

1  
2  
3  
4

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

5 **STEVE FERRARI, ET AL.,**

6 Plaintiffs,

7 vs.

8 **MERCEDES BENZ USA, LLC, ET AL.,**

9 Defendants.

CASE NO. 17-cv-00018-YGR

**ORDER STRIKING PROPOSED FIFTH  
AMENDED COMPLAINT; ORDER TO SHOW  
CAUSE WHY MOTION TO DISMISS SHOULD  
NOT BE GRANTED WITHOUT LEAVE TO  
AMEND**

10  
11 The Court **HEREBY STRIKES** the proposed Fifth Amended Complaint (“5AC”), filed  
12 January 24, 2019 (Dkt. No. 178) as having been filed in direct violation of the Court’s limited  
13 permission to file a red-line version of the operative complaint, striking out those portions of the  
14 claims released by the settlement with the Autobahn defendants, and therefore no longer relevant  
15 to claims against Mercedes Benz USA, LLC (“MBUSA”).

16 Further, the Court issues this **ORDER TO SHOW CAUSE** why the motion dismiss of  
17 MBUSA (Dkt. 163) should not be granted with prejudice. MBUSA submits that the proposed  
18 5AC effectively concedes that plaintiffs, in their Fourth Amended Complaint, have not stated a  
19 claim as against MBUSA as additional allegations are necessary and such allegations directly  
20 contradict those previously asserted and necessary to the basis of the settlement recently approved  
21 by this Court. The Court tends to agree.

22 Plaintiffs shall file a written response to the Order to Show Cause by **February 25, 2019**.  
23 Defendant MBUSA may file a reply by **March 11, 2019**. Each filing shall not exceed eight (8)  
24 pages. Failure to file a response shall be deemed an admission that the granting of the motion with  
25 prejudice is appropriate.

26 **IT IS SO ORDERED.**

Dated: February 8, 2019



**YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE**