

GARDY & NOTIS, LLP

Mark C. Gardy
James S. Notis
Kelly A. Noto
Charles A. Germershausen
560 Sylvan Avenue
Englewood Cliffs, New Jersey 07632
Tel: 201-567-7377
Fax: 201-567-7337

Counsel for Plaintiffs

[Additional counsel listed on signature page]

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

VINCENT LUPPINO, CLIFF STERN
and JOHN CASIERO, individually and on
behalf of all others similarly situated,

Plaintiffs,

-against-

MERCEDES-BENZ USA, LLC,

Defendant.

No: 09-cv-5582-DMC-MF

**SECOND AMENDED
CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

Plaintiffs Vincent Luppino, Cliff Stern, and John Casiero (“Plaintiffs”), by and through their attorneys, bring this second amended class action complaint on their own behalf and on behalf of all others similarly situated, to obtain damages, costs of suit, and attorneys’ fees from defendant Mercedes-Benz USA, LLC (“Mercedes-Benz”). Plaintiffs complain and allege upon knowledge as to themselves and their own acts, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This is a nationwide class action against Mercedes-Benz on behalf of all persons and entities in the United States who purchased or leased a Mercedes-Benz vehicle in any state (or, in the alternative, any person or entity who purchased or leased a Mercedes-Benz vehicle in the State of New Jersey) with 17-inch, 18-inch or 19-inch AMG or non-AMG wheels (the “Rims”) from 2006 to present (the “Class”).

2. Mercedes-Benz designed, manufactured, distributed, advertised, marketed, promoted, warranted and sold the Rims, and/or vehicles equipped with the Rims (the “Vehicles”), to consumers throughout the United States. Mercedes-Benz did so without disclosing that the Rims were defective, as they would fail (that is, bend, deform, dent, warp or fracture) under normal driving conditions.

3. Mercedes-Benz publicly disseminated information that portrayed the Rims as if they were of a design and utility typically found in the automotive industry.

4. Mercedes-Benz knowingly misrepresented in print advertisements, throughout the internet, and in various video and television commercials that the Rims would withstand, and operate effectively under, normal driving conditions. As demonstrated below, Mercedes-Benz’s advertisements and representations specifically emphasized the strength of the Rims and did not hint or disclose any issue relating to their durability.

5. Specifically, Mercedes Benz represented that the Rims are crafted of an alloy designed to meet exceedingly high requirements for strength and durability. Further, Mercedes Benz’s promotional literature and advertisements suggest that the

Vehicles, and the Rims, are capable of operating in various difficult on and off-road terrains, including mountain and dessert topographies.

6. Plaintiffs Luppino, Stern and Casiero, along with all members of the Class, were routinely exposed to Mercedes-Benz representations, including, but not limited to, Mercedes-Benz promotional literature and advertisements, all of which Mercedes-Benz routinely and intentionally communicated to the public through various media and upon which Plaintiffs were intended to, and did, rely.

7. In addition, the Vehicles were sold pursuant to a warranty in which Mercedes-Benz warranted and represented that Mercedes-Benz would make any repairs or replacements necessary to correct defects in material or workmanship in the Vehicles for four years or 50,000 miles (the "Warranty").

8. The Rims are not excluded from protection under the terms of the Warranty.

9. Mercedes-Benz has, as a matter of practice and policy failed to honor the terms of the Warranty as it applies to the Rims, forcing consumers to pay out-of-pocket to repair or replace defective Rims that have failed under normal driving conditions.

10. In addition, many of the affirmative representations Mercedes-Benz made about the Warranty were deceptive. Mercedes-Benz portrayed the Warranty as if it covered all parts equally, including the Rims, when in fact the Rims were defective and Mercedes-Benz intended to exclude the Rims from Warranty coverage.

11. Rather than honoring the terms of the Warranty and take responsibility for the defective Rims, Mercedes-Benz has engaged in a deliberate pattern of concealment,

wherein it has refused complete Warranty coverage to most, if not all, owners and lessees of the Vehicles.

12. Mercedes-Benz has blamed problems associated with the Rims on driver error or poor driving conditions in order to further conceal the defect. In some cases, where a customer has complained loudly enough, Mercedes-Benz has offered to cover some or all of the cost of replacing the Rims, but it is only on the condition that Mercedes-Benz is allowed to maintain possession of the defective Rims.

13. As a result of its affirmative misrepresentations, concealment of material information, deceptive conduct, and refusal to honor the Warranty, Mercedes-Benz has damaged Plaintiffs and the Class, and has unjustly profited from its wrongdoing. Mercedes-Benz has wrongfully refused to notify customers that the Rims it installs on its Vehicles, and the Rims it places on Vehicles in connection with repairing or replacing Rims that failed, are defective, and has failed to notify its customers that, as a matter of policy and practice, Mercedes-Benz will not repair or replace defective Rims free of charge under the Warranty.

14. Mercedes-Benz's conduct constitutes a violation of the Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section 2301, *et seq.*, and the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d). The aggregated claims of the individual Class members exceed the sum or value of \$5,000,000, exclusive of interests and costs, and this

is a class action in which more than two-thirds of the proposed plaintiff Class, on the one hand, and Defendant Mercedes-Benz, on the other, are citizens of different states.

16. This Court has jurisdiction over Mercedes-Benz because it maintains its principal headquarters in New Jersey; is registered to conduct business in New Jersey; has sufficient minimum contacts in New Jersey; or otherwise intentionally avails itself of the markets within New Jersey through the promotion, sale, marketing, and distribution of its vehicles to render the exercise of jurisdiction by this Court proper and necessary. Moreover, Mercedes-Benz's wrongful conduct (as described herein) emanates from New Jersey and foreseeably affects consumers in New Jersey. Most, if not all, of the events complained of below occurred in or emanated from Mercedes-Benz's corporate headquarters located in Montvale, New Jersey.

17. Venue is proper in this District under 28 U.S.C. § 1391(a) because Mercedes-Benz resides in this District and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

THE PARTIES

18. Plaintiff Vincent Luppino ("Luppino") is a New Jersey resident. Luppino leased a new, 2007 Mercedes-Benz CLS 63 AMG with 19-inch AMG factory rims from an authorized Mercedes-Benz dealership in Bergen County, New Jersey. The Rims on Luppino's Vehicle failed numerous times while he was operating the Vehicle under normal, on-road driving conditions within the jurisdiction of this Court. Luppino notified both Mercedes-Benz and its authorized dealers of the damage on multiple occasions during the four year/50,000 mile Warranty period, and Mercedes-Benz refused to replace and/or repair the Rims pursuant to the Warranty. Like all members of the Class,

Mercedes-Benz never notified Luppino before he leased his Vehicle that the Rims were defective, would fail under normal driving conditions, and would not be covered by his Warranty. Like all members of the Class, Luppino did not learn that the Rims were defective until one or more of the Rims on his Vehicle failed.

19. Plaintiff Clifford Stern (“Stern”) is a New Jersey resident. Stern purchased a new, 2006 Mercedes-Benz SL 500 with 18-inch AMG factory Rims from an authorized Mercedes-Benz dealership in Bergen County, New Jersey. The Rims on Stern’s Vehicle failed while he was operating the Vehicle under normal, on-road driving conditions within the jurisdiction of this Court. The Rims on Stern’s Vehicle failed within the four year/50,000 mile Warranty period, but Mercedes-Benz refused to replace and/or repair the Rims pursuant to the Warranty. Like all members of the Class, Mercedes-Benz never notified Stern before he purchased his Vehicle that the Rims were defective, would fail under normal driving conditions, and would not be covered by his Mercedes-Benz Warranty. Like all members of the Class, Stern did not learn that the Rims were defective until one or more of the Rims on his Vehicle failed.

20. Plaintiff John Casiero (“Casiero”) is a New Jersey resident. Casiero purchased a used, 2006 Mercedes-Benz E500 4Matic Sedan with 17-inch 5-Spoke Light Alloy Rims from an authorized dealer’s auction in Somerset County, New Jersey. The Rims on Casiero’s Vehicle failed while he was operating the Vehicle under normal, on-road driving conditions within the jurisdiction of this Court and within the four year/50,000 mile Warranty period. Mercedes-Benz refused to replace and/or repair the Rims pursuant to the Warranty. The Rims on Casiero’s Vehicle also failed outside of the four-year/50,000 mile Warranty Period. Like all members of the Class, Mercedes-Benz

never notified Casiero before he purchased his Vehicle that the Rims were defective, would fail under normal driving conditions, and would not be covered by his Mercedes-Benz Warranty. Like all members of the Class, Casiero did not learn that the Rims were defective until one or more of the Rims on his Vehicle failed.

21. Mercedes-Benz is a Delaware corporation, authorized to do business in New Jersey, with its principal place of business located at One Mercedes Drive, Montvale, New Jersey. At all times relevant hereto, Mercedes-Benz was in the business of designing, manufacturing, distributing, advertising, marketing, promoting, and/or selling the Rims and Vehicles in interstate commerce and in New Jersey. Mercedes-Benz is also in the business of marketing, supplying, and selling written Warranties to the public at large through a system of authorized dealers and sales agents.

PLAINTIFFS' CLASS ALLEGATIONS

22. Plaintiffs seek to bring this case as a nationwide class action on behalf of themselves and all others similarly situated in the United States as members of the proposed Class, defined, in the alternative, as follows:

All persons and entities in the United States who purchased or leased a Mercedes-Benz vehicle with either 17-inch, 18-inch, or 19-inch AMG or non-AMG Rims installed thereon as original manufacturer's equipment, from 2006 to present;

or

All persons and entities in the United States who purchased or leased a Mercedes-Benz vehicle in the State of New Jersey with either 17-inch, 18-inch, or 19-inch AMG or non-AMG Rims installed thereon as original manufacturer's equipment, from 2006 to present.

23. Excluded from the Class are all claims for wrongful death, survivorship and/or personal injury by Class members. Also excluded from the Class is Mercedes-

Benz, any entity in which Mercedes-Benz has a controlling interest, and its legal representatives, heirs, and successors.

NUMEROSITY

24. The Class is so numerous that joinder of all of its members is impractical. Upon information and belief, Mercedes-Benz has sold thousands of Vehicles and/or Rims.

25. Although the precise number of Class members and their addresses are unknown to Plaintiffs, that information is readily ascertainable from Mercedes-Benz's records. Class members may be notified on the pendency of this action by mail, supplemented (if deemed necessary or appropriate by the Court) by published notice.

COMMON QUESTIONS OF LAW AND FACT

26. Common questions of law and fact exist as to all Class members. These questions predominate over questions affecting only individual Class members. These common legal and factual questions include but are not limited to the following:

- a. Whether Mercedes-Benz breached its express warranties;
- b. Whether the Rims were defectively designed;
- c. Whether the Rims were designed without the ability to maintain their shape under normal driving conditions and were, therefore, defective;
- d. Whether Mercedes-Benz engaged in a pattern and practice of deceit or deceptive conduct in connection with the offer and sale of the Rims or Vehicles, or in connection with its representations or disclosures regarding the Rims or Vehicles;

- e. Whether Mercedes-Benz concealed or failed to disclose material information concerning the Rims, its Vehicles, or its Warranty as it relates to the Rims;
- f. Whether Mercedes-Benz's publicly disseminated advertisements constitute affirmative misrepresentations that demonstrate that the Rims could withstand normal driving conditions;
- g. Whether Mercedes-Benz's publicly disseminated promotional materials and advertisements were accurate;
- h. Whether certain finishing processes, including but not limited to alodining, caused degradation or diminution of the strength and durability of the alloys from which the Rims are manufactured;
- i. Whether Mercedes-Benz failed to adequately test the Rims prior to their distribution;
- j. Whether Mercedes-Benz failed to adequately test the Rims following their subjection to certain finishing processes, including but not limited to alodining;
- k. Whether Mercedes-Benz failed to adequately test the Rims after they were combined with other components on the Vehicles;
- l. Whether the Rims are defective as a result of combining the Rims with other components on the Vehicles;
- m. Whether Mercedes-Benz failed to simulate real driving conditions when testing the Rims (both before and after the Rims were combined with other components on the Vehicles); and

- n. Whether Plaintiffs and the Class are entitled to damages and attorneys' fees.

TYPICALITY

27. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and each member of the proposed Class purchased or leased a Mercedes-Benz Vehicle with either 17-inch, 18-inch, or 19-inch AMG or non-AMG Rims installed thereon as original manufacturer's equipment. In connection with their respective Vehicle purchases or leases, Plaintiffs and each Class member were subject to the same disclosures and received the same written Warranty from Mercedes-Benz. Similarly, Plaintiffs and all Class members sustained damages. The financial losses of each Class member were directly caused by Mercedes-Benz's actions as alleged herein.

ADEQUACY OF REPRESENTATION

28. Plaintiffs can and will fairly and adequately represent and protect the interests of the Class and have no interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained attorneys competent and experienced in class actions.

SUPERIORITY

29. A class action is superior to any other available method for the fair and efficient adjudication of this controversy, since, as demonstrated above, common questions of law and fact overwhelmingly predominate over any individual questions that may arise.

30. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual

members of the Class which would establish incompatible standards of conduct for Mercedes-Benz, or adjudication with respect to individual members of the Class which would, as a practical matter, be dispositive of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

31. Mercedes-Benz has acted or refused to act on grounds generally applicable to all Class members, thereby making appropriate any final judgment with respect to the Class as a whole.

SUBSTANTIVE ALLEGATIONS

Mercedes-Benz's Representations

32. Mercedes-Benz designed and manufactured the Rims installed on the Vehicles as original manufacturer's equipment.

33. As demonstrated below, Mercedes-Benz spent millions of dollars to publicly disseminate print advertisements, television commercials, website graphics and videos extolling the virtues and strength of its Vehicles, and specifically the Rims. These advertisements explicitly and implicitly endorsed and represented that the Rims were of a quality and strength to operate under normal driving conditions, and even under off-road conditions.

34. Mercedes-Benz's promotional literature and advertisements are replete with still graphics, illustrations and video footage depicting Mercedes-Benz Vehicles equipped with the Rims operating not only under normal, on-road driving conditions, but traversing treacherous off-road terrain, including desert and mountain landscapes. Moreover, these depictions are not limited to sport utility vehicles, but include Mercedes-Benz cars as well.

35. Mercedes-Benz's promotional literature and advertisements include extensive representations about the quality, strength and durability of the Rims. For example, Mercedes-Benz's 2007 AMG Accessories brochure states that "light-alloy wheels have their origins in the motor racing world" and explains that the materials used in the Rims are "light, strong and totally reliable."

36. Mercedes-Benz's 2006 Accessory and Wheel catalog makes the following claim regarding all Mercedes Benz wheels, including the Rims:

In technical terms, every Genuine Mercedes-Benz and AMG wheel is state-of-the-art. Each is crafted of a proprietary aluminum alloy formula that meets our exceedingly high original equipment requirements for strength and durability with minimal weight. That's crucial, because wheels are a significant part of your vehicle's unsprung mass, where every pound saved contributes directly to more dynamic and comfortable performance. After all, it's the wheels of your vehicle that transfer power to the road; mile after mile, bend after bend.

Besides the material used to manufacture the wheel, and its weight, dimensions such as rim diameter, rim width, offset, backspacing and bolt circle are critical factors that must be considered when matching any custom wheel to your vehicle. We have developed each and every one of our wheels to preserve or to optimize the driving characteristics of a specific Mercedes-Benz model. Further, our wheels are subjected to load tests which exceed statutory requirements. Considering the importance and complexity of wheels, it's no wonder that Mercedes-Benz engineers devote so much attention and scrutiny to them.

A wheel only earns the name Genuine Mercedes-Benz when we are convinced that it will meet our high standards for safety, dependability and performance – not to mention aesthetics – and make your vehicle even more special. In short, Genuine means premium quality.

37. Mercedes-Benz publicly disseminated the above representations in its promotional literature and advertisements with the intention that Plaintiffs and the Class would be exposed to and would rely upon the representations and purchase or lease the Vehicles.

38. Plaintiffs and the Class did, in fact, rely on the representations made by Mercedes-Benz in its brochures, promotional literature and advertisements, as well as representations made by its authorized dealers, in purchasing the Vehicles.

The Defective Rims

39. Contrary to Mercedes-Benz's representations, the Rims bend, deform, dent, warp or fracture when subjected to ordinary, on-road driving conditions in the complete absence of driving-related trauma, or when traversing even extraordinarily slight road irregularities common in normal driving conditions on roadways maintained by federal, state and local governments.

40. The Rim failures result from the defective design and/or manufacture of the Rims alone, failure to properly test the Rims, and/or a defect resulting from combining the Rims with other components of the Vehicles.

41. The Rims are manufactured in various countries including, but not limited to, Belgium and Germany.

42. The Rims suffer from a manufacturing defect in that they lack sufficient hardness or uniformity of hardness to withstand the pressures associated with ordinary, on-road driving conditions.

43. Specifically, during manufacture, Rims cast from aluminum alloys undergo hardening processes and heat treatments designed to strengthen their material structure.

44. Some if not all of the Rims, including but not limited to those of Belgian origin, are not subjected to such hardening processes and, therefore, lack sufficient or uniform hardness.

45. Moreover, subsequent processes, including those related to surface ornamentation and resistance such as alodining, raise the temperature of the Rims to levels that materially alter and weaken their physical composition.

46. These defects, alone or when combined with other factors, addressed below, cause the Rims to fail under normal driving conditions and render the Rims, and therefore the Vehicles, unsafe and unfit for their intended use.

47. In addition to the foregoing defects, in or around 2006, Mercedes-Benz began installing larger Rims on its Vehicles as original manufacturer's equipment, which include Rims that are offered either as standard equipment or as part of a package upgrade customers can purchase at the time they buy or lease a Mercedes-Benz Vehicle.

48. The larger Rims are paired with "low-profile" tires, which require the Rims to absorb a greater amount of pressure and shock from driving than other tires.

49. The defect in the geometric structure of the Rims alone, or when combined with the "low-profile" tires with which Defendant pairs them on the Vehicles, renders them incapable of withstanding the shock and pressure associated with ordinary operation on federal, state and local roadways.

50. As a result of these design and/or manufacturing defects, the Rims routinely bend, deform, dent, warp or fracture under ordinary, on-road driving conditions.

51. Based on information it had, should have had, or of which it was aware or should have been aware, Mercedes-Benz knew the Rims were designed and/or manufactured so that they could not withstand normal driving conditions and, as a result, the Rims would fail under normal driving conditions and were accordingly defective.

52. Despite these defects, and resulting Rim failures, Mercedes-Benz has refused to repair or replace the Rims under its Warranty.

The Mercedes-Benz Warranty

53. At the time a customer purchases or leases a Mercedes-Benz Vehicle, the customer is provided with, among other things, two manuals indicating that the Vehicles are warranted by a four year/50,000 mile Warranty. The Warranty provides as follows:

Mercedes-Benz USA, LLC (MBUSA) warrants to the original and each subsequent owner of a new Mercedes-Benz passenger car that any authorized Mercedes-Benz Center will make any repairs or replacements necessary, to correct defects in material or workmanship arising during the warranty period.

54. The Warranty documentation specifically states that Mercedes-Benz's "intention is to repair under warranty, without charge to you, anything that goes wrong with your car during the warranty period which is our fault."

55. The Warranty does not disclaim defects in the material or workmanship of the Rims.

56. Because the defective Rims fail within the time period and mileage covered by the Warranty, the Warranty obligates Mercedes-Benz to provide replacement parts or repairs necessary to correct the defective parts.

57. Mercedes-Benz, however, refuses to repair or replace the defective Rims during the four year/50,000 mile Warranty period free of charge, and refuses to publicly acknowledge that the Rims are defective.

58. Mercedes-Benz's refusal to honor the Warranty harms Plaintiffs and the Class by forcing them to incur out-of-pocket costs to repair or replace the defective Rims although they should be covered by the Warranty.

59. Moreover, rather than provide the remedy prescribed by the Warranty, Mercedes-Benz has actively concealed the defect present in the Rims from consumers. Mercedes-Benz has also engaged in a campaign of piecemeal correction, refunding all or a portion of the cost of replacement Rims only where convenient or where customer relationships perceived by Mercedes-Benz to be essential so demand, in an attempt to further cover up the fact that the Rims are defective.

60. In some cases, where a customer has complained loudly enough, Mercedes-Benz has offered to cover some or all of the cost of replacing the Rims, but it is only on the condition that Mercedes-Benz is allowed to maintain possession of the defective Rims. This practice has further concealed both the existence and causes of the defect from Plaintiffs and the Class.

61. To make matters worse, all Mercedes-Benz operators' manuals specifically warn of the detrimental effects and dangers to personal safety associated with use of tires and Rims that are not "Mercedes-Benz Original equipment." Accordingly, Plaintiffs and the Class cannot substitute the Mercedes-Benz Rims with rims from another manufacturer in order to alleviate the problems, costs, and/or potential dangers posed by their defects.

62. Thus, Mercedes-Benz repeatedly profits from its refusal to honor the Warranty. Mercedes-Benz places defective Rims on its Vehicles, then forces Plaintiffs to repeatedly purchase new Rims manufactured by Mercedes-Benz each time a Rim fails (each of which is defective at the time of replacement and will ultimately also need to be replaced).

63. This cycle has repeatedly harmed both Plaintiffs and the Class. Indeed, Plaintiffs and the Class have been repeatedly injured and damaged by Mercedes-Benz's ongoing failure to honor its Warranty. Plaintiffs and the Class purchased Vehicles they otherwise would not have purchased, paid more for those Vehicles than they otherwise would have paid, have unnecessarily paid, and will continue to pay, repair and replacement costs as a result of the defective Rims, and were and continue to be subjected to an unreasonable risk to their safety.

Complaints are Numerous and Ongoing

64. The federal government's National Highway Transportation Safety Administration ("NHTSA") complaint database reveals that the Rims easily fail under normal driving conditions and that Mercedes-Benz will not replace the failed Rims under its Warranty program. Specifically, the NHTSA database illustrates the type of bending, warping, cracking and fracturing to which the Rims are prone, and shows Mercedes-Benz's blatant disregard for the Warranty and potential safety hazards presented by the defective Rims.

65. The following are examples of the complaints filed by consumers with the NHTSA. These complaints reflect the strikingly consistent and regular incidence of the Rim failures, the repeated, unexpected costs associated with their replacement, and Mercedes-Benz's refusal to honor its Warranty or take responsibility for the defect:

Make: Mercedes-Benz

Model: CLS500

[Model] Year: 2006

Complaint Number: 10205634

Summary: Normal driving on Illinois highways and streets, drivers side front wheel/rim cracked, I feel this could lead to los[s] of control of the auto and a serious accident. Purchased new rim and installed. Defective rim is in storage. #TR

Make: Mercedes-Benz

Model: CLS 55

[Model] Year: 2006

Complaint Number: 10130172

Summary: The consumer had to replace three wheels and one tire in less than thirty days after purchasing the 2006 Mercedes Benz CLS 55. *MR The first incident was a result of a pot hole, the second incident occurred nine days after the consumer received the vehicle and discovered that the right rear and front wheels were damaged. The third time only the rims were damaged, whereas in the first incident both the rim and the wheel had to be replaced *JB The consumer had experienced four more failures with the rimes. Two of these failures were of original equipment; the other two were failures of the rims that replaced previously failed original equipment. In less that [sic] seven months with 11k miles, the vehicle experienced seven individual failures of the wheels and two failures of the tires. *SC.

Make: Mercedes-Benz

Model: CLS 55

[Model] Year: 2006

Complaint Number: 10183377

Summary: I own a 2006 Mercedes-Benz CLS AMG. The ride has degraded and it now vibrates significantly. I took it to the dealer. They state all 4 rims are bent. This is probably true however, the car has been driven carefully and nothing happened which would cause all 4 wheels to be bent. A search on the internet revealed others with the same complaint. The rims do not appear to be of sufficient strength to cope with normal driving even in California. *NM

Make: Mercedes-Benz

Model: CLS 55

[Model] Year: 2006

Complaint Number: 10181047

Summary: My 2006 Mercedes Benz CLS 55 AMG Has had 6 dented rims within the first 13 months (11,000 MI). My dealer sold me wheel and tire insurance, but states the rim must be cracked before it will be replaced. I've already replaced two rims at \$1100 each, and the car is almost undriveable due to vibration. The tires supplied with the car are completely worn out, and one has a sidewall bubble. If the current trend continues, I will have to spend close to \$20,000 in rims over a 39 month lease period. The car has been driven at normal speeds, mostly over smooth highways. A report from Tire Rack.com regarding the factory supplied tires suggest that they not be used at temperatures below 40F! The wheels and tires supplied by Mercedes Benz on this car are

completely inadequate for normal driving conditions, and I would not have leased the vehicle had I been informed of this obvious defect. *JB

Make: Mercedes-Benz

Model: E500

[Model] Year: 2006

Complaint Number: 10314616

Summary: On two separate occasions in the last two months, my car has experienced flat tires due to a crack in the wheel/rim. I believe the OEM rims may be defective as it is uncharacteristic for a rim to crack, and to have it occur twice is extraordinary. I do not believe this is a result of hitting a pothole, etc. The resulting flat tire which occurred on a busy expressway caused a hazardous driving situation. In each case, due to tire damage, I had to replace both the tire and the wheel/rim at a cost of over \$600 per event, or about \$1,200 total. The serial number on the inside of one of the wheels is: A2114014702. *TR

Make: Mercedes-Benz

Model: C230

[Model] Year: 2007

Complaint Number: 10191587

Summary: I was driving down highway 50 in Sacramento, California, in a 2007 C230 Mercedes Benz, when I ran over an object. The right rear tire immediately went flat. I drove to a tire facility and had the tire exchanged for the spare. The tire facility suggested I take the car to Mercedes Benz. On the way to Mercedes Benz I stopped at an automobile repair shop and had the tire and rim inspected. The middle of the rim was cracked and ruptured. The shop owner stated he had been in the auto repair business for 30 years and had never seen a rim failure of that type. *AK I took the vehicle to Mercedes Benz Sacramento and the serviceman told me tires and rims were not covered under warranty. He did not even bother to take the tire out of the trunk. I said I wished to speak to the service manager. He informed me the service manager wasn't in. I said I would like to make an appointment to see the service manager – that I had concerns about the rim failure. When I met with the service manager, I voiced my concerns regarding the rim. The service manager called me later in the afternoon and stated the damage would be at my cost and wasn't covered under warranty. I inquired why this wasn't covered under warranty because I was only 4 months into the lease of this new car. The answer was tires and rims are not covered under warranty under any circumstance's [sic] left a voice mail message for general manager of Mercedes Benz Sacramento to call me regarding this rim failure and my concerns. He called me back and defended the service technician and service manager's decisions to give the stock answer it was not covered under warranty. I point out to the general manager that my concern was the rim had ruptured and cracked and that this was a new vehicle. I felt

my concerns were being ignored by the service department. Mr. Crowley did not seem to be of the same opinion. The tire and Rim were being replaced at a facility other than Mercedes Benz. *AK

Make: Mercedes-Benz

Model: E 550

[Model] Year: 2007

Complaint Number: 10264262

Summary: Hit a small pot hole and dented the tire rim and flattened my tire. This the [sic] 4th rim and 4th tire replaced since March of 2008. Replaced the rims and tires at approximately \$1000/rim tire. These low profile tires/rims should not be sold. *TR.

Make: Mercedes-Benz

Model: E 550

[Model] Year: 2007

Complaint Number: 1027762

Summary: Purchased car in August 2007, have driven 40,000 miles and have replaced 2 stock rims, 6 after-market rims, and five relatively new tires due to just average potholes that any other car would simply roll over. Part of the problem is the low profile tires but there appears to be a deeper problem with the suspension. When this car hits a small pothole or even a deep manhole cover it takes a very hard, teeth jarring hit to the front end suspension. I also drive a competing brand 8-cylinder sedan which is very near to this Mercedes in size and weight but hardly feel the bumps that pound the Mercedes. *TR.

Make: Mercedes-Benz

Model: E350

[Model] Year: 2007

Complaint Number: 10222583

Summary: TL* The contact owns a 2007 Mercedes Benz E350. While driving 50 mph, the contact felt an unusual vibration in the wheels. He took the vehicle to the dealer and was informed that all four wheels were bent at the inside rim due to driving over potholes and railroad tracks. All four wheels and rims needed to be replaced. The manufacturer refused to assist with any repairs. The powertrain was unknown. The current mileage was 14,000 and failure mileage was 12,789. Updated 04/23/08. *LJ

Make: Mercedes-Benz

Model: CL63

[Model] Year: 2007

Complaint Number: 10353360

Summary: TL-The contact owns a 2007 Mercedes Benz CLS63. While driving at approximately 20 mph the air pressure light illuminated on the

dashboard. The vehicle was taken to an authorized dealer where he was informed that the front passenger side wheel was cracked. It was repaired. Approximately two months later the failure recurred on the rear passenger side wheel. The vehicle was taken back to an authorized dealer where it was repaired. The failure has not recurred. The failure mileage was 33,000 and the current mileage was 37,000. SM.

Make: Mercedes-Benz

Model: E550

[Model] Year: 2008

Complaint Number: 10284653

Summary: 2008 Mercedes E550 rim problem. I have owned this vehicle for 8 months and have had two front tire blowouts on 2 different occasions from hitting small pot hole. The rim gets bent then the tire blows out. The latest incident, a police officer and I watched many vehicles driving over the pot hole with no problems. The rims are the 12 spoke that comes stock on the E550's. *TR

Make: Mercedes-Benz

Model: CLS 63

[Model] Year: 2008

Complaint Number: 10323408

Summary: My vehicle had 9,000 miles on it and is driven in moderation. One of the rims needed to be replaced because it was cracked – the other 3 are bent. Within 1,500 mile [sic], I have learned that the replaced rim is now also bent. I am concerned about the vehicle's safety while driving at freeway speeds – the car shakes. The manufacturer refuses to replace the wheels stating no defects or recalls have been issued.

66. Similar consumer complaints are published frequently on the internet. A sampling of complaints published on just one forum,

<http://www.worldlawdirect.com/forum/class-actions-defective-products/7442-mercedes-benz-tires-dont-support-vehicle.html>, state the following:

Nov. 20th, 2007, 12:10 PM: My husband has a Mercedes E350 with high performance Continental tires and has gone through tires and alloy wheels constantly since getting this vehicle. This has never happened to us with any other car. He has replaced the tires 3 or 4 times and the alloy rims twice in less than 2 years. I was told by MB technicians and reps that the high performance tires get bulges and the alloy wheels bend if you hit any pot holes and they were not covered under warranty. They explained that MB weighs 1500 pounds more than a normal car and that's why there are so many bulges and bent rims with the tires. I was told that everyone has

the same problems and the drivers assistance program mechanics told me that is what they spend 99% of their day doing was tires. I can not believe that the tires they sell do not support the car and that any pot holes would cause such issues. I also will say that we have never had problems driving in this area before and what they claim to be a pothole is normal driving for the east coast and more like ruts in the road. I think these tires are dangerous and should not be used on this vehicle because they could easily blow out and I feel it's dangerous and don't like to drive this vehicle any longer. Shouldn't tires be sold with a vehicle that will support the car and normal driving conditions in the area? Anyone know of a lawsuit against MB or if we have a case for lemon laws?

Feb. 8th, 2008, 09:39 AM: I have the same problem. I just replaced four wheels on my E350 sport. It was not covered under any warranty. The car is 8 months old with 10,000 miles. The tires are fine but the wheels are bent, it is a definite defect that Mercedes won't take responsibility for.

Feb. 28th, 2008, 08:41 PM: Please let me know where you are going to file [the class action lawsuit] since I have the same problem. I had the car 3 months and already have a bent rim and bubbled tire. It is costing me almost \$700 to replace. This is ridiculous!

Jul. 21st, 2008, 09:27 AM: I own a 2006 E350 sport and have logged close to 85,000 miles. During this time I have replace[d] no fewer than 5 wheels and tires. The wheel is the problem and not the tires (Michellin). The wheels either bend or in most cases crack. The last one had [] three stress type cracks. I thoroughly agree that there is a defect in the wheels. I have written to MBUSA and have spoken to the dealership several times. Naturally, the same reiterate, the east coast have horrible roads. Well, MB, it is not the roads as my BMW and Lexus do not have this problem.

Oct. 24th, 2008, 04:13 PM: My 2008 E350 is virtually new, 2500 miles. I went over a pothole and was told my service rep that the damage to 2 wheels will cost \$2500. Now I see this post. I am furious. If anyone has succeeded in getting a claim against MBZ please let me know.

Oct. 29th, 2008, 10:13 PM: Me too! Bent rims, damaged prematurely worn out tires and drifting issues. Buyers should be told about these things before they buy or lease. (Failure to disclose etc-etc). Cars could become unsafe by just driving under normal conditions. Lawsuit does sound appropriate.

Mar. 22nd, 2009, 12:57 AM: Same here. I have an E430 Lorinser and have had to repair rims multiple times and have been going through tires like crazy due to pinched sidewalls that end up in bubbles.

Mar. 26th, 2009, 11:22 AM: March 26, 2009 – we leased a 2008 E350 in December 2007 (fortunately it is just a 2 year lease) and in the space of 16 months (and less than 12,000 miles) we have had to replace or repair 3 rims and replace 4 tires. We live in the northeast – where there are potholes and uneven surfaces – and after we learned about the problems with the tires, we now have to drive the car as if we were transporting eggs. This is not the MB experience we expected, and the extra expense (close to \$2,000 now) has been infuriating. We will not get another MB – it will be back to trusty and reliable Lexus and BMW.

Aug. 8th, 2009, 10:42 AM: Just had three of my four wheels “repaired” on my E-class due to damage from normal use. Had a vibration on the highway – service writer at the dealership stated that these wheels are “soft.” Well, certainly should not be the responsibility of the owner to pay for these repairs.

Aug. 11th, 2009, 06:04 PM: I have a GL 450 and am in the midst of the same issue. I have a crack in one of my wheels and all 4 tires need to be replaced at 23K miles. The dealer tells me it must be as a result of a pothole or some “impact” to the vehicle. I have never been in any sort of accident or anything...no “impact” has occurred to my vehicle ever. And...for my model at least...it is advertised as an “off road vehicle.” Can’t even withstand potholes???? Not right. This is an obvious defect. If something more comes of this legally I would like to be involved.

Oct. 15th, 2009, 12:41 PM: I’ve got a CLS 500, this will be the 4th rim I’ve replaced on the vehicle, I’m the only one driving it and I know I haven’t hit a pothole. My guy doing the tire changes told me this is a very common problem with Mercedes.

Dec. 2nd, 2009, 6:34 PM: I have a 07 SL55 AMG19” extremely wide Bridgestone tires 22,000 miles and no damage or dents in the rear wheel, only two stress cracks on the inside of the rim. I don’t know how it’s holding air. I’ve had this car up 135 mph and am lucky I didn’t get killed.

Jan. 11th, 2010, 1:23 PM: I own a 2005 E500 wagon with 5 spoke rims. I’ve had to replace 6 rims in the past 2 years. I live in NYC. I am sick and tired of cracking rims and replacing tires. Can anyone please tell me what rims and tires to buy so I don’t have to go through this anymore?

Jan. 25th, 2010, 10:43 PM: We have MB E350 4 matic with 25,000 miles. I have been told by my MB dealer that we need to replace 3 tires and also wheels. I have never had problem with wheels in my Lexus, Acura and all other vehicles with several thousands [sic] miles on it. I feel that it must be manufacturing defect of MB. It should be covered by MB. It is going to cost me over 2,000 dollars.

Jan. 28th, 2010, 10:47 PM: I spoke with MB today as I am having the same issue with 2007 C280. This is so typical of corporate America, they know they have a problem and refuse to fix it because that means bottomline [sic] expense to the companies balance sheet. MB may not have this issue for a long because might not have any customers left. We are not talking about inexpensive cars here. I have had 3 BMW's, I still have one and with 90,000 miles – never did I replace a rim or tires before 30,000 miles. This is my first and last MB. Well done MB, another customer lost.

May 3rd, 2010, 10:05 AM: I have a 2007 E350 and I kept having a slow leak in from tire. I finally got tired of checking the air so I took the time this weekend and went to a tire shop. Was I shocked! A crack across my rim. Rim shows no dings or trauma around the edge. The tire guy said I have never seen a rim like this. It looks like a bad rim. I am surprised with this being a Mercedes. He said take it to the dealer they should replace this rim. My boyfriend googled and found this site. I am amazed. I am now waiting to see all my rims do this. What crap.

Jul. 5th, 2010, 3:11 AM: I am having a similar problem. This will be the third time in 8 months that I will be replacing my tire. This is the 2nd time my wheels got bent. They are telling me that the roads are just bad and that why I am having this problem. But my gosh! My husband drive his acura in the same roads I drive in and he never had this proble[m]. Something Needs to be done!!!!

Sept. 8th, 2010, 6:41 PM: For what it is worth – yes I am at that point, anyway, I purchased my 2008 E350 with the sport package used with 21000 miles from Mercedes Benz of Huntsville 4 months ago. The Mercedes dealer certified the car with their Service Department point system. Three days after purchase, during washing the car, I noticed bubbles that looked like slight bumps on the side walls of the drivers front and passengers rear tire, which at the time I thought it was just a tire molding problem during the manufacturing process of the tire and didn't think twice about it. Now I have put 4k more miles on the car and washing the car again the other day, I noticed that there was a 2 inch separation or split in the tire directly between where the bubble/bump is and the rim, running in parallel with the rim. I called my MB sales person immediately on the next day, made a appointment, took it in, and MB Service guy tells me that this happens when you run over pot holes, bumps in the road, etc.! He continued to tell me that he owns a E350 sport and he was driving in a gas station parking lot at 4-5 miles an hour, hit a pot hole and blew out one of his tires. Guys this is unacceptable, MB has upgraded the 2008 sport to have 18" wheels and low profile tires that cannot support the weight of the vehicle – 4000 pounds, especially if this is happening to everyone I am reading here about? Oh, the service guy says that I have

sub wheel damage on the wheel that had the split. I never hit any pot holes, bumps, anything, it is down to my word against theirs, and understand that, but I be damn [sic] if I am not going tell as many people I can that MB of Huntsville sold me a car with the wheel damage and tire bubbles already existing. Rule of thumb here is 1), inspect the wheels and tires very very very closely, 2) MB offers a tire and wheel insurance, I would have purchased this up front if I knew about it, especially with the problems at hand. I would guess that I was not told this because it would have made me aware to look closer at the tires and wheels. I am not sure the details of the insurance but the service guy told me it would have covered this. So, for everyone, MB makes a great E350 Sport, with the exception of the tire and wheel design, just get the insurance. Thanks from an upset consumer.

