 Plaintiff, Class Counsel, and MBUSA mediated the issue of Attorneys' Fees,
9 Costs, and All Other Expenses only after reaching agreement in principle on the
10 material terms of this settlement for the Class.

11 5.4. At the election of Class Counsel, Attorneys' Fees and Costs awarded
12 by the Court to Class Counsel shall be paid by MBUSA prior to the Effective
13 Date if the terms and conditions set forth in Paragraphs 5.5 and 5.6 are met.

14 5.5. Class Counsel may, within sixty (60) days after the filing of any
15 Notice of Appeal of any Final Order by the Court approving the Settlement, notify
16 Defense Counsel that Class Counsel elects to receive payment of Attorneys' Fees
17 and Costs prior to the Effective Date (and, if so, the amount sought to be paid
18 under that Paragraph). If Class Counsel elects to receive payment of Attorneys'
19 Fees and Costs (in full or in part) prior to the Effective Date, and provided the
20 security requirements set forth in Paragraph 5.6 have been met, MBUSA will
21 make the payment within fourteen (14) business days of receipt of Class
22 Counsel's notice. If, and to the extent, Class Counsel (i) do not timely elect to
23 receive full payment of Attorneys' Fees and Costs or (ii) do not otherwise meet
24 the security requirements of Paragraph 5.6, all remaining portions of Attorneys'
25 Fees and Costs shall be paid no later than seven (7) business days from the
26 Effective Date of the Settlement.

27 5.6. Payment of Attorneys' Fees and Costs to Class Counsel prior to the
28 Effective Date is expressly conditioned upon Class Counsel securing at their cost

1 and providing proof of an irrevocable letter of credit, a bond, or other mutually
2 agreed security instrument from an agreed-upon, sufficiently capitalized provider
3 in favor of MBUSA that guarantees reimbursement of the award plus interest
4 accruing at the post-judgment interest rate set forth in California Code of Civil
5 Procedure § 685.010. Repayment to MBUSA of any Attorneys' Fees and Costs
6 paid prior to the Effective Date will be made by Class Counsel within fourteen
7 (14) business days following any event that prevents the Effective Date of the
8 Settlement from occurring (*e.g.*, termination of the agreement, failure to affirm the
9 judgment on appeal). Notwithstanding any other provision in this paragraph, no
10 portion of the award shall be paid earlier than three (3) business days following
11 MBUSA's receipt of proof of the security. This provision will survive this
12 Agreement and may be enforced regardless whether the Settlement becomes
13 effective or is otherwise terminated.

14 5.7. Plaintiff and Class Counsel will not seek in excess of the sums
15 specified in Sections 5.1, 5.2, and 5.3, and in any event, Plaintiff and Class
16 Counsel agree that MBUSA shall not be obligated to pay any sum in excess of the
17 cap amounts specified in Sections 5.2, 5.2 and 5.3.

18 5.8. The Settling Parties agree the amounts in Sections 5.1, 5.2 and 5.3
19 represent MBUSA's all-inclusive, full payment for all fees, costs, and all other
20 expenses in connection with this Settlement, including but not limited to fees,
21 costs, and any other expenses incurred by any counsel in any related class action
22 or any other related cases, whether known or unknown to MBUSA, as well as any
23 objectors, intervenors, or later-appearing counsel. The amounts described in
24 Sections 5.1, 5.2, and 5.3 shall constitute full satisfaction of MBUSA's obligation
25 to pay any person, attorney or law firm for attorneys' fees, costs, and all other
26 expenses, and shall relieve MBUSA and the Released Parties from any other
27 claims or liability to any other attorney or law firm or person for any attorneys'
28 fees, costs, or other expenses to which any Plaintiff, Settlement Class Member,

1 objector, intervenor, or any other person may claim that are in any way related to
2 the Released Claims.

3 5.9. In the event of any objections to the settlement or appeal from any
4 order of the Court granting final approval, Class Counsel agree that they will be
5 solely responsible for responding to objectors and intervenors, and defending the
6 Court's Final Order and Judgment on appeal at their own cost. MBUSA will join
7 in the defense of the Final Order and Judgment. MBUSA agrees not to appeal, or
8 otherwise support any appeal, of an order or judgment entered by the Court that is
9 consistent with this provision and the terms of the settlement. Any costs incurred
10 by Class Counsel in such appeals, including costs incurred to settle any claims by
11 objectors or intervenors, are the sole responsibility of Class Counsel. No one may
12 seek to recover such costs from MBUSA. This will not, however, preclude Class
13 Counsel from including such amount in any application for attorneys' fees, so
14 long as Class Counsel does not seek fees and costs in excess of the caps set forth
15 in Section 5.3 above

16 **6. RELEASE**

17 6.1. Upon the entry of the Final Order and Judgment, Plaintiff and each
18 Participating Class Member, on behalf of themselves and their current and
19 former/predecessor agents, heirs, executors and administrators, successors,
20 assigns, insurers, attorneys, representatives, shareholders, and any and all persons
21 who in the future seek to claim through or in the name or right of any of them (the
22 "Releasing Parties"), release and forever discharge (as by an instrument under seal
23 without further act by any person, and upon good and sufficient consideration),
24 MBUSA and each of its current or former administrators, insurers, reinsurers,
25 agents, firms, parent companies/corporations, sister companies/corporations,
26 subsidiaries and affiliates (including without limitation Daimler AG and
27 Mercedes-Benz US International), and all other entities, including without
28 limitation manufacturers, suppliers, and distributors (including wholesale and

1 retail distributors), and affiliated dealerships, and all of the foregoing persons' or
2 entities' respective predecessors, successors, assigns and present and former
3 officers, directors, shareholders, employees, agents, attorneys, representatives, as
4 well as their insurers (collectively, the "Released Parties") from each and every
5 claim of liability, on any legal or equitable ground whatsoever, including relief
6 under federal law or the laws of any state, regarding or related to the repair or
7 replacement of seat heaters in the Subject Vehicles, including without limitation
8 all claims, damages, punitive or exemplary damages, fees, costs, expenses or
9 liability on any legal or equitable ground whatsoever, and regardless of whether
10 such claims might have been or might be brought directly or indirectly, or through
11 subrogation or assignment or otherwise, on account of or related to claims that the
12 seat heaters in the Subject Vehicles are inadequate or of poor or insufficient
13 quality or defective, due to wear or otherwise, which were alleged or could have
14 been alleged as to the Subject Vehicles in the Litigation or in similar actions, but
15 not including claims for personal injury or wrongful death as described in Section
16 6.3 below (the "Released Claims").

17 6.2. The releases provided for herein are as a result of membership as a
18 Participating Class Member or status as a Person with a legal right to assert claims
19 of a Participating Class Member, the Court's approval process herein, and
20 occurrence of the Effective Date, and are not conditional on receipt of payment by
21 any particular Participating Class Member. Persons who, after the date of the
22 Preliminary Approval Order, acquire legal rights to assert claims within the scope
23 of this Agreement that belong initially to a Participating Class Member shall take
24 such rights subject to all of the terms, time periods, releases, caps, prohibitions
25 against overlapping or double recoveries, and other provisions contained herein.

26 6.3. The release provided by this Agreement shall be and is broad and
27 expansive and shall include the release of all damages, burdens, obligations of
28 liability of any sort, including, without limitation, penalties, punitive damages,

1 exemplary damages, statutory damages, damages based upon a multiplication of
2 compensatory damages, court costs, or attorneys' fees or expenses, which might
3 otherwise have been made in connection with any Released Claims. However,
4 excluded from this release are any claims for personal injury or wrongful death
5 only.

6 6.4. The release includes all claims that the Releasing Parties have or may
7 hereafter discover including, without limitation, claims, injuries, damages, or facts
8 in addition to or different from those now known or believed to be true with
9 respect to any matter disposed of by this settlement. The Releasing Parties have
10 fully, finally, and forever settled and released any and all such claims, injuries,
11 damages, or facts, whether known or unknown, suspected or unsuspected,
12 contingent or non-contingent, past or future, whether or not concealed or hidden,
13 which exist, could exist in the future, or heretofore have existed upon any theory
14 of law or equity now existing or coming into existence in the future related to
15 matters arising from or in any way related to, connected with, or resulting from
16 the original-equipment seat heaters in the Subject Vehicles, including, but not
17 limited to, conduct which is negligent, reckless, willful, intentional, with or
18 without malice, or a breach of any duty, law, or rule, without regard to the
19 subsequent discovery or existence of such different or additional facts.

20 6.5. The Releasing Parties shall be deemed by operation of the Final Order
21 and Judgment in the Litigation to have acknowledged that the foregoing waiver
22 was separately bargained for and a key element of this Settlement of which the
23 releases herein are a part. The Releasing Parties expressly and intentionally waive
24 any and all rights and benefits which they now have or in the future may have
25 under the terms of the law (whether statutory, common law, regulation, or
26 otherwise) of any other state or territory of the United States within the scope of
27 the Released Claims.
28

1 6.6. Class Counsel shall cooperate with Released Parties to ensure that the
2 releases set forth in the Final Approval Order are given their full force and effect
3 (including by seeking the inclusion of the releases in the Final Order and
4 Judgment and the Claims Forms) and to ensure that Releasing Parties comply
5 with their obligations set forth in this Agreement.

6 6.7. In the event that any Releasing Party seeks to invoke California Civil
7 Code § 1542, which provides that:

8 A GENERAL RELEASE DOES NOT EXTEND TO
9 CLAIMS WHICH THE CREDITOR DOES NOT
10 KNOW OR SUSPECT TO EXIST IN HIS OR HER
11 FAVOR AT THE TIME OF EXECUTING THE
12 RELEASE, WHICH IF KNOWN BY HIM OR HER
13 MUST HAVE MATERIALLY AFFECTED HIS OR
14 HER SETTLEMENT WITH THE DEBTOR

15 (or any other like provision or principle of law of any jurisdiction) in
16 connection with claims related to the Symptoms Alleged in original-equipment
17 seat heaters in the Subject Vehicles, the Releasing Parties and each of them
18 expressly waive the provision of California Civil Code § 1542 (or any other like
19 provision or principle of law of any jurisdiction) to the full extent that these
20 provisions may be applicable to this release. Each of the Releasing Parties hereby
21 does, and shall be deemed to, have considered the possibility that the number or
22 magnitude of all claims may not currently be known; nevertheless, each of the
23 Releasing Parties assumes the risk that claims and facts additional, different, or
24 contrary to the claims and facts that each believes or understands to exist may
25 now exist or may be discovered after the settlement becomes effective. Each of
26 the Releasing Parties agrees that any such additional, different, or contrary claims
27 and facts shall in no way limit, waive, or reduce the foregoing release, which shall
28 remain in full force and effect. Nothing in this paragraph shall be construed as
modifying or limiting the other provisions of the settlement concerning the
potential availability of claims.

1 6.8. No Releasing Party shall recover, directly or indirectly, any sums for
2 claims released by operation of this Agreement, including, without limitation, to
3 the claims settled and released herein, from the Released Parties, other than
4 consideration and sums received under this Agreement and that the Released
5 Parties shall have no obligation to make any payments to any non-parties for
6 liability arising out of claims released by operation of this Agreement, other than
7 as set forth in this Settlement.

8 **7. APPROVAL OF THE SETTLEMENT; JUDGMENT AS TO MBUSA**

9 7.1. Plaintiff will file, and MBUSA will not oppose, a motion for an order
10 conditionally certifying the Settlement Class, giving preliminary approval of this
11 Settlement, approving the notice to be provided the Settlement Class and the
12 procedures for providing such notice, setting a hearing for final approval and a
13 briefing schedule for a motion for an award of Attorneys' Fees, Costs and All
14 Other Expenses, and otherwise staying this Litigation.

15 7.2. Should the Court decline to conditionally certify the Settlement Class
16 or to approve any material aspect of the Settlement (including but not limited to
17 the scope of release to be granted by Participating Class Members or the binding
18 effect of the Settlement on Participating Class Members), and the Parties, despite
19 their best efforts, are unable to agree upon revisions to the Agreement that
20 alleviate the Court's concerns, or the Agreement is otherwise terminated or fails
21 to become effective in accordance with the terms of this Agreement, the Settling
22 Parties will be restored to their respective positions in the Litigation as of October
23 3, 2016. In such event, the terms and provisions of this Agreement will have no
24 further force and effect and shall not be used in this Litigation or in any other
25 proceeding for any purpose, and any Judgment or order entered by the Court in
26 accordance with the terms of this Agreement will be treated as vacated, *nunc pro*
27 *tunc*.

28

1 7.3. No order of the Court or modification or reversal on appeal of any
2 order of the Court concerning any award of attorneys' fees, expenses, or costs to
3 Class Counsel will constitute grounds for cancellation or termination of this
4 Agreement, unless the order potentially increases in any way MBUSA's financial
5 responsibility in connection with the settlement.

6 **8. NOTICE TO THE SETTLEMENT CLASS AND OPPORTUNITY TO**
7 **OPT OUT OR OBJECT**

8 8.1. **Appointment of Settlement Administrator.** The Parties will ask the
9 Court to appoint a qualified administrator, to serve as the Settlement
10 Administrator, subject to the Court's approval. As a condition of appointment, the
11 Settlement Administrator will agree to be bound by this Agreement with respect
12 to the performance of its duties and its compensation. The Settlement
13 Administrator's duties will include preparing, printing, and mailing the Class
14 Notice to all Settlement Class Members; conducting a national change of address
15 search on all Settlement Class Members before the initial mailing; conducting
16 skip tracing on any notice returned by the U.S. Postal Service as non-deliverable,
17 as needed, and re-mailing the notice to any new address located; providing the
18 Parties with periodic status reports about the delivery of the notices and receipt of
19 objections to and requests to opt out; creating, maintaining, and monitoring a
20 settlement website; and otherwise administering the Settlement pursuant to this
21 Agreement. MBUSA will be responsible for paying all costs of administration.

22 8.2. **Notice to Settlement Class Members.** All Settlement Class Members
23 will be sent a notice in the form evidenced by Exhibit A (other than formatting
24 changes to facilitate printing by the Settlement Administrator). The address block
25 in the Class Notice shall also include the VIN of the vehicle(s) owned or leased by
26 the Settlement Class Member. The Settlement Administrator shall also provide a
27 copy of the Notice and/or Claim Form to any Settlement Class Member who
28 requests the Notice and/or Claim Form.

1 8.3. **Information to Settlement Administrator.** As soon as possible, and
2 in no event later than five (5) court days after Plaintiff has filed the motion for
3 preliminary approval of this Settlement, MBUSA shall provide a list of applicable
4 Vehicle Identification Numbers (“VINs”) to the Settlement Administrator, who
5 will obtain contact information of owners associated with each VIN from IHS
6 Markit Ltd. (R. L. Polk) or a similar provider, which contact information will be
7 processed by the Settlement Administrator through the National Change of
8 Address database (where a specific owner is known), the Coding Accuracy
9 Support System, and the Delivery Point Validation system for the purpose of
10 verifying and updating the addresses.

11 8.4. **Mailing of the Notices.** The Settlement Administrator shall mail the
12 notice approved by the Court to all Settlement Class Members who have
13 addresses identified through the sources specified in the Notice Plan within sixty
14 (60) days of the entry of the Court’s order preliminarily approving this settlement.
15 The Settlement Administrator shall mail the notices via first class mail.

16 8.5. **Settlement Website.** As part of its duties, the Settlement
17 Administrator shall reserve, create, maintain, and monitor a website on which the
18 Class Notice and this Agreement shall be posted. The website shall also include a
19 link to download a copy of the Claim Form. Claims shall be submitted only by
20 mail and shall not be accepted through the website. The website will be made
21 available on the date the Notice is mailed to Settlement Class Members as set
22 forth in Section 8.4. The website shall be active until all valid claims submitted
23 under the Claim Validation Process set forth in Section 9 have been paid.

24 8.6. **Weekly Report.** As part of its duties, the Settlement Administrator
25 shall provide Class Counsel and Defense Counsel with a weekly status report that
26 tracks the notices that have been mailed and requests to opt out that the Settlement
27 Administrator receives.
28

1 8.7. **Returned Notices.** Unless the Settlement Administrator receives a
2 Notice returned from the United States Postal Service for reasons discussed below
3 in this paragraph, the Notice shall be deemed mailed and received by the
4 Settlement Class Member to whom it was sent three (3) days after mailing. In the
5 event that subsequent to the first mailing of the Notice, the Notice is returned to
6 the Settlement Administrator by the United States Postal Service within twenty-
7 eight (28) days of the original mailing of the Notice, with a forwarding address for
8 the recipient, the Settlement Administrator shall re-mail the Notice to that address,
9 and the forwarding address shall be deemed the updated address for that
10 Settlement Class Member. In the event that subsequent to the first mailing of the
11 Notice, the Notice is returned to the Settlement Administrator by the United States
12 Postal Service within twenty-eight (28) days of the original mailing of the Notice
13 because the address of the recipient is no longer valid, and the name of the
14 Settlement Class member is known, the Settlement Administrator shall perform a
15 standard skip trace in an effort to attempt to ascertain the current address of the
16 Settlement Class Member in question and, if such an address is ascertained, the
17 Settlement Administrator will promptly re-send the Notice. If no updated address
18 is obtained for that Settlement Class Member, the Notice shall be sent again to the
19 last known address.

20 8.8. **Final Report.** Not later than ten (10) court days after the deadline for
21 submission of requests to opt out, the Settlement Administrator shall provide the
22 Parties a declaration of due diligence setting forth its compliance with its
23 obligations under this Agreement to be filed in conjunction with a motion for final
24 approval. The declaration shall identify those individuals who have submitted a
25 valid and timely request to opt out. Prior to the hearing on the motion for final
26 approval, the Settlement Administrator will supplement its declaration of due
27 diligence if any material changes occur from the date of the filing of its prior
28 declaration.

1 8.9. **Request to Opt Out.** Settlement Class Members may exclude
2 themselves from the Settlement by notifying the Settlement Administrator of their
3 intent to not participate in the settlement not later than sixty (60) days after the
4 Administrator mails the Class Notices. Such notice must be made in writing and
5 contain (1) the Settlement Class Member's name, (2) his or her current address
6 and telephone number, (3) Vehicle Identification Number associated with the
7 vehicle giving rise to standing to "opt out" and the dates of ownership for said
8 vehicle; (4) a dated signature; and (5) a written statement that the Settlement Class
9 Member has reviewed the Class Notice and wishes to be excluded from the
10 Settlement. If a question is raised about the authenticity of a request to opt out, the
11 Settlement Administrator will have the right to demand additional proof of the
12 individual's identity and intent. Anyone who has submitted a valid request to opt
13 out will not participate in or be bound by the Settlement or the Final Order and
14 Judgment. A Settlement Class Member who does not complete and mail a valid
15 request to opt out in the manner and by the deadline specified above will
16 automatically become a Participating Class Member and be bound by all terms
17 and conditions of the Settlement and the Final Order and Judgment entered by the
18 Court, including the release of claims set forth in Section 6.

19 8.10. **Objections to the Settlement.** Any Participating Class Member who
20 intends to object to the Settlement must do so by filing the objection with the
21 Court not later than sixty (60) days after the Settlement Administrator mails the
22 Class Notices. The objection must be in writing and include (1) the Participating
23 Class Member's full name, current address, and telephone number; (2) the
24 Vehicle Identification Number associated with the vehicle giving rise to standing
25 to make an Objection, and the dates of ownership of said vehicle; (3) a statement
26 that the objector has reviewed the Settlement Class definition and understands that
27 he/she is a Settlement Class Member, and has not opted out of the Settlement
28 Class; (4) a complete statement of all legal and factual bases for any Objection

1 that the objector wishes to assert; (5) a statement of whether the Participating
2 Class Member intends to appear at the final approval hearing, (6) copies of any
3 documents or witnesses that support the objection, and (7) a dated signature.
4 Copies of any such Objection documents (1) through (7) above must also be
5 mailed to Class Counsel and Defense Counsel no later than the 60-day period
6 from the date of Notice mailing. Only those Settlement Class Members who do
7 not submit a request to opt out may object to the Settlement. A Settlement Class
8 Member who does not submit a written objection in the manner and by the
9 deadline specified in this Section will be deemed to have waived any objections
10 and will be foreclosed from making any objections (whether by appeal or
11 otherwise) to the Settlement. A Settlement Class Member who does not timely
12 submit a notice of intent to appear at the final approval hearing in accordance with
13 all of the requirements of this Section shall not be allowed to appear at the
14 hearing.

15 **9. CLAIMS ADMINISTRATION AND CLAIMS PROCEDURE**

16 9.1. Only Participating Class Members shall be eligible to make a claim.

17 9.2. As a condition of its retention, the Settlement Administrator must
18 agree that (a) it will fulfill all responsibilities and duties assigned to the Settlement
19 Administrator under the terms of this Agreement, and (b) the Settling Parties and
20 their Counsel, as well as the Released Parties, reserve all claims and rights for any
21 failure by the Settlement Administrator to fulfill its responsibilities and duties. In
22 no event shall the Settling Parties or their Counsel have any liability for claims of
23 wrongful or negligent conduct on the part of the Settlement Administrator, the
24 Third-Party Neutral, or their agents.

25 9.3. The Settlement Administrator shall:

26 9.3.1. Use personal information acquired as a result of this Agreement
27 solely for purposes of evaluating and paying claims under this Agreement;
28 and

1 9.3.2. Assign a manager to oversee the protection and appropriate
2 management of personal information and review its internal system to
3 manage the protection of personal information to ensure consistent
4 performance and constant improvement; and

5 9.3.3. Take security countermeasures to prevent unauthorized access to
6 personal information, and loss, destruction, falsification and leakage of
7 personal information; and

8 9.3.4. If outsourcing the handling of personal information, determine
9 that outsourced companies take steps to ensure appropriate management of
10 the information to prevent leaks of personal or confidential information, and
11 prohibit re-use of information for other purposes; and

12 9.3.5. Respond immediately with appropriate measures then necessary
13 to disclose, correct, stop using, or eliminate contents of information; and

14 9.3.6. Following the completion of the Claims Period and in
15 compliance with applicable retention law, destroy all personal information
16 obtained in connection with this settlement in a manner most likely to
17 guarantee that such information not be obtained by unauthorized persons.

18 9.4. Any Participating Class Member who wishes to make a claim must
19 completely fill out and sign a Claim Form providing all requested information.
20 Claims must be made under penalty of perjury, comply with the procedures and
21 terms set forth in this Settlement, and be mailed to the Settlement Administrator
22 within the Claims Period(s) specified in Section 4.1 and/or Section 9.5 of this
23 Agreement.

24 9.5. Any claim for reimbursement for a qualifying past repair accruing
25 prior to the date Notice is mailed must be made within sixty (60) days of the date
26 Notice is mailed. Any claim for reimbursement accruing after the date Notice is
27 mailed, but before the Effective Date, must be submitted within forty-five (45)
28 days of the date accrued. No claims for reimbursement can be made if the claim

1 accrues on or after the Effective Date; rather, Participating Class Members must
2 have applicable repairs made pursuant to Section 4.3 of this Agreement in such
3 circumstances.

4 9.6. Upon receipt, the Settlement Administrator shall perform
5 administrative checks to ensure that Claim Forms contain all required
6 information. The Settlement Administrator will notify Participating Class
7 Members who submit deficient claims by first-class mail. The Participating Class
8 Member receiving such notice will be allowed thirty (30) days from the
9 postmarked date on the notice even if it exceeds the Claims Period to submit
10 materials to cure the deficiencies. Once a claim is complete, the Settlement
11 Administrator shall forward the claim to the individual designated by MBUSA,
12 for a decision on the claim.

13 9.7. Class Members who submitted a timely, valid, and fully completed
14 Seat Heater Bypass Claim Form will be sent a further notice, via the email address
15 provided in the Form, stating that the settlement has become final, the date on
16 which it became final (i.e., the Effective Date), and that the Class Member has 60
17 days from the Effective Date to make an appointment with an authorized
18 Mercedes-Benz Service Center to have the bypass procedure performed on the
19 Subject Vehicle. The Settlement Administrator shall send the further notice
20 described in this paragraph as soon as practicable but in no event more than five
21 (5) days after the Effective Date date. Provision of a valid email address by each
22 Class Member electing the Seat Heater Bypass Procedure is necessary in order to
23 facilitate the further notice described in this paragraph, as MBUSA does not
24 maintain customer email addresses in the ordinary course of business and cannot
25 provide customer email addresses to the Settlement Administrator for this or any
26 other purpose. Any email addresses provided in the Seat Heater Bypass Claim
27 Forms will be used only for the purpose of allowing the Settlement Administrator
28 to provide the notice described in this paragraph.

1 9.8. The Settlement Administrator shall administer all claims, and in doing
2 so shall provide MBUSA and Class Counsel with a copy of all claims. MBUSA
3 (or its designee) shall have the right to review and evaluate all claims, and shall
4 do so on a uniform and non-arbitrary basis. For claims timely submitted within
5 the Claims Period *before* the Effective Date, MBUSA shall perform any review
6 and evaluation of the claim within ninety (90) days of the Effective Date;
7 otherwise, such review and evaluation shall be made within ninety (90) days of
8 receipt.

9 9.9. In the event MBUSA (or its designee) reviews and evaluates a claim
10 and determines the Claimant is ineligible for inclusion in the Claims Process,
11 MBUSA (or its designee) shall inform the Settlement Administrator, who will
12 inform the Claimant via first-class mail and will also inform Class Counsel by
13 email. The Claimant shall have thirty (30) days to dispute MBUSA's (or its
14 designee's) evaluation that Claimant is ineligible, measured from the date the
15 notice of the dispute to Claimant was postmarked. If the Claimant does not timely
16 dispute MBUSA's (or its designee's) determination that the Claimant is ineligible,
17 the Settlement Administrator shall deny the claim. If the Claimant timely disputes
18 MBUSA's (or its designee's) evaluation, the dispute will be adjudicated by the
19 Third-Party Neutral who shall independently determine the validity of the claim.
20 The Claimant and MBUSA will have a reasonable opportunity to present two-
21 page statements to the Third-Party Neutral setting forth their positions about
22 whether the claim should be deemed eligible or ineligible for inclusion in the
23 Claims Process, but there shall be no formal hearing or trial. Claimant must
24 submit its position statement with its notice that it is disputing MBUSA's
25 determination. The Settlement Administrator shall provide that statement to
26 MBUSA, which shall have thirty (30) days submit its responsive position
27 statement. The decisions of the Third-Party Neutral pursuant to this Agreement
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1 shall be final and binding on the Claimant and all the Settling Parties. MBUSA
2 shall be responsible for the fees of the Third-Party Neutral

3 9.10. MBUSA shall pay valid claims for reimbursement for a past
4 repair in the form of a check valid for 180 days from the date of issue, sent via
5 first-class United States mail to the address shown on the Participating Class
6 Member's Reimbursement Claim, which check shall be mailed to each such
7 Participating Class Member with an approved claim within thirty (30) days of the
8 final decision regarding the claim. If the check issued to a Participating Class
9 Member under the terms of this Agreement is not cashed within the 180 day
10 period, there shall be no further obligation to make payment to such Participating
11 Class Member.

12 **10. DISPUTE RESOLUTION**

13 10.1. **Court's Continuing Jurisdiction.** The Court shall retain
14 jurisdiction with respect to the interpretation, implementation, and enforcement of
15 the terms of this Agreement and all orders and judgments entered in connection
16 therewith, and Plaintiff, MBUSA and their respective counsel submit to the
17 jurisdiction of the Court for purposes of interpreting, implementing and enforcing
18 the Settlement Agreement and all orders and judgments entered in connection
19 therewith, except that the Court shall not have jurisdiction to increase MBUSA's
20 payment obligations hereunder.

21 10.2. **Dispute Resolution Procedure.** Except as otherwise set forth
22 herein, all disputes concerning the interpretation, calculation, or payment of
23 settlement claims, or other disputes regarding compliance with this Settlement
24 Agreement, shall be resolved as follows:

25 10.2.1. If Plaintiff or Class Counsel, on the one hand, or
26 MBUSA, on the other hand, at any time believes the other party has
27 materially breached the Settlement Agreement, that party shall notify the
28 other party in writing of the alleged violation.

1 10.2.2. Upon receiving notice of the alleged violation or dispute,
2 the responding party shall have ten (10) days to correct the alleged violation
3 and/or respond in writing to the initiating party with the reasons why the
4 party disputes all or part of the allegation.

5 10.2.3. If the response does not address the alleged violation to
6 the initiating party's satisfaction, Plaintiff, Class Counsel and MBUSA shall
7 negotiate in good faith for up to ten (10) days to resolve their differences.

8 10.2.4. If Plaintiff, Class Counsel, and MBUSA are unable to
9 resolve their differences after twenty (20) days, either party may file an
10 appropriate motion to enforce the Settlement Agreement with the Court.

11 10.3. **Attorneys' Fees in Resolving Dispute.** Reasonable attorneys'
12 fees and costs for work done in resolving a dispute under this Section may be
13 recovered by the prevailing party.

14 **11. TAXES**

15 11.1. Neither Class Counsel nor Defense Counsel intends anything
16 contained herein to constitute legal advice regarding the taxability of any amount
17 paid hereunder, nor shall it be relied upon as such. The tax issues for each
18 Participating Class Member may be unique, and each Participating Class Member
19 is advised to obtain tax advice from his or her own tax advisor with respect to any
20 payments resulting from this Agreement. Each Participating Class Member will
21 be responsible for paying all applicable state, local, and federal income taxes on
22 all amounts the Participating Class Member receives pursuant to this Settlement
23 Agreement.

24 11.2. No person shall have any claim against the Settling Parties, their
25 respective counsel, or the Settlement Administrator based on the mailings,
26 distributions, and payments made in accordance with or pursuant to this
27 Settlement Agreement.
28

1 **12. MISCELLANEOUS TERMS**

2 12.1. **CAFA Notice.** Within ten (10) days after this Agreement is filed
3 in Court, the Settlement Administrator will cause a notice of the proposed
4 settlement consisting of the materials required by the Class Action Fairness Act
5 (28 U.S.C. § 1715) (“CAFA”) to be served upon the appropriate state official in
6 each state of the United States as well as the appropriate federal officials. Within
7 fifteen (15) days after the deadline to mail the Notice to Settlement Class
8 Members in Section 8.4, the Settlement Administrator shall provide declarations
9 to the Court, with a copy to Class Counsel and Defense Counsel, attesting to the
10 measures undertaken to provide notice as directed by CAFA.

11 12.2. **Integrated Agreement.** After this Agreement is signed and
12 delivered by Plaintiff, MBUSA and their respective counsel, this Agreement and
13 its exhibits will constitute the entire agreement between Plaintiff and MBUSA
14 relating to the Settlement, and it will then be deemed that no oral representations,
15 warranties, covenants, or inducements have been made Plaintiff and/or MBUSA
16 concerning this Agreement or its exhibits other than the representations,
17 warranties, covenants, and inducements expressly stated in this Agreement and its
18 exhibits.

19 12.3. **Attorney Authorization.** Class Counsel and Defense Counsel
20 warrant and represent that they are authorized by Plaintiff and MBUSA,
21 respectively, to take all appropriate action required or permitted to be taken
22 pursuant to this Agreement to effectuate its terms, and to execute any other
23 documents required to effectuate the terms of this Agreement. Plaintiff, MBUSA
24 and their respective counsel will cooperate with each other and use their best
25 efforts to effect the implementation of the Settlement. In the event Plaintiff and
26 MBUSA are unable to reach agreement on the form or content of any document
27 needed to implement the Agreement, or on any supplemental provisions that may
28 become necessary to effectuate the terms of this Agreement, Plaintiff and

1 MBUSA will seek the assistance of the Court, and in all cases all such documents,
2 supplemental provisions and assistance of the court will be consistent with this
3 Agreement.

4 12.4. **Modification of Agreement.** This Agreement, and any and all
5 parts of it, may be amended, modified, changed, or waived in writing by
6 Plaintiff's or MBUSA's counsel with each party's consent.