67. Additionally, the following complaints can be found on a forum open exclusively to Mercedes-Benz owners, http://www.mercedes-benz-usa.com/cls_class.php:

Ted Pearlman writes: I am the sad owner of a 2006 CLS 55 AMG sedan. In the first 13 months of ownership (11,000 MI) I have had not two months without vibration due to bent wheels. When I leased the vehicle I was sold wheel and tire insurance only to be told that bent rims were not covered. After nine months of ownership I discovered two bent rims and had to pay \$2200 to replace them. Four months later all four rims are bent. If I were to replace them, that would total \$6600 for rims with only one third of the lease over. In addition, the factory supplied tires are completely worn out, one with a sidewall bubble.

Nick writes: I have had the same problem with the MB CLS 55 AMG: literally, no joke and no exaggeration, I have had ten bent wheels so far....The dealer...[said] it's probably because I drive over curbs and down stairs and so forth. I'm 54 years old and had never bent a rim in my life prior to owning this car....

Casey writes: I had leased a brand new '07 CLS63 which was my dream car. I live in NY and was sold the car in NY. Only 2 months after I purchased the car I was told the wheels were bent. I paid over \$2k for new wheels. Four months later I was told all four wheels were bent and it was [be]cause I drive the car in New York (I was told by the dealership I shouldn't be driving in New York, even though they sold me the car in NY). I argued with the dealership who gave me wheel and tire insurance for free but I ended up paying \$4k for new wheels. Less than three months later the car started shaking again and I was told all four wheels were bent again and the tire and wheel insurance said they would not pay

for the wheels. Now I am stuck with a \$101k car that I cannot drive unless I am willing to shell out \$4k every 2 months. They told me that unless I buy new wheels, I can't drive over 60 mph.... I just can't believe what is happening. The dealership refuses to help me anymore and I tried calling corporate. I just want out of my lease. I would never recommend a CLS if you are planning on driving it, it is however, a beautiful ornament for my driveway.

68. The complaints are illustrative of the type of complaints common between Plaintiffs and other Class members. Regardless of the Vehicle's make or model, the complaints are strikingly similar, each demonstrating that the Rims fail regularly, under normal driving conditions, and that Plaintiffs and the Class have incurred, will incur, or will continue to incur, out-of-pocket costs associated with repairing or replacing the defective Rims on each of their Vehicles. The complaints also demonstrate that although Mercedes-Benz was made aware of the defect, it continues to deny Warranty coverage for the Rim failures.

69. As demonstrated above, Mercedes-Benz has long known that the Rims are defective. Additionally, Mercedes-Benz has exclusive access to information about the defective Rims through its dealerships, pre-release testing data, Warranty data, customer complaint data and replacement part sales data, among other sources of aggregate information about the problem.

70. By contrast, the defect present in the Rims was not known or reasonably discoverable by Plaintiffs and the Class prior to purchase of the Vehicles. Plaintiffs and the Class had to experience the defect first-hand, thereby exposing them to an unreasonable safety risk.

71. Notwithstanding Mercedes-Benz's knowledge of numerous Rim failures and the defective material and design of the Rims, Mercedes-Benz failed and continues to

fail to advise potential and/or current owners or lessees of Vehicles of the defective nature of the Rims – that they are known to bend, warp or even break under normal driving conditions – and instead has engaged in a calculated pattern and practice to hide the true nature of the Rim failures.

72. In fact, Mercedes-Benz has repeatedly advised Plaintiffs and the Class that the Rim failures are due to the owner's driving habits or poor road conditions, never mentioning the defective Rim design, manufacture, or inadequate testing of which Mercedes has knowledge, or the pattern of complaints regarding Rim failures under normal driving conditions of which it is aware. Even when consumers specifically ask whether a Vehicle equipped with the Rims suffers from a known problem, Mercedes-Benz's policy is to deny that there is a problem, continue concealing the defect, and assert that any damage to the Rims is the result of driver error or abnormal driving conditions.

73. Mercedes-Benz knew that potential car buyers and lessees would deem the defect in the Rims to be material such that reasonable consumers who knew of the defect either would have paid less for the Vehicles or would not have purchased or leased them at all.

74. Had Plaintiffs and the Class been advised of the defects present in the Rims, or the fact that Mercedes-Benz would refuse to honor its Warranty, Plaintiffs and the Class would not have purchased Vehicles or would have paid substantially less for them.

75. As a result of Mercedes-Benz's actions and inactions, Plaintiffs and the Class have been injured and damaged. Plaintiffs and the Class purchased Vehicles they

otherwise would not have purchased, paid more for those Vehicles than they otherwise would have paid, were and continue to be subjected to an unreasonable risk to their safety, and unnecessarily paid, and will continue to pay, repair and replacement costs as a result of the defective Rims, all to the financial benefit of Mercedes-Benz.

SPECIFIC FACTUAL ALLEGATIONS AS TO PLAINTIFF LUPPINO

Luppino's Vehicle

76. On or about February 28, 2007, Luppino leased a new, 2007 Mercedes-Benz CLS 63 AMG with 19-inch AMG factory Rims from an authorized Mercedes-Benz dealership.

77. The lease term for Luppino's Vehicle was 39 months, and was scheduled to end on or about May 28, 2010.

78. The mileage allowance for the lease term was 32,500 miles.

79. At the time Luppino returned the Vehicle to Mercedes-Benz, the Vehicle had been driven approximately 42,255 miles.

Luppino's Warranty

80. Like all members of the Class, Mercedes-Benz provided Luppino with various materials at the time he leased his Vehicle. Among those materials were two manuals: (1) a manual entitled, "Service and Warranty Information 2007 Passenger Cars" ("Luppino's Warranty Manual"); and (2) a manual entitled, "Operator's Manual CLS-Class" ("Luppino's Operator's Manual").

81. Like all members of the Class, Luppino's Warranty Manual made the following representations about the standard Mercedes-Benz Warranty:

To the Owner

General

The subsequent pages of this Service and Warranty Information booklet describe some service requirements and the warranties you receive as a Mercedes-Benz owner. Your car is covered under the terms of these “Warranties” and your Mercedes-Benz Center will exchange or repair any defective parts in accordance with the terms of such warranties within stated limits. Please keep this booklet together with the Operator’s Manual, Maintenance Booklet and other documents concerning your car so that future owners will have access to this literature if you should sell the vehicle.

Replacement Parts for Your Mercedes-Benz

Genuine Mercedes-Benz parts, exchange units and factory approved accessories are the recommended replacement parts for your Mercedes-Benz passenger car and are available through your authorized Mercedes-Benz Center.

These parts meet the same exacting quality control standards as the original equipment on your car and comply with all applicable Federal and State safety regulations.

Items Which are covered:

DEFECTS: Mercedes-Benz USA, LLC (MBUSA) warrants to the original and each subsequent owner of a new Mercedes-Benz passenger car that any authorized Mercedes-Benz Center will make any repairs or replacements necessary, to correct defects in material or workmanship arising during the warranty period.

WARRANTY PERIOD: This warranty is for 48 months or 50,000 miles, whichever occurs first.

NO CHARGE: Warranty repairs will be made at no charge for parts and labor.

82. Luppino’s Warranty Manual further details damage to the Vehicle that is not covered by the Warranty in a section titled “Items Which Are Not Covered.” These items include: (1) tire damage; (2) damage due to accidents, misuse or negligence (defined as accidents or damage from objects striking the car. Misuse of the car such as

driving over curbs, overloading, improper operation, storage or transport); (3) damage due to lack of maintenance; and (4) damage due to alterations.

83. The Rims are not excluded from Warranty coverage.

84. Luppino's Warranty Manual further states:

Our intention is to repair under warranty, without charge to you, anything that goes wrong with your car during the warranty period which is our fault. All we ask is that you properly maintain and care for the car and that you have warranty repairs performed by an authorized Mercedes-Benz Center.

Please note the difference between "defects" and "damage" as used in the warranty. Defects are covered since we, the distributor, are responsible.

85. With respect to pre-owned Mercedes-Benz Vehicles, under a section titled "To Purchasers of Pre-Owned Mercedes-Benz Vehicles", Luppino's Warranty Manual states, "If you have purchased a pre-owned Mercedes-Benz vehicle before the expiration of its original warranty, you are entitled to any unexpired portion of the warranty provided you establish your ownership and the purchase date of the car."

86. Like all members of the Class, Luppino's Operator's Manual also contained specific representations relating to the standard Mercedes-Benz Warranty as well as the tires and Rims on his Vehicle. Among other things, Luppino's Operator's Manual contained a section labeled "**Warning!**", which states:

Replace rims or tires with the same designation, manufacturer and type as shown on the original part. See an authorized Mercedes-Benz Center for further information. If incorrectly sized rims and tires are mounted:

- The wheel brakes or suspension components can be damaged.
- The correct operating clearance of the wheels and the tires are no longer guaranteed.

87. Under a second "**Warning!**" section, Luppino's Operator's Manual states:

When replacing rims, only use Genuine Mercedes-Benz wheel bolts specified for the particular rim type. Failure to do so can result in the bolts loosening and possibly an accident.

88. A section entitled, “**Important Guidelines**” also states:

- Only use sets of tires and rims of the same type and make
- Tires must be of the correct size for the rim
- Regularly check the tires and rims for damage. Dented or bent rims can cause tire inflation pressure loss and damage to the tire beds.

89. The “**Parts Service**” section of Luppino’s Operator’s Manual states:

All authorized Mercedes-Benz Centers maintain stock of Genuine Mercedes-Benz parts required for maintenance and repair work. In addition, strategically located parts distribution centers provide quick and reliable parts service.

Genuine Mercedes-Benz parts are subjected to stringent quality inspections. Each part has been specifically developed, manufactured or selected for and adapted to Mercedes-Benz vehicles.

Therefore, Genuine Mercedes-Benz parts should be installed.

! The use of non-genuine Mercedes-Benz parts and accessories not authorized by Mercedes-Benz could damage the vehicle, which is not covered by the Mercedes-Benz Limited Warranty, or could compromise the vehicle’s durability or safety.

Luppino Was Repeatedly Exposed To Mercedes-Benz Representations

90. In addition to the representations in Luppino’s Warranty Manual and Luppino’s Owner’s Manual, Luppino was repeatedly exposed to advertisements and other representations that Mercedes-Benz publicly disseminates in magazines, on television, throughout the internet and in other media, as well as in brochures, manuals, and other printed advertisements Mercedes-Benz provides to potential customers at all Mercedes-Benz authorized dealerships, including those representations identified in paragraphs 32-38, above.

91. Like all members of the Class, Luppino was exposed to the following Mercedes-Benz representations at the time he leased his Vehicle, which were widely disseminated in a variety of Mercedes-Benz commercials and print advertisements:

- a. Mercedes-Benz Vehicles are high-quality, high-performance Vehicles;
- b. Mercedes-Benz Rims are durable, without defect, and suitable for the purposes for which they are intended;
- c. Mercedes-Benz Vehicles are tested by Mercedes-Benz to ensure that they maintain the highest standards of safety, innovation, performance, durability and strength in the automotive industry.

The Rims on Luppino's Vehicle Were Defective

92. Luppino's Vehicle was less than two years old and had been driven only 42,255 miles when Luppino returned it to Mercedes-Benz. Thus, as reflected in Luppino's Warranty Manual, Luppino's Vehicle was covered by the standard Mercedes-Benz Warranty (four years or 50,000 miles) during Luppino's entire lease term.

93. Luppino's Rims failed numerous times throughout the term of his lease. Luppino repaired or replaced multiple Rims on numerous occasions during the two years he leased his Vehicle.

94. Luppino incurred thousands of dollars in out-of-pocket costs to repair and/or replace the Rims on his Vehicle.

95. Each of the Rims Luppino repaired and/or replaced failed under normal driving conditions, in the complete absence of driving-related trauma.

96. Prior to, during, and following the time during which Luppino leased his Vehicle, Luppino owned and/or leased a variety of sports cars designed and manufactured by companies other than Mercedes-Benz, including Ferrari and Porsche. Luppino drove these cars on the same roads and during the same time period when his Mercedes-Benz Vehicle was driven. Luppino never had to repair and/or replace any of the wheels on any of these other vehicles.

97. The Mercedes-Benz dealership repaired and/or replaced the Rims on Luppino's Vehicle on some occasions, selected at the dealership's discretion. After repetitive Rim failures, the dealership ultimately declined to continue to repair and/or replace the defective Rims at no charge to Luppino.

98. Accordingly, Luppino, through counsel, contacted Mercedes-Benz's corporate office about the defective Rims.

99. Luppino informed Mercedes-Benz's corporate office that he was compelled to repair and/or replace the Rims on his Vehicle on numerous occasions; that he believed that the Rims were defective; and that the defects were reported to his authorized Mercedes-Benz dealership during the time specified under New Jersey's Lemon Law. Luppino demanded that the defects be cured.

100. Mercedes-Benz's corporate office responded, through counsel, denying Warranty coverage for Luppino's Rims, stating, "Please be advised that such damage does not indicate the presence of a warranted defect with the vehicle, rather of outside influence."

101. Luppino's counsel responded by letter, stating, in pertinent part:

My client does not understand your reference to this matter being caused by "outside influence". The vehicle has been driven in a normal fashion in

on [sic] road conditions. There should be no reason for any vehicle to have experienced the persistent problems such as have been the case, let alone a vehicle of the supposed quality of a Mercedes Benz.

It is my understanding that the problem was complained of by my client early on in his use of the vehicle and that a number of attempts at repair or replacement have all failed. Clearly, there is an inherent defect with the vehicle.

102. Mercedes-Benz did not respond to this letter. This lawsuit followed.

SPECIFIC FACTUAL ALLEGATIONS AS TO PLAINTIFF STERN

Stern's Vehicle

103. Stern purchased a new, 2005 Mercedes-Benz SL 500 with 18-inch AMG factory Rims from an authorized Mercedes-Benz dealership in Bergen County, New Jersey on or about December 31, 2005.

104. The vehicle suffered from what was believed to be an electrical defect and, as a result, Mercedes-Benz replaced the vehicle in or about March of 2006 with a new, 2006 Mercedes-Benz SL 500 with 18-inch AMG factory Rims (the Vehicle that is the subject of this lawsuit).

105. Stern still owns the Vehicle, which currently has less than 40,000 miles on it.

Stern's Warranty

106. Like all members of the Class, at the time Stern purchased his Vehicle Mercedes-Benz provided Stern with various materials. Among those materials were two manuals: (1) a manual entitled, "Service and Warranty Information 2006 Passenger Cars" ("Stern's Warranty Manual"); and (2) a manual entitled, "Operator's Manual SL-Class" ("Stern's Operator's Manual").

107. Like all members of the Class, Stern's Warranty Manual made the following representations about the standard Mercedes-Benz Warranty:

To the Owner

General

The subsequent pages of this Service and Warranty Information booklet describe some service requirements and the warranties you receive as a Mercedes-Benz owner.

Your car is covered under the terms of these "Warranties" and your Mercedes-Benz Center will exchange or repair any defective parts in accordance with the terms of such warranties within stated limits.

Please keep this booklet together with the Operator's Manual, Maintenance Booklet and other documents concerning your car so that future owners will have access to this literature if you should sell the vehicle.

Replacement Parts for Your Mercedes-Benz

Genuine Mercedes-Benz parts, exchange units and factory approved accessories are the recommended replacement parts for your Mercedes-Benz passenger car and are available through your authorized Mercedes-Benz Center.

These parts meet the same exacting quality control standards as the original equipment on your car and comply with all applicable Federal and State safety regulations.

Items Which are covered:

DEFECTS: Mercedes-Benz USA, LLC (MBUSA) warrants to the original and each subsequent owner of a new Mercedes-Benz passenger car that any authorized Mercedes-Benz Center will make any repairs or replacements necessary, to correct defects in material or workmanship arising during the warranty period.

WARRANTY PERIOD: This warranty is for 48 months or 50,000 miles, whichever occurs first.

NO CHARGE: Warranty repairs will be made at no charge for parts and labor.

108. Stern's Warranty Manual further details damage to the Vehicle which is not covered by the Warranty in a section titled "Items Which Are Not Covered." These items include: (1) tire damage; (2) damage due to accidents, misuse or negligence (defined as accidents or damage from objects striking the car. Misuse of the car such as driving over curbs, overloading, improper operation, storage or transport); (3) damage due to lack of maintenance; and (4) damage due to alterations.

109. The Rims are not excluded from Warranty coverage.

110. Stern's Warranty Manual further states:

Our intention is to repair under warranty, without charge to you, anything that goes wrong with your car during the warranty period which is our fault. All we ask is that you properly maintain and care for the car and that you have warranty repairs performed by an authorized Mercedes-Benz Center.

Please note the difference between "defects" and "damage" as used in the warranty. Defects are covered since we, the distributor, are responsible.

111. With respect to pre-owned Mercedes-Benz Vehicles, under a section titled "To Purchasers of Pre-Owned Mercedes-Benz Vehicles", Stern's Warranty Manual states, "If you have purchased a pre-owned Mercedes-Benz vehicle before the expiration of its original warranty, you are entitled to any unexpired portion of the warranty provided you establish your ownership and the purchase date of the car."

112. Like all members of the Class, Stern's Operator's Manual also contained specific representations relating to the standard Mercedes-Benz Warranty as well as the tires and Rims on his Vehicle. Among other things, Stern's Operator's Manual contained a section labeled "**Warning!**", which states:

Replace rims or tires with the same designation, manufacturer and type as shown on the original part. See an authorized Mercedes-Benz Center for further information. If incorrectly sized rims and tires are mounted:

- The wheel brakes or suspension components can be damaged.
- The correct operating clearance of the wheels and the tires are no longer guaranteed.

113. Under a second “**Warning!**” section, Stern’s Operator’s Manual states:

When replacing rims, only use Genuine Mercedes-Benz wheel bolts specified for the particular rim type. Failure to do so can result in the bolts loosening and possibly an accident.

114. A section entitled, “**Important Guidelines**” also states:

- Only use sets of tires and rims of the same type and make
- Tires must be of the correct size for the rim
- Regularly check the tires and rims for damage. Dented or bent rims can cause tire inflation pressure loss and damage to the tire beds.

115. The “**Parts Service**” section of Stern’s Operator’s Manual states:

All authorized Mercedes-Benz Centers maintain stock of Genuine Mercedes-Benz parts required for maintenance and repair work. In addition, strategically located parts distribution centers provide quick and reliable parts service.

Genuine Mercedes-Benz parts are subjected to stringent quality inspections. Each part has been specifically developed, manufactured or selected for and adapted to Mercedes-Benz vehicles.

Therefore, Genuine Mercedes-Benz parts should be installed.

! The use of non-genuine Mercedes-Benz parts and accessories not authorized by Mercedes-Benz could damage the vehicle, which is not covered by the Mercedes-Benz Limited Warranty, or could compromise the vehicle’s durability or safety.