7 12.5. **Agreement Binding on Successors.** This Agreement will be
8 binding upon, and inure to the benefit of, the successors of each of Plaintiff,
9 MBUSA, and the Settlement Administrator.

10 12.6. **Applicable Law.** All terms and conditions of this Agreement
11 and its exhibits will be governed by and interpreted according to the laws of the
12 State of California, without giving effect to any conflict of law principles or
13 choice of law principles.

14 12.7. **Cooperation in Drafting.** Plaintiff and MBUSA have
15 cooperated in the drafting and preparation of this Agreement. This Agreement
16 will not be construed against any party on the basis that the party was the drafter
17 or participated in the drafting.

18 12.8. **Fair Settlement.** Plaintiff, MBUSA, and their respective
19 counsel believe and warrant that this Agreement reflects a fair, reasonable, and
20 adequate settlement of the claims against MBUSA and have arrived at this
21 Agreement through arms-length negotiations, taking into account all relevant
22 factors, current and potential.

23 12.9. **Stay of Proceedings.** The Settling Parties hereby agree and
24 stipulate to stay all proceedings in this Litigation until the approval of this
25 Agreement has been finally determined, *except* the stay of proceedings shall not
26 prevent the filing of any motions, declarations, and other matters necessary to the
27 approval of this Agreement. A standstill of litigation will be efficient, promotes
28

1 the public policy favoring settlement and aids resolution of claims on a
2 nationwide basis, which is in the public interest.

3 12.10. Except as expressly provided herein, nothing in this Agreement
4 will be construed as diminishing, lessening, or otherwise affecting any warranty,
5 duty, or contractual obligation of MBUSA in connection with the Subject
6 Vehicles, including but not limited to seat heaters. Moreover, MBUSA or any
7 Authorized Service Center may continue to effect or implement any goodwill
8 policy, program, or procedure during the pendency of the settlement approval
9 proceedings.

10 12.11. **Headings.** The descriptive heading of any section or paragraph
11 of this Agreement is inserted for convenience of reference only and does not
12 constitute a part of this Agreement.

13 12.12. **Notice.** All notices, demands or other communications given under
14 this Agreement will be in writing and deemed to have been duly given as of the
15 third business day after mailing by United States mail, addressed as follows:

16 To Plaintiff and the Class:

17 YUHL CARR LLP
18 Eric F. Yuhl
4676 Admiralty Way, Suite 550
19 Marina Del Rey, California 90292
20 Tel: (310) 827-2800
Fax: (310) 827-4200

21 FRANK SIMS & STOLPER LLP
22 Jason M. Frank
3200 Park Center Drive
23 Costa Mesa, California
24 Tel: (949) 201-2400
Fax: (949) 201-2405

25 MCNICHOLAS & MCNICHOLAS LLP
26 John Patrick McNicholas
10866 Wilshire Blvd, Suite 1400
27 Los Angeles California 90024
28 Tel: (310) 474-1582
Fax: (310) 475-7871

To MBUSA:

SQUIRE PATTON BOGGS (US)
LLP
Troy M. Yoshino
275 Battery Street, Suite 2600
San Francisco, CA 94111
Tel: (415) 954-0200
Fax: (415) 393-9887

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12.13. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts and may be delivered by facsimile or electronic scan, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and Agreement, provided that counsel for Plaintiff and MBUSA will exchange between themselves original signed counterparts. Plaintiff and MBUSA further agree to accept a digital image, printout, facsimile or photocopy of this Agreement, as executed, as a true and correct original and admissible as best evidence for the purposes of state law, California Evidence Code 1520, Federal Rule of Evidence 1002, and like statutes and regulations.

13. EXECUTION BY PARTIES AND COUNSEL

Plaintiff, MBUSA, and their counsel hereby execute this Agreement.

Dated: July 25, 2017

By: William S. Callaway
WILLIAM S. CALLAWAY

Dated: July 25, 2017

YUHL CARR LLP
By: [Signature]
Eric F. Yuhl
Attorneys for Plaintiff

Dated: July 25, 2017

FRANK SIMS & STOLPER LLP
By: [Signature]
Jason M. Frank
Attorneys for Plaintiff

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Dated: July __, 2017

MCNICHOLAS & MCNICHOLAS LLP

By: 
John Patrick McNicholas
Attorneys for Plaintiff

Dated: July 24, 2017

MERCEDES-BENZ USA, LLC

By: 
Matthew J. Everitt
General Counsel, Mercedes-Benz USA, LLC

Dated: July 26, 2017

SQUIRE PATTON BOGGS (US) LLP

By: 
Troy M. Yoshino
Attorneys for Defendant MBUSA