Stern Was Repeatedly Exposed To Mercedes-Benz Representations

116. Stern is a member of the Mercedes-Benz Club of America, a not-for-profit organization that Mercedes-Benz supplies with technical and historical information which it includes in its periodical, *The Star* magazine, which Stern receives in regular

intervals throughout the year. *The Star* magazine includes news from Mercedes-Benz, as well as advertisements for Mercedes-Benz products and services. Stern was repeatedly exposed to Mercedes-Benz representations contained in *The Star* magazine prior to purchasing his Vehicle.

117. In addition to the representations in *The Star* magazine, and those in Stern's Warranty Manual and in Stern's Owner's Manual, Stern was repeatedly exposed to advertisements and other representations that Mercedes-Benz publicly disseminates in magazines, on television, throughout the internet and in other media, as well as in brochures, manuals, and other printed advertisements Mercedes-Benz provides to potential customers at all Mercedes-Benz authorized dealerships, including those representations identified in paragraphs 32-38, above.

118. Like all members of the Class, Stern was exposed to the following Mercedes-Benz representations at the time he purchased his Vehicle, which were widely disseminated in a variety of Mercedes-Benz commercials and print advertisements:

- a. Mercedes-Benz Vehicles are high-quality, high-performance Vehicles;
- b. Mercedes-Benz Rims are durable, without defect, and suitable for the purposes for which they are intended;
- c. Mercedes-Benz Vehicles are tested by Mercedes-Benz to ensure that they maintain the highest standards of safety, innovation, performance, durability and strength in the automotive industry.

The Rims on Stern's Vehicle Were Defective

119. Within the first few months of owning the Vehicle, Stern had to repair a failed Rim on his Vehicle.

120. Stern had the Rim repaired at a parts distribution center which sells and distributes genuine Mercedes-Benz Rims (as authorized by Stern's Operator's Manual).

121. Although Stern did not specifically ask Mercedes-Benz to repair or replace the failed Rim pursuant to the Warranty, Stern became generally aware, from information readily accessible in the public domain, that Mercedes-Benz routinely refused to repair or replace Rims that have failed under normal driving conditions, and that Mercedes-Benz would claim the repair would not be covered under his Warranty. Thus, Stern paid out-of-pocket to repair the Rim.

122. Stern's vehicle was only a few months old at the time he incurred the out-of-pocket costs to repair the Rim on his Vehicle, and which currently has less than 40,000 miles on it. Thus, as reflected in Stern's Warranty Manual, Stern's Vehicle was covered by the standard Mercedes-Benz Warranty (four years or 50,000 miles) at the time he incurred the out-of-pocket costs to repair the first failed Rim on his Vehicle.

SPECIFIC FACTUAL ALLEGATIONS AS TO PLAINTIFF CASIERO

Casiero's Vehicle

123. Casiero purchased a 2006 Mercedes-Benz E500 4Matic Sedan with 17-inch 5-Spoke Light Alloy Rims from an authorized dealer's auction in Somerset County, New Jersey on May 7, 2008.

124. Casiero currently owns the Vehicle, which is currently outside of the Warranty Period in terms of both timing and mileage. As a result, in addition to

replacing Rims during the Warranty Period, Casiero has incurred costs to repair and/or replace the Rims outside of the Warranty Period.

Casiero's Warranty

125. Like all members of the Class, at the time Casiero purchased his Vehicle he was provided with various materials. Among those materials were two manuals: (1) a manual entitled, "Service and Warranty Information 2006 Passenger Cars" ("Casiero's Warranty Manual"); and (2) a manual entitled, "Operator's Manual E-Class Sedan" ("Casiero's Operator's Manual").

126. Although Casiero did not purchase his vehicle from a Mercedes-Benz dealership, he was provided these materials pursuant to Mercedes-Benz Practice and procedure, as outlined in Casiero's Operator's Manual, which specifically states that the Warranties provided therein are applicable to his Vehicle. Under a section titled "To Purchasers of Pre-Owned Mercedes-Benz Vehicles", Casiero's Warranty Manual states, "If you have purchased a pre-owned Mercedes-Benz vehicle before the expiration of its original warranty, you are entitled to any unexpired portion of the warranty provided you establish your ownership and the purchase date of the car."

127. Like all members of the Class, Casiero's Warranty Manual made the following representations about the standard Mercedes-Benz Warranty:

To the Owner

General

The subsequent pages of this Service and Warranty Information booklet describe some service requirements and the warranties you receive as a Mercedes-Benz owner.

Your car is covered under the terms of these “Warranties” and your Mercedes-Benz Center will exchange or repair any defective parts in accordance with the terms of such warranties within stated limits.

Please keep this booklet together with the Operator’s Manual, Maintenance Booklet and other documents concerning your car so that future owners will have access to this literature if you should sell the vehicle.

Replacement Parts for Your Mercedes-Benz

Genuine Mercedes-Benz parts, exchange units and factory approved accessories are the recommended replacement parts for your Mercedes-Benz passenger car and are available through your authorized Mercedes-Benz Center.

These parts meet the same exacting quality control standards as the original equipment on your car and comply with all applicable Federal and State safety regulations.

Items Which are covered:

DEFECTS: Mercedes-Benz USA, LLC (MBUSA) warrants to the original and each subsequent owner of a new Mercedes-Benz passenger car that any authorized Mercedes-Benz Center will make any repairs or replacements necessary, to correct defects in material or workmanship arising during the warranty period.

WARRANTY PERIOD: This warranty is for 48 months or 50,000 miles, whichever occurs first.

NO CHARGE: Warranty repairs will be made at no charge for parts and labor.

128. Casiero’s Warranty Manual further details damage to the Vehicle which is not covered by the Warranty in a section titled “Items Which Are Not Covered”. These items include: (1) tire damage; (2) damage due to accidents, misuse or negligence (defined as accidents or damage from objects striking the car. Misuse of the car such as driving over curbs, overloading, improper operation, storage or transport); (3) damage due to lack of maintenance; and (4) damage due to alterations.

129. The Rims are not excluded from Warranty coverage.

130. Casiero's Warranty Manual further states:

Our intention is to repair under warranty, without charge to you, anything that goes wrong with your car during the warranty period which is our fault. All we ask is that you properly maintain and care for the car and that you have warranty repairs performed by an authorized Mercedes-Benz Center.

Please note the difference between "defects" and "damage" as used in the warranty. Defects are covered since we, the distributor, are responsible.

131. With respect to pre-owned Mercedes-Benz Vehicles, under a section titled "To Purchasers of Pre-Owned Mercedes-Benz Vehicles", Casiero's Warranty Manual states, "If you have purchased a pre-owned Mercedes-Benz vehicle before the expiration of its original warranty, you are entitled to any unexpired portion of the warranty provided you establish your ownership and the purchase date of the car."

132. Like all members of the Class, Casiero's Operator's Manual also contained specific representations relating to the standard Mercedes-Benz Warranty as well as the tires and Rims on his Vehicle. Among other things, Casiero's Operator's Manual contained a section labeled "**Warning!**", which states:

Replace rims or tires with the same designation, manufacturer and type as shown on the original part. See an authorized Mercedes-Benz Center for further information. If incorrectly sized rims and tires are mounted:

- The wheel brakes or suspension components can be damaged.
- The correct operating clearance of the wheels and the tires are no longer guaranteed.

133. Under a second "**Warning!**" section, Casiero's Operator's Manual states:

When replacing rims, only use Genuine Mercedes-Benz wheel bolts specified for the particular rim type. Failure to do so can result in the bolts loosening and possibly an accident.

134. A section entitled, “**Important Guidelines**” also states:

- Only use sets of tires and rims of the same type and make
- Tires must be of the correct size for the rim
- Regularly check the tires and rims for damage. Dented or bent rims can cause tire inflation pressure loss and damage to the tire beds.

135. The “**Parts Service**” section of Casiero’s Operator’s Manual states:

All authorized Mercedes-Benz Centers maintain stock of Genuine Mercedes-Benz parts required for maintenance and repair work. In addition, strategically located parts distribution centers provide quick and reliable parts service.

Genuine Mercedes-Benz parts are subjected to stringent quality inspections. Each part has been specifically developed, manufactured or selected for and adapted to Mercedes-Benz vehicles.

Therefore, Genuine Mercedes-Benz parts should be installed.

! The use of non-genuine Mercedes-Benz parts and accessories not authorized by Mercedes-Benz could damage the vehicle, which is not covered by the Mercedes-Benz Limited Warranty, or could compromise the vehicle’s durability or safety.

Casiero Was Repeatedly Exposed To Mercedes-Benz Representations

136. In addition to the representations in Casiero’s Warranty Manual and Casiero’s Owner’s Manual, Casiero was repeatedly exposed to advertisements and other representations that Mercedes-Benz publicly disseminates in magazines, on television, throughout the internet and in other media, as well as in brochures, manuals, and other printed advertisements Mercedes-Benz provides to potential customers at all Mercedes-Benz authorized dealerships, including those representations identified in paragraphs 32-38, above.

137. Like all members of the Class, Casiero was exposed to the following Mercedes-Benz representations at the time he leased his Vehicle, which were widely disseminated in a variety of Mercedes-Benz commercials and print advertisements:

- a. Mercedes-Benz Vehicles are high-quality, high-performance Vehicles;
- b. Mercedes-Benz Rims are durable, without defect, and suitable for the purposes for which they are intended;
- c. Mercedes-Benz Vehicles are tested by Mercedes-Benz to ensure that they maintain the highest standards of safety, innovation, performance, durability and strength in the automotive industry.

The Rims on Casiero's Vehicle Were Defective

138. In or about June of 2008, within one month of owning the Vehicle, Casiero had to replace a failed Rim on his Vehicle.

139. Casiero had the Rim replaced at a parts distribution center which sells and distributes genuine Mercedes-Benz Rims (as authorized by Casiero's Operator's Manual).

140. Although Casiero did not specifically ask Mercedes-Benz to replace the failed Rim pursuant to the Warranty, Casiero became generally aware, from information readily accessible in the public domain, that Mercedes-Benz routinely refused to replace Rims that had failed under normal driving conditions, and that Mercedes-Benz would claim that the replacement would not be covered under his Warranty. Thus, Casiero paid out-of-pocket to replace the Rim.

141. Casiero's vehicle was less than three years old at the time he incurred the first out-of-pocket costs to replace the Rim on his Vehicle. There were 47,125 miles on his Vehicle at the time of the replacement. Thus, as reflected in Casiero's Warranty Manual, Casiero's Vehicle was covered by the standard Mercedes-Benz Warranty (four years or 50,000 miles) at the time he incurred the out-of-pocket costs to repair the first failed Rim on his Vehicle.

142. Thereafter, in or about April of 2009, when Casiero's Vehicle had been driven approximately 58,196 miles, Casiero's Rims again failed under normal driving conditions. This failure occurred outside of the Warranty Period, thus, Casiero was again forced to pay out-of-pocket to replace the defective Rims.

TOLLING OF THE STATUTE OF LIMITATIONS

143. The defective Rims as alleged herein are latent and self-concealing. Accordingly, exercising reasonable care, Plaintiffs and the Class members cannot discover that such inherent defects exist.

144. By suppressing the dissemination of truthful information regarding the Rim defects, Mercedes-Benz has actively foreclosed Plaintiffs and the Class members from learning of the latent defects.

145. By reason of the foregoing, the claims of Plaintiffs and other Class members are timely under any applicable statute of limitations (as tolled by the filing of this class action petition) pursuant to the discovery rule and the doctrine of fraudulent concealment.

146. Mercedes-Benz has been aware of the defective nature of the subject Rims for several years.

147. Despite this knowledge and awareness, Mercedes-Benz has continued to manufacture and sell the Rims and Vehicles on which the Rims are installed, has engaged in an ongoing scheme to hide the defective nature of the Rims as set forth above, and has failed to take appropriate action towards inspecting, repairing, or replacing the defective Rims.

148. Mercedes-Benz's failure to properly test the Rims prior to marketing them, their failure to take necessary steps to remedy the defect, their failure to suspend sales of the Rims in the United States, and their refusal to inspect, repair, or replace the defective parts, in light of their knowledge that these parts would fail prematurely and damage Plaintiffs and the members of the Class, was and is willful, wanton, malicious, outrageous, and was and continues to be undertaken in deliberate disregard of, or with reckless indifference to, the rights and interests of Plaintiffs and the Class members.

COUNT I

BREACH OF EXPRESS WARRANTIES

149. Plaintiffs reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein.

150. Plaintiffs, and all others similarly situated, relied in good faith upon Mercedes-Benz's written representations and warranties in making their determination to purchase or lease their Mercedes-Benz Vehicles.

151. With the purchase or lease of each Vehicle, Mercedes-Benz specifically and uniformly warranted in writing that, for four years or 50,000 miles, any part of the subject vehicle that proved to be defective would be replaced by Mercedes-Benz at no cost to Plaintiffs or members of the Class.

152. Mercedes-Benz has breached its express warranties to Plaintiffs and the Class members in that the Rims do not perform as represented by Mercedes-Benz.

153. Mercedes-Benz has also breached its express warranties to Plaintiffs and Class members in that Mercedes-Benz failed and continues to fail to replace and/or repair the Rims that proved defective under normal driving conditions within the warranty period.

154. As a direct and proximate result of Mercedes-Benz's breach of its express warranties, Plaintiffs and the Class members have suffered or will suffer damages, which include, without limitation, the diminution in value of Plaintiffs' and the Class members' vehicles, costs to inspect, repair and/or replace the Rims, reimbursement of the costs and expenses already expended by Plaintiffs and the Class members as a result of the Rim failures, and other damage caused by the defective Rims in an amount to be determined at trial.

COUNT II

BREACH OF WRITTEN WARRANTY PURSUANT TO THE MAGNUSON-MOSS WARRANTY ACT

155. Plaintiffs reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein.

156. Plaintiffs and the other Class members are "consumers" within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

157. Mercedes Benz is a "supplier" and "warrantor" within the meaning of sections 2301(4)-(5).

158. The Vehicles are "consumer products" within the meaning of section 2301(1).

159. Mercedes-Benz's express warranty is a "written warranty" within the meaning of section 2301(6).

160. Mercedes-Benz breached the express warranty by:

- a. Extending a four year/50,000 mile Warranty with the purchase or lease of the Vehicles, thereby warranting to repair or replace any part defective in material or workmanship at no cost to the owner or lessee;
- b. Selling and leasing Vehicles with Rims that were defective in material and workmanship, requiring repair or replacement within the warranty period; and
- c. Refusing to honor the express warranty by repairing or replacing, free of charge, the Rims and instead charging for repair and replacement parts.

161. Mercedes-Benz's breach of the express warranty has deprived the Plaintiffs and the other Class members of the benefit of their bargain.

162. The amount in controversy of the Plaintiffs' individual claims meets or exceeds the sum or value of \$25. In addition, the amount in controversy meets or exceeds the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit.

163. Mercedes-Benz has been afforded a reasonable opportunity to cure its breach of written warranty, including when Plaintiffs and other Class members brought their Vehicles in for replacement of the defective Rims.

164. As a direct and proximate result of Mercedes-Benz's breach of its express written warranties, Plaintiffs and the Class members have suffered damages and other losses in an amount to be determined at trial. Accordingly, Plaintiffs and the Class are entitled to recover damages, consequential damages, specific performance, diminution in value, costs, attorneys' fees, rescission, and/or other relief as appropriate.

COUNT III

VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT

165. Plaintiffs reallege and incorporate by reference each and every allegation set forth above as though fully set forth herein.

166. Plaintiffs and the Class members are consumers who purchased or leased for personal use Mercedes-Benz Rims and/or Vehicles from an authorized dealer in the State of New Jersey.

167. Mercedes-Benz used, by means of an affirmative act, an unconscionable commercial practice, deception, fraud, false pretense, false promise or misrepresentation, in connection with the advertisement or sale of its Rims and Vehicles with the capacity and/or intent to mislead or deceive Plaintiffs and the Class in violation of N.J.S.A. 56:8-1 *et seq.* (the "New Jersey Consumer Fraud Act").

168. In addition, Mercedes-Benz knowingly concealed, suppressed, omitted, left out, or did not mention important or significant facts purposely or with the intent that Plaintiffs and the Class would rely on that concealment, suppression and/or omission in connection with the sale or advertisement of its Rims or Vehicles in violation of the New Jersey Consumer Fraud Act. Plaintiffs and the Class relied upon the facts as communicated to them without having the opportunity to also consider the facts which

were concealed, suppressed, or omitted when they purchased or leased their Mercedes-Benz Rims and Vehicles.

169. As a direct and proximate result of Mercedes-Benz's unlawful conduct, Plaintiffs and the Class members have suffered or will suffer damages, which include, without limitation, the diminution in value of Plaintiffs' and the Class members' vehicles, costs to inspect, repair, and/or replace the Rims, and reimbursement of the costs and expenses already expended by Plaintiffs and the Class members as a result of the failed Rims in an amount to be determined at trial.

170. As a direct and proximate result of Mercedes-Benz's conduct, Plaintiffs and the Class are entitled to treble damages and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray the Court to enter judgment against Mercedes-Benz and in favor of Plaintiffs, on behalf of themselves and the Class members, and to award the following relief:

- A. Certifying this action as a nationwide class action (or in the alternative as a New Jersey class action), certifying Plaintiffs as representatives of the Class and designating their counsel as counsel for the Class;
- B. Tolling the statute of limitations pursuant to the discovery rule and the doctrine of fraudulent concealment;
- C. Awarding the Plaintiffs and each Class member compensatory damages for the acts complained of herein;

- D. Awarding the Plaintiffs and each Class member treble damages for the acts complained of herein;
- E. Awarding the Plaintiffs and each Class member costs and attorneys' fees, as allowed by law, and/or awarding counsel for the Class attorneys' fees;
- F. Awarding the Plaintiffs and each class member statutory pre-judgment interest;
- G. For legal and equitable relief as this Court may deem just and proper; and
- H. Granting such other or further relief as may be appropriate under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury as to all issues so triable.

Dated: September 24, 2010

GARDY & NOTIS, LLP

By: s/Mark C. Gardy
Mark C. Gardy
James S. Notis
Kelly A. Noto
Charles A. Germershausen
560 Sylvan Avenue
Englewood Cliffs, New Jersey 07632
Tel: 201-567-7377
Fax: 201-567-7337

SADIS & GOLDBERG LLP
Douglas R. Hirsch
Charles H. Dufresne, Jr.
551 Fifth Avenue, 21st Floor
New York, New York 10176
Tel: 212-573-6660
Fax: 212-573-6661

BERK LAW PLLC

Steven N. Berk
Michael P. Lewis
1225 15th Street, NW
Washington, D.C. 20005
Tel: 202-232-7550
Fax: 202-232-7556

FARUQI & FARUQI, LLP

Nadeem Faruqi
369 Lexington Avenue, 10th Floor
New York, New York 10016
Tel: 212-983-9330
Fax: 212-983-9331

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system as follows:

Kathleen M. Fennelly
(kfennelly@grahamcurtin.com)
Thomas R. Curtin
(tcurtin@grahamcurtin.com)
GRAHAM CURTIN, PA

Counsel for Defendant

s/Kelly A. Noto

Kelly A. Noto
GARDY & NOTIS, LLP
560 Sylvan Avenue
Englewood Cliffs, New Jersey 07632
Tel: 201-567-7377
Fax: 201-567-7337